



## REQUEST FOR PROPOSAL

### FOOD CONCESSION

### CONTRA LOMA REGIONAL RECREATION AREA

March 17, 2010

EAST BAY REGIONAL PARK DISTRICT  
2950 Peralta Oaks Court  
P.O. Box 5381  
Oakland, CA 94605 - 0381

## I. NOTICE REQUESTING PROPOSALS

NOTICE IS HEREBY GIVEN THAT THE BOARD OF DIRECTORS OF THE EAST BAY REGIONAL PARK DISTRICT will receive at District's Operations Division Office, 2950 Peralta Oaks Court, Oakland, California, 94605-0381 on **April 23, 2010** at or before the hour of 3:00 p.m., sealed proposals for the operation of a food concession in Contra Loma Regional Recreation Area, Antioch, California. Proposals must be submitted on prescribed forms.

The Board of Directors reserves the right to reject any and all Proposals, to modify the terms of this Request either before or after the deadline for submission of Proposals, negotiate with one or more of the Proposers, to call for additional Proposals, or to refrain from accepting any Proposal. The Concession Agreement the District expects to award shall in no event become effective until an award is approved by Resolution of the Board of Directors.

Proposals shall be submitted on the accompanying Proposal Forms with attachments and shall conform to the requirements set forth in these Instructions. Failure to complete any portion of the Proposal Form with attachments may be cause for rejection of the Proposal.

The District's policy in awarding this Concession Agreement will be based primarily on the most qualified Proposer overall, and not simply on the rental payments proposed. The District will carefully investigate each Proposer's background and experience in the development and operation of like facilities.

Proposers must be prepared to make all determinations of feasibility necessary to the operation of the proposed use.

Please be certain that your Proposal is complete and is delivered at District Operations and Interpretation Office, 2950 Peralta Oaks Court, Oakland, California 94605-0381, by 3:00 p.m. on Friday, April 23, 2010. Under no circumstances will proposals be accepted after that time. Should you have any questions regarding this matter, please call Mimi Waluch at (510) 544-2513.

Dated: March 17, 2010

EAST BAY REGIONAL PARK DISTRICT

## II. REQUESTS FOR PROPOSALS

### FOOD CONCESSION

#### CONTRA LOMA REGIONAL RECREATION AREA

##### A. INTRODUCTION

The East Bay Regional Park District (“District”) is seeking an experienced concessionaire to operate a food concession at Contra Loma Regional Recreation Area which is located in Antioch, California. It is expected that a Concession Agreement will be awarded following public advertisement for competitive proposals, evaluation of those proposals, selection of the best proposal and approval by the Board of Directors of the District.

Parties interested in competing for the project must submit proposals in accordance with the instructions contained herein.

##### B. SETTING

The Food Concession is a part of Contra Loma Regional Recreation Area (the “Park”) operated by the District. The park has 776 acres that include an 80-acre reservoir open throughout the year for boating and fishing. By agreement, the waters of Contra Loma’s lake are maintained by the Contra Costa Water District. Only limited body contact recreation (but not swimming) such as fishing and boating is allowed in the lake. As the result of an agreement between the U.S. Bureau of Reclamation, the Park District and the Contra Costa Water District, a new state of the art lagoon has been constructed for public swimming. The surrounding lands, owned by the U.S. Bureau of Reclamation, are managed by the East Bay Regional Park District.

##### C. LOCATION

The Park is located south east of Antioch on Fredrickson’s Lane, approximately one (1) mile from downtown Antioch, California.

##### D. JURISDICTION

The site is managed by the East Bay Regional Park District. The District is a two-county special district providing regional parks for both Alameda and Contra Costa Counties.

##### E. RECREATIONAL & ENVIRONMENTAL OBJECTIVES

The Proposal will be evaluated based on a concessionaire’s ability to offer a variety of food and vending services. The proposal should demonstrate the concessionaire’s capability to improve, maintain and manage a food service and vending operation. The District will review the primary Concessionaires’ and all partners or potential sub-concessionaires and their experience related to the following list of requirements:

1. Organizational mission congruent with District's mission of offering recreational opportunities to Bay Area residents.
2. Experience in operating a food and vending machine complex.
3. Ability to foster and maintain positive relationships with District.
4. Fiscal solvency and financial ability to successfully run the concession.

F. TERM OF AGREEMENT

The Concession Agreement is offered for a term of three (3) years (the "Original Term"). The concessionaire shall have the option of extending the Original Term for an additional two (2) years (the "Extended Term") by notifying the District in writing of its intent to extend. Notification must be no more than ninety (90) days nor less than thirty (30) days before the end of the Original Term; provided, however, that the District must approve the extension in its sole discretion.

### III. INSTRUCTIONS

#### A. Purpose

This Request for Proposals (RFP) provides all potential operators with relevant information, a Concession Agreement and the necessary forms required to submit a proposal for operation of the Contra Loma Food Concession.

#### B. Procedures

Proposals must be submitted according to these instructions. Sealed proposals will be received at the District Operations Division Office, 2950 Peralta Oaks Court, Oakland, California 94605-0381, until 3:00 p.m. on Friday, April 23, 2010. After submission, the proposals will be evaluated and, at some subsequent time, a recommendation will be given to the District Board of Directors for its consideration.

1. Instructions for Submitting Proposals. All proposals must be submitted in triplicate (one original and two copies). This information should be submitted in a sealed envelope bearing on the outside the name of the Proposer, address, the date for the opening of the proposals, and the words "PROPOSAL FOR FOOD CONCESSION, CONTRA LOMA PARK", attention Mimi Waluch. If forwarded by mail, the sealed proposals for the concession at Contra Loma must be enclosed in a larger mailing envelope and received by the East Bay Regional Park District, Operations Division, 2950 Peralta Oaks Court, Oakland, California 94605-0381, attention Mimi Waluch on or before 3:00 p.m. on Friday, April 23, 2010.

2. Interpretation of Documents and Addenda. The Proposer must carefully examine the requirements and conditions expressed in the attached documents and become fully informed as to the quality and character of facilities and actions required. If any person planning to submit a proposal finds any discrepancy in the documents, or has any question concerning this RFP, a written request for interpretation must be submitted to the District's Revenue Manager at the address shown above. The District is not responsible for any explanations or interpretations obtained in any other manner. Any change or modification to this RFP shall be issued in the form of Addenda to the Request for Proposals. Addenda prepared for this Request for Proposals will be mailed to all parties listed as requesting a copy of the Request for Proposals at least 10 days prior to the proposal opening date. This practice shall be observed even if the proposal opening date must be postponed. This RFP can be downloaded electronically using Microsoft Office WORD (track changes fully engaged) or Adobe Acrobat.

