

REQUEST FOR PROPOSAL
SNACK BAR & RESERVABLE PICNIC AND WEDDING CONCESSION
ARDENWOOD HISTORIC FARM



June 21, 2016

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

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 July 29, 2016, on or before the hour of 4:00 p.m., sealed proposals for the operation of a Snack bar & Reservable Picnic and Wedding concession in Ardenwood Historic Farm in Fremont, north of Highway 84 near Ardenwood/Newark Boulevard.

Description of the concession and the requirements of the operator are contained in "Request for Proposal, Snack bar & Reservable Picnic and Wedding Concession, Ardenwood Historic Farm."

You can download the RFP documentation package from the East Bay Regional Park District (District) website at <http://www.ebparcs.org/> or email Mimi Waluch at mwaluch@ebparcs.org to request a hard copy of the RFP documents.

Questions regarding the RFP shall be made by email to Mimi Waluch at mwaluch@ebparcs.org. No other District personnel is authorized to explain, interpret, or provide clarification concerning the RFP. All questions concerning this RFP shall be submitted on or before 4:00 p.m. on July 11, 2016 by email to mwaluch@ebparcs.org. All questions submitted after 4:00 p.m. on July 11, 2016 will not be accepted. Questions will NOT be taken or answered verbally, except for during the site visit. Should answers to questions amend the RFP, the District will issue an Addendum. All responses to questions will be posted to the District's website (www.ebparcs.org) under Bids/RFPs by 4:00 p.m. on July 13, 2016.

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, to 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.

All proposals become the property of the District and once a successful bidder is identified or all proposals are rejected, shall be deemed public record.

A proposal may be withdrawn at any time prior to the time set for receipt of proposals, provided that a request for withdrawal is submitted by the bidder or a duly authorized representative of the bidder. The withdrawal of a proposal shall not prejudice the right of the bidder to submit a new proposal prior to the time set forth herein above.

Proposals shall conform to the requirements set forth in these Instructions. Failure to conform to the requirements 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.

Dated: June 21, 2016

EAST BAY REGIONAL PARK DISTRICT

ARDENWOOD HISTORIC FARM

SNACK BAR & RESERVABLE PICNIC and WEDDING CONCESSION

REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the operation of a Snack bar & Reservable Picnic and Wedding concession at Ardenwood Historic Farm which is located in Fremont, California.

Announcement Open Proposal	June 21, 2016
Site visit	July 6, 10 a.m. – 12 p.m.
Questions from Bidders deadline	July 11, 2016 4 p.m.
Questions/Answers and Amendments posted to website	July 13, 2016
Proposal Due	July 29, 2016 4 p.m.
Staff to review Proposals	August 1 – 5, 2016
Bidders Notified	August 5, 2016
Interview with Bidders	August 12, 2016
Staff Recommendations	August 26
Board Operations Committee review	September 15, 2016
Board of Directors review	October 4, 2016
Notification of Award	October 4, 2016

PLEASE NOTE: this schedule is subject to change as circumstances warrant and any changes to the schedule and/or additional information such as answers to questions will be posted on the District website. Please check the website for the most current information before sending in your proposal.

A. INTRODUCTION

The East Bay Regional Park District (“District”) is seeking an experienced concessionaire to operate a Snack Bar & Reservable Picnic and Wedding concession in Ardenwood Historic Farm. It is expected that a Concession Agreement will be awarded following receipt of competitive proposals, evaluation of those proposals, selection of the best proposal and approval by the Board of Directors of the District.

Parties interested in operating this concession must submit proposals in accordance with the instructions contained herein.

B. SETTING

The concession license available is part of the Ardenwood Historic Farm operated by the District in partnership with the City of Fremont. Visitors to Ardenwood experience farm life as it was near the turn of the 20th Century. The Concession premises include the farmyard snack bar (the kitchen building with office space and storage containers) called the Farmyard Café, the gazebo and surrounding lawn area by the Patterson House, the adjacent lawn and deck area (the “pool site”) with restrooms and storage, as well as the snack bar and surrounding picnic and play area in the Deer Park Picnic area.

C. LOCATION

Ardenwood Historic Farm is located in Fremont near the Ardenwood/Newark Boulevard intersection just north of Highway 84 at 34600 Ardenwood Blvd.

D. JURISDICTION

Ardenwood Historic Farm is owned by the City of Fremont and leased to the District for operation and management. The District must also obtain approval from the City of Fremont prior to executing the proposed agreement.