3. Site Visitations and Discussion. A group site visit and open question and answer session is scheduled for interested parties on **Wednesday, March 31, 2010** between 10:00 and 11:00 a.m. If you are planning to attend the site visit please RSVP at (510) 544- 2513 or email [MWaluch@ebparks.org](mailto:MWaluch@ebparks.org) by 5:00 p.m. on Tuesday, March 30, 2010.

4. Withdrawal of Proposals. Proposals may be withdrawn by notifying the District in writing to the District Operations Division Office, 2950 Peralta Oaks Court, Oakland, California 94605-0381,

5. Rejection of Irregular Proposals. Proposals not meeting the stated minimum terms and qualifications may be rejected by the District as non-responsive. The District reserves the right to waive any irregularities, technicalities, or informalities in any proposal, and to reject any or all proposals without cause.

6. Review of Proposals. Following the opening, all proposals will be reviewed by a committee consisting of representatives of the District and other interested parties as selected by the District. This committee will review all proposals that meet the minimum qualifications.

7. Oral Presentations. Proposer may be required, at District's option, to make public and/or private oral presentations to elaborate on the written proposal. These presentations will be held subsequent to preliminary evaluations of the proposals. The District will notify each such Proposer of the scheduled time and location for his/her presentation.

### C. Required Forms

All forms shall be submitted in triplicate (one original and two copies) on District forms where provided, and in accordance with these instructions. Provided forms should not be modified. Extra sheets may be added to provide additional information.

#### I. Forms Provided:

a. Proposal Form. Proposer shall insert the percentage of gross receipts as defined in the Concession Agreement, which he/she is willing to pay to the District.

b. Statement of Personal History and Experience. Each Proposer shall provide a statement of personal history and experience covering their background, knowledge and hands-on experiences in the operation of a food facility, or actively involved in the management of the facility.

c. Statement of Proposer's Principals. Proposer shall utilize the attached form to supply the indicated information about each person who will have primary management responsibility for each component of the concession activity.

d. Statement Regarding Additional Services. Proposers are encouraged to propose to offer services in addition to required programs associated with the concession. A plan for enhancement of facilities and improvement of services should be outlined. The approval to allow any of these services rests with the District. Provide a brief description of the additional services.

e. Statement of Financial Condition. Proposer shall provide financial information called for in the attached form. Significant weight will be given to such financial information in

the selection process. The District may request a bond for \$5,000 as a security deposit when awarding the contract.

f. Checklist of Endorsements and Attachments. On the form attached, Proposer shall check items included in proposal.

2. Forms Not Provided.

a. Pro Forma Income or Cash Flow Statement. Proposer shall prepare a projection of revenues and expenditures anticipated from the proposed concession activities for the first three years of operation. Revenues should include all forms of revenue generated from the facility for which a fee is charged. Revenues must be broken down to show merchandise and food and non-alcoholic beverage sales and sales by other services (like vending machines). Expenditures must include projected Concession Fee payments to District. The statement must show month to month projections for the first three-year term assuming a startup date of May 1, 2010.

b. Insurance. Proposer shall include a letter from an insurance company, or its broker or agent, licensed to do business in California and rated "A" or better by Best's Key Rating Guide stating that the insurer has reviewed the attached Concession Agreement and will provide the required insurance (including insurance for special events).

c. Concession Agreement Language. The standard concession agreement is attached and Proposer must be willing to execute the agreement if awarded the concession.

d. Written Information. Proposer shall attach all written information available, including advertising and brochures that show recent activity of food services rendered.

**All information, documents, drawings, and other material submitted as part of a proposal shall become property of the District. Return of any material is solely at the discretion of the District.**

## IV. BASIS OF AWARD

### FOOD CONCESSION

In seeking a Food Concessionaire for Contra Loma Regional Recreation Area, the District desires to provide quality service to park visitors in an atmosphere compatible with the lake setting of the Park.

The District will investigate the financial capability, reputation, integrity, skill, relevant experience, and quality of performance of each Proposer, including its stockholders and principals, before making award. Award of a Concession Agreement, if any, will be based on both objective and subjective comparison of proposals and Proposers. Information being solicited from Proposers is intended to provide the District with adequate knowledge of Proposers and proposals in order that the District can judge the relative merits of each of the proposals. Evaluation will be based on the items listed below. The order of the items below is not intended to portray any ranking of the relative priority.

<u>ITEM</u>	<u>CONSIDERATION</u>
Payment to District	Evaluation of projected payments, and evidence of ability to achieve such projections.
Quality of Service	Evaluation of previous and proposed quality and quantity of service.
Experience and Background	Years in business, amount of relevant experience (breadth and length). Evidence of a variety of experiences in the business.
Financial Capability	Capability to provide services throughout the term with adequate strength to cover start up and sustain possible losses; sources of financing and availability of immediate funds and back-up funds; proposed investment in promotion.
Enhancement	Proposed enhancement plan of services at the Food Concession and evidence of ability to accomplish these objectives.
Concession Agreement	Reasonable changes for changes will be at District's sole discretion.
Insurance	Strength of issuing company, ability to secure.

## **V. CHECKLIST FOR PROPOSAL DOCUMENTS**

Three copies of each of the following documents shall be submitted. Tabbed dividers would be helpful but not required.

- Proposal Form
- Statement of Additional Services and Facilities
- Pro Forma Statement
- Personal History
- Proposed Principals
- Insurance and Bonding
- Financial Condition, including (audited) Financial Statement or income tax returns and source of funds
- Checklist of Enclosures

**VI. PROPOSAL FORM**  
**FOOD CONCESSION**

To the BOARD OF DIRECTORS of EAST BAY REGIONAL PARK DISTRICT (“DISTRICT”)

The undersigned have visited the site, made inspections and investigated the conditions surrounding the food concession located in Contra Loma Regional Recreation Area in Contra Costa County south east of the City of Antioch to our satisfaction. We have read and understood the Request for Proposals, including the attached Concession Agreement in accordance with this proposal and propose to enter into the Agreement. We have had and used the opportunity to obtain relevant information from the District, but agree that all such information must be checked by us since we can rely only on the written material in the RFP. We also agree that any clerical, mathematical, or other errors made by us in preparing this Proposal shall not relieve us of our obligation to enter into the Concession Agreement as proposed.

If our Proposal is accepted by District, the undersigned, as Concessionaire agrees to:

Pay as the Concession Fee \_\_\_\_% of monthly Gross Receipts as defined in the Concession Agreement.

Pay as a Vending Machine Fee \_\_\_\_% of monthly Gross Receipts as defined in the Concession Agreement.

Pay as the Maintenance Fee \_\_\_\_% of monthly Gross Receipts as defined in the Concession Agreement.

Affidavit of Proposer. Each of the undersigned hereby represents, warrant and certify to the East Bay Regional Park District that:

(1) The proposal is genuine and not a sham or collusive or made in the interest or on behalf of any person not named, and neither the Proposer nor the undersigned have directly or indirectly induced or solicited any other person, firm, or corporation to refrain from submitting a proposal or to submit a sham proposal, and that the Proposer has not in any manner sought by collusion to secure for himself an advantage over any other Proposer.

(2) There are no material misstatements or withholding of facts in this proposal or in any of the attachments supplied with the proposal. The Proposer acknowledges that any such misstatement or withholding shall constitute good cause for cancellation at any time by District of the Concession Agreement.

The undersigned hereby respectfully submits this proposal as of this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Signature

**SOLE PROPRIETORSHIP**

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_\*\*

**PARTNERSHIP OR JOINT VENTURE**

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_\*\*

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_\*\*

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_\*\*

Name of Partnership of Joint Venture \_\_\_\_\_

\_\_\_\_\_, a California \_\_\_\_\_ (type of entity)

**CORPORATION**

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_

President\*\*

No. of shares owned: \_\_\_\_\_

Mailing Address:\*

\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_

Signature:

\_\_\_\_\_

Secretary\*\*

No. of shares owned: \_\_\_\_\_

Name of Corporation \_\_\_\_\_

\_\_\_\_\_ a California Corporation (Seal)

Date of Incorporation: \_\_\_\_\_

Total of No. of shares outstanding: \_\_\_\_\_

\* Show residence address if different from mailing address.

\*\* Type or print name and title beneath each signature. (The form may be duplicated)

## VII. STATEMENT OF PERSONAL HISTORY AND EXPERIENCE

This Statement forms a part of the Proposal for the Concessionaire at Contra Loma Regional Recreation Area.

(If a question does not apply to you, place NA on the space provided.)

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS)

DATE \_\_\_\_\_

1. Name: \_\_\_\_\_

2. Residence or Business Address: \_\_\_\_\_

\_\_\_\_\_

Residence or Business Phone: \_\_\_\_\_

Social Security No. \_\_\_\_\_

Social Security number will be used to assist the district in verifying financial information submitted by Proposers. If financial information can not be verified, the District will not be able to evaluate the applicant. Disclosure of Social Security number is voluntary.

3. Are you its full \_\_\_\_; or partial (\_\_\_\_ %) owner?

What was the gross income of the above business the last full year of operation?

\$ \_\_\_\_\_

What was the net profit for the last full year of operation? \$ \_\_\_\_\_

Is your business a sole proprietorship, corporation, partnership or other? Explain:

\_\_\_\_\_

\_\_\_\_\_

If a sole proprietorship, are you the owner? Yes \_\_\_ No \_\_\_

4. Describe services you perform \_\_\_\_\_

\_\_\_\_\_

5. Have you ever had a bond or surety canceled or forfeited?

Yes \_\_\_ No \_\_\_ If yes, state the name and address of the bonding company, date, amount of bond and reason for such cancellation or forfeiture:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Have you ever been convicted of or pled guilty to any crime (other than minor traffic violations)? Yes \_\_\_ No \_\_\_ If yes, state the violations, dates and locations:

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7. Have you or your spouse ever been adjudicated bankrupt or filed any form of bankruptcy proceedings? Yes \_\_\_ No \_\_\_ If yes, state date, court jurisdiction, amount of liabilities and amount of assets.

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8. Has any corporation in which you were an officer filed bankruptcy during the time you were an officer? Yes \_\_\_ No \_\_\_ If yes, state the name of such corporation, your position, date, court jurisdiction, amount of liabilities and amount of assets.

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9. Have you ever owned, managed or been employed by a park food concession or related enterprise? Yes \_\_\_ No \_\_\_ (a detailed description of all instances is required to be listed below and on additional pages)

a. Name of business \_\_\_\_\_

Type of Business: \_\_\_\_\_

Location: \_\_\_\_\_

Job Title: \_\_\_\_\_

Length of Employment: From \_\_\_\_\_ to \_\_\_\_\_

Salary or Net Profit (indicate which) \$ \_\_\_\_\_ per year

Description of work and responsibilities:

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Reason for leaving: \_\_\_\_\_

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b. Name of business \_\_\_\_\_

Type of Business: \_\_\_\_\_

Location: \_\_\_\_\_

Job Title: \_\_\_\_\_

Length of Employment: From \_\_\_\_\_ to \_\_\_\_\_

Salary or Net Profit (indicate which) \$ \_\_\_\_\_ per year

Description of work and responsibilities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for leaving: \_\_\_\_\_

\_\_\_\_\_

10. Have you ever been involved in the promotion or production of any Special Events for larger groups? Yes \_\_\_ No \_\_\_. If yes, give names, dates, number of people attended, and describe your activities and responsibilities: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. List your minimum food and beverage menu and your suggested pricing for these items: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. List any additional evidence of your qualifications to provide food services, promote facility enhancement, and produce special events for Contra Loma Concession:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. List your method of compliance with the California Injury and Illness Prevention Program – SB 198: \_\_\_\_\_

\_\_\_\_\_

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14. List your methods of compliance with the American Disability Act (ADA): \_\_\_\_\_

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15. List your method of insuring that all employees meet the provisions of Section 5164 of the Public Resources Code for all employees who supervise minors. These Codes refer to the fingerprinting of all employees that have direct supervision over employees, volunteers or programs that include individuals that are under the age of 18: \_\_\_\_\_

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I certify under penalty of perjury that the foregoing is true and correct. Material falsification is grounds for termination of Concession Agreement by District.

\_\_\_\_\_  
Signature

(This form may be reproduced as needed.)

**VIII. STATEMENT OF PROPOSER'S PRINCIPALS**

List the person(s) who will have primary management responsibility for each of the indicated components of the Project:

A. Preparation of the Proposal and completion of contract documents

\_\_\_\_\_  
Name \*Address

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Daytime telephone

I agree to be available (subject to disability) to the Proposer to perform such services from \_\_\_\_\_, 2010, until at least \_\_\_\_\_.

\_\_\_\_\_  
Signature

B. Management and Supervision of the Food Operations

\_\_\_\_\_  
Name \*Address

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Daytime telephone

I agree to be available (subject to disability) to the Proposer to perform such services from \_\_\_\_\_, 2010, until at least \_\_\_\_\_.

\_\_\_\_\_  
Signature

C. Planning, Promotion, and Production of Special Events

\_\_\_\_\_  
Name \*Address

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Daytime telephone

I agree to be available (subject to disability) to the Proposer to perform such services from \_\_\_\_\_, 2010, until at least \_\_\_\_\_.

I certify that the foregoing is true and correct. Material falsification is grounds for rejection of the Proposal and /or termination of the Agreement.

\_\_\_\_\_  
Signature

\*Show residence address if different than mailing address.

**IX. STATEMENT REGARDING ADDITIONAL SERVICES**

This statement forms a part of the Proposal for the development and operation of the Contra Loma Concession. In addition to the services required by the Concession Agreement, we propose to provide the following activities, sales and/or facilities. We understand that they may be implemented only with approval of the District.

A. SERVICES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. FACILITIES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. SPECIAL EVENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. PROPOSED MENU AND PRICING: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. PROPOSED ENHANCEMENTS TO CONCESSION OPERATION:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(This form may be reproduced as needed.)

**X. STATEMENT OF FINANCIAL CONDITION**

This Statement forms a part of the Proposal Form for the Contra Loma Food and Vending Concession. If a question does not apply to you, write NA in the space provided. As part of the selection procedure, it will be necessary for the District to verify each Proposer’s financial condition and credit rating. So that we may do this, please provide the information requested below. Material inaccuracies may result in your Proposal, or even an awarded Concession Agreement, being invalidated.

**SUPPLIERS**

Please list the suppliers (names and addresses) who have granted you business credit or with whom you do business.

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**OTHER REFERENCES**

Please list three credit references:

Name	Address	Daytime Telephone
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<hr/>		
<hr/>		

A set of personal or business financial statements, prepared by a CPA or Public Accountant, or three years of Federal income tax returns should be submitted by the applicant intending to operate this concession. Also, applicant must provide a three-year pro forma income statement and statement of cash flow for the proposed activity.

I certify that the foregoing is true and correct. Material falsification is grounds for rejection of the Proposal and/or termination of the Concession Agreement.

\_\_\_\_\_  
Signature

**XI. LIST OF ENCLOSURES AND ATTACHMENTS FOR  
CONTRA LOMA FOOD PROPOSAL**

ITEM	CHECK IF Enclosed	FOR DISTRICT USE ONLY – Reviewed and found properly submitted (initial and date)
Proposal Form	_____	_____
Statement of Personal History and Experience	_____	_____
Statement of Proposer’s Principals	_____	_____
Statement Regarding Additional Services	_____	_____
Pro Forma Statement of Income & Cash Flow	_____	_____
Insurance	_____	_____
Statement of Financial Condition	_____	_____
Concession Agreement	_____	_____
Check List	_____	_____
Written Information	_____	_____

## SAMPLE CONCESSION AGREEMENT

THIS AGREEMENT is entered into as of \_\_\_\_\_ between the EAST BAY REGIONAL PARK DISTRICT, a California Special District ("District"), whose address is 2950 Peralta Oaks Court, Oakland, CA 94605, and a \_\_\_\_\_ ("Concessionaire") whose address is \_\_\_\_\_. The parties hereby agree as follows:

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, District hereby grants to Concessionaire, pursuant to its powers under Section 5540 of the Public Resources Code of the State of California, the exclusive license to operate the food concession facility at Contra Loma Regional Recreation Area, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. **PREMISES.** Subject to terms and conditions contained in the Master Lease, the controlling document, between the East Bay Regional Park District in consideration of the payment of license fees hereinafter specified to be paid by Concessionaire and of the covenants and agreements herein contained to be performed and observed by Concessionaire, District grants to Concessionaire for the purposes hereinafter specified that certain property ("Premises"), located in the food concession in Contra Loma Regional Recreation Area ("Park"), at 11200 Frederickson Lane, Antioch CA 94509, and as more particularly described in Exhibit "A".
2. **TERM.** This License is granted for a term of three (3) years beginning \_\_\_\_\_ and terminating \_\_\_\_\_. In District's sole discretion, District may grant Concessionaire the option to extend the term of the Agreement for one two-year option period. Concessionaire shall give notice to District sixty days prior to expiration of initial term to request entering into the option periods. District shall respond within thirty (30) days to such request.

This Agreement shall be subject to early termination as follows:

- a. Upon at least 180 days prior written notice to such effect by Concessionaire to District.
  - b. By District upon determination by its Board of Directors that a food concession is an incompatible use of Contra Loma Regional Recreation Area. The Board of Directors shall have sole discretion to determine whether food sales is an incompatible use or constitutes a nuisance or public safety hazard to other park users. Upon such a determination, Concessionaire shall be given 180 days to remove all its property and repair any damage Concessionaire has caused.
- 3. FEES AND CHARGES.**
- a. Concession Fee. Concessionaire shall pay to District without demand,

\_\_\_\_\_ % of Concessionaire's gross receipts as defined in Section 3.c. made from sales at the concession stand and \_\_\_\_\_ % of Concessionaire's gross receipts from sales made from vending machines upon the Premises during each year of the Term.

Following the first whole or partial month of the term hereof, Concessionaire shall furnish to the District by the 15th day of each month, a verified statement of its total gross receipts for the preceding month along with the Concession Fee for that period. The monthly statement and the Concession Fee shall be mailed to the Finance Department, P.O. Box 5381, Oakland, California 94605-0381.

- b. Late Charge.** If any installment of Concession Fee due from Concessionaire is not received by District when due, Concessionaire shall pay to District an additional sum of 10% of the overdue concession fee as a late charge. Acceptance of any late charge shall not constitute a waiver of Concessionaire's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District.
- c. Gross Receipts.** The term "gross receipts" herein shall include the total aggregate amount of the business done, sales made, and services performed by Concessionaire in, on, or from the Premises for cash and on credit (it being understood that sales on credit are to be included in gross receipts whether or not payment is actually made to Concessionaire). In addition, gross receipts shall also include the total aggregate amount received by Concessionaire from the operating of vending machines. Any transaction on an installment basis involving the extending of credit shall be treated as a sale for the full price at the time such transaction was entered into irrespective of the time of payment or when title passes. Gross receipts shall not include the amount of any tax on sales from the Premises where such taxes are added to the selling price, stated separately, and paid by Concessionaire's customers, and remitted directly to the taxing authorities by Concessionaire.
- d. Concessionaire's Maintenance Fund.** In addition to the percentage Concession Fee paid during the term pursuant to Section 3.a. and the ongoing maintenance required by this Agreement, Concessionaire agrees to expend for major maintenance, replacement, or addition of District-owned facilities, the sum equal to \_\_\_\_\_ % of Concessionaire's Gross Receipts.

District will account for these funds in a separate account designated as "Contra Loma Maintenance Fund" and maintain adequate records thereof. These funds are solely for use for maintenance and improvements to the facility. Concessionaire acknowledges that they possess no right, title or interest in these funds other than to administrate pursuant to this Section. Expenditures from this maintenance fund shall require District's prior written approval and the projects approved in the maintenance fund plan shall be completed during the

term of this agreement. If Concessionaire uses its own labor for these projects, payment for such labor for the purpose of this Section will be calculated at the actual hourly rate including 25% for payroll taxes and benefits or not more than three times the minimum wage, whichever is less. No credit for management or supervision will be allowed.

- e. Concessionaire will prepare a maintenance fund plan by January 1, each year and forward a copy to District's Revenue Manager to obtain the necessary District approvals and prioritization. Concession maintenance and/or replacement categories are listed in Exhibit "B". The minimum dollar amount for a project to be approved for this fund is \$300. No maintenance fund activities shall begin without District's prior written approval. Work requiring design approval, specific plans and/or specifications, as appropriate, must be submitted to District and approved by District's Chief of Design or designee. Such review will be completed by District within thirty (30) working days of receipt, with Concessionaire responsible to meet all reasonable requests for revision or amendment.
- f. Upon completion of an approved maintenance project, the Concessionaire will submit to the Park Supervisor a summary of project costs, original invoices, and copies of front and back of canceled checks to vendors. If the Concessionaire uses its own labor for these projects, time cards must be submitted. The Park Supervisor will approve the expenditures and forward them to the Revenue Manager for reimbursement to the Concessionaire.
- g. Any unexpended major maintenance and/or replacement of funds at the end of the term shall become the property of District and shall be used to improve the Premises.
- h. Records - Inspection. Concessionaire shall keep true and accurate books and records showing all of its income and expenses and business transactions in connection with the Concession in separate records of account in a manner reasonably acceptable to District, and District shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including State of California sales tax return records, Federal and State income tax returns and Federal and State payroll tax reports. Concessionaire shall keep gross receipt deposits and cash disbursements related to the operation of the Concession in a separate bank account.
- i. User Rates. District shall have access to and the right to inspect the schedule of prices and rates for goods sold and services rendered on the Premises and any lists and schedules of prices for food-serving activities operated by Concessionaire. If District shall determine any price or prices to be unreasonable, such price shall be modified as directed by District. Concessionaire shall post rates and prices for all goods and services in such

places as may be designated by District.

- j. **Rate Increases.** Concessionaire shall not increase the user rates and/or institute any additional services and charges without the prior written consent of the District, which consent shall not be withheld unreasonably. Concessionaire will attempt to keep prices below competitors' pricing. District agrees to approve any price changes that are below immediate competitor prices.

- 4. **PROMOTION; SIGNS.** Concessionaire shall not display any signs whatsoever within the park or on the Premises without the prior written consent of the Park Supervisor. Application for such consent shall show in reasonable detail the type, character and size of any such sign Concessionaire desires to display. District agrees not to withhold nor delay approval of reasonable requests for signs.

Concessionaire shall maintain one or more bulletin boards for posting notices hours of operation, fees, safety regulations, information about activities on the Premises, etc., and may distribute pamphlets or brochures describing the services and activities available on the Premises. All promotional materials shall contain the reference "Contra Loma Regional Recreation Area an East Bay Regional Park District facility".

- 5. **CONDITION OF PREMISES AND EQUIPMENT.** Concessionaire acknowledges and agrees that the Premises are in good and tenantable condition. Concessionaire further acknowledges that the equipment to be provided by District is in good operating condition. Concessionaire shall accept the Premises and equipment to be provided by District in their presently existing "as is" condition and agrees that District shall not be obligated to make any alterations, additions or improvements thereto.

- 6. **USE OF THE PREMISES.** Concessionaire shall use the Premises to operate, manage and maintain the service operations for the public described below in this Section upon the terms and conditions of this Agreement and for no other purposes, refer to Exhibit "C" for Hours of Operation.

- a. **Food Concession.** Concessionaire shall operate the existing food concession at the beach area. Concessionaire shall operate food service at a level consistent with the required Costa County Health Department license. Copies of all inspections are to be submitted to Park Supervisor within 24 hours of site visit. Refer to Exhibit A map for site location.

- b. **Other.** Other or additional activities by Concessionaire shall require the prior written consent of District, which consent may be granted or withheld in District's sole discretion. Concessionaire shall comply with any and all present laws, general rules or regulations of District and any governmental authority now in force relating to sanitation or public health, safety or welfare and environmental matters relating to the condition, use or occupancy of the Premises during the Term. Such rules, regulations and policies of District may include, without limitation, containers for trash removal to aid in the control of

yellow jackets and other insects. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions within Concessionaire's responsibility. Concessionaire shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to the public.

## **7. RESTRICTED SALES AND USES**

- a.** Sales and Rentals. District reserves the right to prohibit the sale, rental, or use by Concessionaire of any article or item which District regards as objectionable or beyond the scope of merchandise or equipment deemed necessary for proper services to the public or of inferior quality.
- b.** Containers. Beverages in air-tight containers under pressure of carbonation from the Premises shall be marked for identification. Concessionaire and District shall from time to time review items sold and containers or utensils used or dispensed by Concessionaire. District prohibits the use of Styrofoam containers by Concessionaire.
- c.** Waste Reduction. District prohibits the sale or use of non-recyclable containers or plastics. No pull-top cans with removable tabs are to be used or sold by Concessionaire. Concessionaire must maintain a recycling program or make arrangements with park staff to utilize the park's recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.
- d.** Chemicals. No pesticides, herbicides or fungicides may be used or sold by Concessionaire on the Premises that are not approved in writing by District in advance of proposed use or sale.
- e.** Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage. District shall provide Concessionaire continued use of storage sheds located behind the public restrooms.
- f.** Private Vehicles. Concessionaire's personnel may drive private vehicles into areas of the Park restricted to non-District vehicles only as required for loading and unloading items used to operate the Premises. Operation of such vehicles shall be subject to regulations established by District from time to time.
- g.** Noise. Concessionaire shall not install, use, or permit to be operated or used on the Premises any public address equipment, television equipment, juke box, radios, loudspeaker, or other equipment producing noises that can be heard outside the Premises, except as approved in writing by District in advance of such operation and use. Systems to announce readiness of food orders or to facilitate boat rentals are permissible as long as noise level is restricted to that necessary for public convenience.

- 8. FACILITIES AND EQUIPMENT PROVIDED BY DISTRICT.** Upon commencement of the Term, District shall provide to Concessionaire the equipment listed on Exhibit “D”. Notwithstanding the foregoing, the equipment listed on Exhibit D may be provided by District in District's sole discretion.

District shall provide hookup for electrical, telephone, sewer and potable water service at the existing location at no cost to Concessionaire. Electrical service at this location shall be both 100 and 200 amp. Any future utility hookups deemed necessary by District in its sole discretion will be provided by the District. District will pay for gas and electric, garbage pickup, and water service.

- 9. FACILITIES AND EQUIPMENT PROVIDED BY CONCESSIONAIRE.** Concessionaire shall provide, at its own expense, other equipment, as needed, which equipment is not provided by District. This equipment will remain the property and responsibility of Concessionaire who shall obtain written approval of District prior to providing any other equipment that Concessionaire deems to be necessary for the good and proper operation of the recreation area. Concessionaire shall be responsible for telephone service and for all costs related to the burglar alarm systems on its portion of the Premises.

- 10. PROTECTION OF PARK AND GENERAL PUBLIC USE.** It is recognized by Concessionaire that the Premises are owned by the District and that the Premises are within a Regional Park, operated and maintained by the District, as an essential part of its system for furnishing park and recreation opportunities for the inhabitants of the District. Concessionaire agrees to cooperate with the District to protect lands of the District from destruction by erosion, fire or improper use, and to protect the flora and fauna within the Park, as well as the area assigned to Concessionaire and to protect the public at all times from hazards.

All Concessionaire-sponsored activities and participating individuals are subject to the provisions of the East Bay Regional Park District's Ordinance No. 38 and Concessionaire agrees to abide by all rules and regulations therein. Accidents that occur on the Premises must be reported to the Park Supervisor and Public Safety within 24 hours.

Concessionaire is granted authority to develop, administer and regulate the activities of trainees and others using the Premises pursuant to posted rules and regulations governing use of the Premises. All such rules and regulations must be approved in advance in writing by the District's General Manager and shall not conflict with District Board policy and other rules and regulations established by District. District ordinances and rules and regulations shall take precedence. Concessionaire shall post all facility rules and instruct customers on the safe operations of all activities on the Premises.

In the case of abuse of the facility or unsafe actions on the part of any person(s), Concessionaire shall courteously and respectfully point out such abuse or unsafe action and request that such person(s) refrain from so doing. Should such action persist or in the case

of any dispute, the matter shall be promptly referred to the Supervisor of the Park or, in case of present danger, to a District Police Officer.

While District shall provide the normal level of public safety services to the Premises that it supplies to the adjacent and other District areas, Concessionaire shall be responsible for having adequately trained personnel on hand during hours of operation as required to perform foreseeable needs for maintaining an orderly operation, protecting visitors, on the Premises and providing emergency response in the event of accident or fire, including first-aid assistance on the Premises. Concessionaire agrees to instruct its personnel to use all reasonable efforts to notify District's Public Safety Department in the event of emergencies or other significant disturbances.

**11. EMPLOYEES-PERSONNEL.** All persons employed or utilized in connection with the operation of the Premises, including relatives and minors, age of fourteen and above, with valid work permits and employed under the strict guidelines of California Child Labor laws, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees of Concessionaire. If in the reasonable judgment of District, any such person is incompetent, disorderly, discourteous, or otherwise objectionable, such person, including relatives, shall be discharged or reassigned to a non-District facility upon Concessionaire's receipt of written notice from District's General Manager to such. Concessionaire shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Premises to the extent reasonably required to ensure such standards of operation called for in this Agreement.

Concessionaire shall insure all employees who supervise minors meet the provisions of the Public Resources Code, Section 5164, Exhibit "E" which is attached hereto and made a part hereof, that Concessionaire will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted. Livescan fingerprinting service is available through the District's Public Safety Division, located at Lake Chabot Regional Park, for the current Department of Justice rate for a background check.

**12. LICENSES.** Concessionaire shall, at its expense, obtain from time to time and shall be in possession of and display such licenses, permits or certificates issued by Federal, State or County authorities certifying that the business operations, equipment, facilities, products on sale and methods of preparing, serving and selling thereof meet current applicable health and sanitation regulations, as well as all necessary business licenses and permits.

**13. CONCESSIONAIRE'S MAINTENANCE OBLIGATION.** Concessionaire agrees to maintain in good order and repair any and all concession structures, facilities, improvements, and equipment on the Premises, at Concessionaire's cost and expense, during the entire term. Concessionaire shall perform any required maintenance. Should Concessionaire fail, neglect or refuse to do so, the District shall have the right, but not the obligation, to perform such maintenance or repairs for the Concessionaire's account, and the Concessionaire agrees to promptly reimburse the District for the cost thereof, provided, however, that the District shall first give Concessionaire ten days' written notice of its intention to perform such maintenance. District shall not be obligated to make any

repairs to or maintain any improvements on the subject Premises unless otherwise required by this Agreement.

District reserves the right of entry for its employees and agents to inspect the Premises as deemed necessary by District, and the right (but not obligation) to do any and all work of any nature necessary for preservation, maintenance and operation of the park in which the Premises are located. Concessionaire shall be given reasonable notice when any such work may become necessary and will adjust concession operations in such a manner that District may proceed expeditiously.

Concessionaire expressly agrees, at its own cost and expense, to maintain and operate all of the Premises in a clean, safe, wholesome, and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any applicable laws, rules or regulations of any governmental authority having jurisdiction over the Premises. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions. In addition to the general maintenance required above, Concessionaire shall make and observe the following in a prompt manner:

- Post hours of operations
  - Post menu and prices in a neat and orderly manner
  - Clean concession and other buildings used by Concessionaire
  - Replace burned out bulbs promptly
  - Monitor plumbing (report leaks or breaks etc.)
- a. Repair and Replacement by District. District shall have the obligation to repair or replace to the extent the damage or destruction is caused by the sole negligence of District.
- b. Repair and Replacement by Concessionaire. Concessionaire shall have the obligation to repair or replace to the extent damage or destruction is caused by Concessionaire, or to the extent insurance proceeds are received by Concessionaire (which shall be held in trust for such purposes), or to the extent that proceeds would have been obtained by Concessionaire if Concessionaire had been carrying the insurance required by this Agreement.

**14. CONCESSIONAIRE'S ALTERATIONS AND IMPROVEMENTS.** At any time during the term hereof, Concessionaire shall have the right, subject to prior written approval by District as hereinafter provided, to construct alterations, additions and/or improvements to the Premises, at Concessionaire's sole cost and expense and without reimbursement from the District. Whenever Concessionaire desires to construct alterations, it shall prepare specifications and working drawings and submit them to District's Design Department for approval, which approval shall not be unreasonably withheld, provided that the proposed work will be of high quality, compatible with the purposes described and compatible in finish, color, and design with the existing structures on the Premises and the Park environment.

Upon expiration or termination of this Agreement, any alterations to the Premises or to any structures located thereon, and all fixtures, shall remain upon the Premises and be surrendered to and become the property of the District.

**15. TITLE TO IMPROVEMENTS.** Concessionaire hereby acknowledges the title of District in and to the Premises described in this Agreement, including real property improvements existing or erected thereon, and hereby covenants and agrees never to assail, contest, or resist said title.

**16. INDEMNITY.** Concessionaire hereby waives all claims and recourse against the District including the right to contribution for loss of damage by reason of death or injury to persons or damages to property, whether the person or property of Concessionaire, its agents or employees, or third persons arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the sole negligence or sole willful misconduct of District, its officers, directors, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

Concessionaire shall indemnify, hold harmless, and defend the District and its officers, directors, agents and employees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including attorneys' fees, penalties, judgments or obligations whatsoever for or in connection with injury (including death) or damage to any person or property or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Concessionaire, including, but not limited to, Concessionaire's development, construction, occupation, use, operation, or maintenance of the concession, Premises, or any facilities, including events occurring on or of the Premises or facilities, regardless of how the injury or damage was caused or suffered unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of District, its officers, directors, agents, or employees.

District shall have no responsibility to safeguard the equipment and property of Concessionaire or any of its invitees. District shall have no responsibility to safeguard or protect the Concessionaire, or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death) or personal injury.

In the event a claim is made against District and District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Concessionaire, Concessionaire shall immediately notify District of such fact, and at District's option shall either retain legal counsel to represent District in such action at Concessionaire's sole expense or reimburse District for District's litigation costs, expenses and attorney's fees in undertaking to represent itself.

In the event a claim is made against the District and Concessionaire for the joint and several liabilities of District and Concessionaire, the determination as to the apportionment of liability between District and Concessionaire shall be made by the judge in a court of competent jurisdiction. Neither District nor Concessionaire shall request that the apportionment of liability be determined by a jury.

Notwithstanding the apportionment of liability between District and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District its officers, directors, agents, or employees.

**17. INSURANCE.** Concessionaire shall carry during the term of this License, at its own cost and expense, the following insurance:

- a. General Liability** (Bodily Injury and Property Damage) including Premises and Operations (including off-site operations), Blanket Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, and Owners and Contractors Protective Liability in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate which amount may be satisfied through an umbrella policy.
- b. Fire/Property Insurance** on all improvements and equipment owned by the Concessionaire. Standard Fire Insurance with extended coverage and vandalism and malicious mischief endorsements thereon, on all improvements owned by the concessionaire, placed or constructed upon the premises by Concessionaire, in an amount equal to 90% of the full replacements cost thereof, and insuring the interests of the District and the Concessionaire as same shall appear. Concessionaire and District agree, to extent permissible, that they will waive their rights to subrogate fire damage. The policy shall contain a special endorsement that such proceeds shall be disbursed and used to repair or rebuild and such improvements so damaged or destroyed (if such course of action is required by this Agreement.
- c. Automobile Liability** (Bodily Injury and Property Damage) extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under the License in an amount not less than \$1,000,000 per occurrence.
- d. Worker's Compensation** as required by law and Employer's Liability with limits of \$500,000 per occurrence. The insurer will waive all rights of subrogation against District, its officials, directors, employees, agents and volunteers.
- e. Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and are subject to approval by District.
- f. Other Insurance Provisions:** The policy is to contain, or be endorsed to contain, the following provisions:
  - i. Concessionaire shall name District, its officials, directors, employees, agents and volunteers as additional insured in its General Liability and

Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to District, its officials, directors, employees, agents or volunteers.

- ii. Concessionaire's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to District, its officials, directors, employees, agents or volunteers.
- iii. All endorsements to policies shall be executed by an authorized representative of the insurer.

**g. All Coverages:**

- i. Each insurance policy required by this clause shall be endorsed to state that District will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.
- ii. Insurance is to be placed with insurers with an A.M. Best's rating of no less than A- or better.
- iii. Concessionaire shall furnish District with certificates of insurance and endorsements to the policies evidencing coverage required by this License prior to the start of operations at the Premises. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Concessionaire's insurer in its normal course of business and shall be received and approved by District prior to execution of this License by District. District reserves the right to require complete, certified copies of all required insurance policies in the event of an insurance claim. The Concessionaire shall provide proof that any expiring coverage has been renewed or replaced at least two weeks prior to the expiration of the coverage.

**18. WAIVER OF CLAIMS.** The Concessionaire hereby waives any claim against the District, its officers, directors, agents, or employees for damage or loss caused in connection with or as a result of any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof or as a result of any judgment or award in any suit or proceeding declaring this Agreement null, void or delaying the same or any part thereof from being carried out.

**19. WAIVER OF CONTRACT TERMS.** No waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of District to re-enter the Premises or to exercise any right, power, privilege, or option or be accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the District of any default. No option, right, power, remedy, or privilege of District shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the District by this Agreement

shall be deemed cumulative.

**20. NON-DISCRIMINATION.** The Licenses and Concessionaire's members shall not discriminate because of sex, sexual orientation, race, religion, age, color, disability, or national origin, against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall the Concessionaire or Concessionaire's employees or members publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

In the performance of this contract, the Concessionaire will not discriminate against any applicant because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

**21. TAXES.** Concessionaire shall pay when due all taxes levied on personal property used or maintained upon the Premises and shall pay any possessory or use tax that may be levied in connection with use of the Premises, Concessionaire agreeing to indemnify and save District harmless from all taxes whatsoever arising out of or in any way connected to the operations conducted by Concessionaire upon the Premises.

**22. PAYMENT OF DEBTS - NO LIENS.** Concessionaire shall promptly pay all debts incurred by it for materials, supplies, equipment, merchandise or services used in or about or in connection with its business or operations, and the wages and salaries and payroll taxes of all employees employed thereon. Concessionaire shall permit no liens to be levied upon or to attach to any property used by it in the performance of this Agreement. Concessionaire shall pay before delinquency all license fees, taxes, and assessments imposed, levied or assessed upon items or upon any property used by Concessionaire in the performance of this Agreement or upon Concessionaire's possessory interest therein, upon Concessionaire's business or activity conducted hereunder or Concessionaire's right to conduct same, or based upon the proceeds of such business or activity.

**23. ASSIGNMENT AND SUBLETTING.** Concessionaire shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Concessionaire's interest in the License or in the Premises, without District's prior written consent which may be granted or denied in District's sole discretion. Notwithstanding the foregoing, Concessionaire shall have the right to assign this License, with notification to District (but without the need for prior consent), to its general partner or any entity which controls, is controlled by, or is under common control with Concessionaire, to any entity resulting from merger or consolidation with Concessionaire, or to any person or entity which acquires substantially all of Concessionaire's assets, provided that such assignee assumes in full all of Concessionaire's obligations under the License. Notwithstanding anything to the contrary contained in this Agreement, Concessionaire may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity or agent on behalf of any financing entity to whom Concessionaire (i) has obligations for borrowed money or in

respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

**24. RIGHT OF ENTRY.** Concessionaire agrees that District and its agents may enter upon the Premises at all reasonable times to inspect the same, and to fulfill any of the rights granted District under the terms of this Agreement, or otherwise to protect any of the rights of District and there shall be no liability against District for damages thereby sustained by Concessionaire nor shall Concessionaire be entitled to any abatement or reduction of rental herein by reason of the exercise by District of any such right herein reserved.

**25. CONFLICT OF INTEREST.** Concessionaire warrants and covenants that no official or employee of District nor any business entity in which an official or employee of District is interested; (1) has been employed or retained to solicit or aid in the procuring of this contract; (2) will be employed in the performance of this contract without the immediate divulgence of such fact to District. In the event District determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of District, Concessionaire, upon request of District, shall terminate such employment immediately.

**26. CONCESSIONAIRE AS INDEPENDENT CONTRACTOR.** It is expressly agreed that under the license to operate the facility granted by this Agreement, Concessionaire shall be, and is, an independent contractor, and is not an agent or employee of District. Except as otherwise expressly limited by other provisions of this Agreement, Concessionaire has and shall retain the right to exercise full control and supervision of the operation of the facility, and full control over the employment, direction, compensation and discharge of all persons assisting Concessionaire in the operation of the facility under this Agreement. Concessionaire shall be solely responsible for all matters, and shall be solely responsible for Concessionaire's own acts and those of subordinates and employees.

**27. SAFETY.** No special events will be conducted by Concessionaire without prior approval by the District. In order to insure the safety of the public, these safety precautions will be followed at all times; (1) Smoking will be strictly prohibited on the Premises and the surrounding area, and (2) All injury accidents shall be reported to the Park Supervisor within 24 hours.

- a. Fire Protection. Concessionaire shall take all necessary precautions to prevent fire in or about the Premises, and Concessionaire shall carefully observe all rules of District relative to fire prevention. District shall, at its expense, install and maintain such fire prevention and fire fighting practices and equipment as may be specified or required by Alameda County or any other agency having jurisdiction to regulate fire prevention measures at the Premises.
- b. Hazardous Substances. No goods, merchandise or material shall be kept, stored, or sold in or on said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on

therein or thereon, and nothing shall be done on said Premises, other than as is provided for in this contract, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.

- c. Concessionaire represents and warrants to District that Concessionaire will not generate, store, release or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below). Concessionaire shall hold District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.
- d. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

**28. NOTICES.** Any notices required or permitted to be given under this Agreement shall be certified mail and addressed to respective parties at their addresses indicated on the first page hereof. Such addresses may be changed from time to time by notice in writing to either party. Such notices shall be deemed delivered at the time mailed.

**29. DEFAULT.** The occurrence of any one or more of the following events shall constitute a material default of this License by Concessionaire.

- a. The abandonment, vacation, or discontinuance of operations on the concession premises for more than thirty days.
- b. The failure of Concessionaire to make any payment of license fees or any other payment required to be made by Concessionaire hereunder, upon ten days written notice from District of non-payment.
- c. The interest of Concessionaire in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation without the written consent of the District.

- d. The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than thirty days after written notice from the District to correct the condition specified.
- e. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than thirty days after written notice from the District for correction thereof.
- f. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Concessionaire under the Agreement which is not corrected within thirty days after written notice from the District for correction thereof; and the failure to maintain service standards thereafter.
- g. The failure of Concessionaire to keep, observe and perform all other promises, covenants, conditions and agreements set forth in this Agreement including compliance with local, state and federal law, where such failure continues for more than thirty days after written notice from the District for correction thereof.
- h. The filing of a voluntary petition in bankruptcy by Concessionaire, the adjudication of Concessionaire as a bankrupt, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefit of creditors, and or a petition or answer seeking a reorganization of Concessionaire under the federal bankruptcy laws or any other federal or state laws.
- i. Concessionaire's material misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of Concessionaire to perform the services under this Agreement.
- j. The filing of any lien or stop notice on account of Concessionaire where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten days.

**30. REMEDIES.** In the event of a material default by Concessionaire, District may:

- a. Terminate this License in which case Concessionaire shall immediately surrender possession of the Premises to District.
- b. Take possession of the Premises as the agent and on account of Concessionaire, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this License and retain any license fees received and apply the same in payment on account of Concessionaire. The

performance of any or all of said acts by District shall not release Concessionaire from the full and strict compliance with all of the terms, conditions and covenants of this License on Concessionaire's part and Concessionaire shall pay any deficiency that may exist after deducting any license fees received, if any.

- c. It is understood that the remedies herein provided for District in case of a violation of the terms of this License by Concessionaire are not exclusive, but are in addition to the remedies provided by law or at equity, and any of which remedies District shall have the right to use at its option.

**31. HOLD OVER.** Any holding over after the expiration of the term of this License, with the consent of District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable. District may terminate any hold over tenancy on thirty days written notice to Concessionaire.

**32. MODIFICATION OF AGREEMENT.** Notwithstanding any of the provisions of this Agreement, the parties may hereafter, by mutual consent agree to modifications thereof or additions thereto in writing which are not forbidden by law. District shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

**33. ATTORNEY'S FEES.** Should either party bring any legal action or proceeding for the breach of any term, covenant or Condition of this Agreement, the Court shall award reasonable attorneys' fees to one or more of the parties therein based upon the degree to which each party prevails in such action or proceeding, as determined by the Court.

**34. ADVICE OF COUNSEL.** Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

**35. MISCELLANEOUS.** Headings are for convenience only and shall not be considered in the interpretation of this Agreement. This Agreement shall benefit and bind the successors and assigns of the respective parties hereto.

**36. ENTIRE AGREEMENT.** This Concessionaire Agreement constitutes the entire agreement between the parties regardless of any other representations that may have been made either orally or in writing.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the day first herein above written.

CONCESSIONAIRE

EAST BAY REGIONAL PARK DISTRICT

By \_\_\_\_\_

By \_\_\_\_\_  
General Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**MAP OF PREMISES**



## **EXHIBIT B**

### **CONCESSIONAIRE MAINTENANCE FUND CATEGORIES**

Concessionaire Maintenance and/or Replacement Fund categories are established as follows:

1. Repair, replacement and/or additions to interior equipment in the food concession:  
Repairs such as freezers, ice machines, cooking equipment, major electrical work, etc.
2. Other items as the parties may mutually agree upon in writing.
3. All equipment (especially newly acquired that will become property of the District's) must be placed on an inventory and a District identification number affixed. This will be the responsibility of the Park Supervisor. The Concessionaire will notify the Park Supervisor upon receipt of such items and will forward the appropriate invoices, warranties, etc., to the Park Supervisor.

**EXHIBIT C**  
**DAYS AND HOURS OF OPERATION**

All of Concessionaire's operations permitted hereunder shall be conducted during the days and hours of operation specified herein (minimum required).

Beach Concession: From 11:00 a.m. to 6:00 p.m. Weekends from the first weekend in April through the end of September.  
Daily - Beginning the second Monday in June through the weekend after Labor Day

Vending Services: Year round

Concessionaire may close the Premises because of adverse weather or other adverse operating conditions with the prior consent of District, which consent shall not be withheld unreasonably.

**EXHIBIT D**  
**EQUIPMENT**

<u>Equipment</u>	<u>Asset #</u>
1. Freezer	18886
2. Icemaker	19062
3. Refrigerator	
4. Microwave	12775
5. Cash Register (Sharp ER-A410)	
6. Ice Cream Refrigerator (Kelvinator)	
7. Metal shelving unit	

## EXHIBIT E

### S B 5164

(a)

(1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2)

(A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b)

(1) To give effect to this section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.