E. SERVICE OBJECTIVE

The Concessionaire shall provide: food service at two snack bars, one at Deer Park and one at the farmyard, service for reserved groups, including wedding parties, the choice of either a complete event service or partial service and should contain a range of services, among other factors, in keeping with the setting of the farm. Service should be flexible and have costs at medium to low prices. The District is also interested in the promotion of mid-week reservations that would provide an enjoyable visit to the parks while increasing and promoting mid-week use of the facility. Details concerning ideas and the Proposer’s ability to promote and meet these objectives should be included in the proposal.

The District will review the primary Proposers and all partners and their experience related to the following list of requirements:

1. Organizational mission congruent with District’s mission of offering a vibrant, regional center of social and cultural celebrations and opportunities to Bay Area residents.
2. Experience in operating an event services concession and a snack bar in a park setting.
3. Ability to foster and maintain positive relationships with District.
4. Fiscal solvency and financial ability to successfully run the concession.
5. Preserve the facility and enhance the condition of the facility.
 - a. Priorities year one through three.
 - (1) Operate and maintain the facility in an efficient and professional manner.
 - (2) Improve operations and conditions.
 - b. Priorities after year three.
 - (1) Complete improvements (using Concession Maintenance Fund).
 - (2) Promote use of the facility and provide a quality experience with a

reasonable fee structure for community residents and visitors.

6. Maintain an economically viable operation with revenues sufficient to cover operating expenses, rental payment, capital improvement reserves, and provide the lessee an adequate return on its investment.
7. Generate revenue for the District.

F. TERM OF AGREEMENT

The Concession Agreement is offered for a term of three (3) years (the “Original Term”). The concessionaire may extend the Original Term for an additional three (3) years (the “Extended Term”) by notifying the District in writing of its intent to extend. Notification must be no more than ninety (90) days or less than thirty (30) days before the end of the Original Term. The District may approve or disapprove the extension in its sole discretion.

G. PURPOSE

This Request for Proposals (RFP) provides all potential operators of the East Bay Regional Park District Snack Bar & Reservable Picnic and Wedding concession at Ardenwood Historic Farm with relevant information, a proposed preliminary Concession Agreement sample and the requirements to submit a proposal for operation of the Concession.

Event Space Details

Ardenwood boasts a fully functioning turn-of-the-last-century farm. The 1850s Patterson Ranch is a country estate with a beautiful Victorian Mansion and elaborate Victorian Gardens. This creates a stately backdrop for wedding ceremonies to take place on the lawn in front of the Garden Gazebo surrounded by nature. There is also a large picnic site in the Deer Park area that can accommodate a more casual event.

The Patterson Ranch built the first concrete swimming pool in the country. Now it is filled in and covered providing the perfect location for guests to dance. The surrounding lawn may be set with tables and chairs, a bar, buffet and any other items for the reception or event. This is the Pool Site even though the pool is no longer visible. The maximum capacity at the gazebo site and the pool site is 225 people. Maximum capacity at the Deer Park Site is 950 people.

Ardenwood is open to the public and can be accessed by paying a small fee at the entrance gate; however Park Rangers that work in the park during operating hours are not equipped to answer questions regarding weddings and events. Historically, the Concessionaire has provided Event Planners that are available by phone and have regularly scheduled onsite office hours as well as one day each week for scheduled tours.

Historically, the rental fee for wedding events has included full use of the Pool site restrooms and bride’s changing room, use of the facility and grounds for the duration of the event, all tables and chairs within the facility, set up and breakdown time, and day of coordination services from the Concessionaire’s Event Planners. The bride’s room has a lock on it so belongings can be in the room during the event. An additional small fee would obtain a permit

to rent the Patterson House for pre -ceremony needs. The House is run by the City of Fremont. Wedding rehearsals would take place on the Thursday before the event and would be scheduled with the Event Planner.

Access to Ardenwood for events would begin and end within the rental period. Vendors must follow the same access rules. Catering service must come from a list of certified East Bay Regional Park District caterers. Alcohol service must be obtained through the caterer.

Renters must have general liability insurance that meets the District's requirements. The cost of the mandatory general liability insurance varies according to the number of guests and type of event. A Certificate of Liability Insurance that names the person on the reservation and his/her address in the amount of \$1 million per occurrence, and naming the East Bay Regional Park District as additional insured is required at least 120 days in advance of the event or within 5 business days of booking the date if less than 120 days out. This insurance may be purchased through the East Bay Regional Park District Reservations office for an additional fee.

HISTORICAL FEES & DEPOSITS

Friday 5pm-12am \$2,200 (event or wedding ceremony and reception)

Saturday, Sunday

10am-3pm \$1500 (ceremony only) or

5pm-12am \$2500 (event or wedding ceremony and reception)

\$300 deposit to book a Ceremony-Only (\$200 of which is non-refundable)

\$600 deposit to book an Event or Wedding Ceremony-and-Reception (\$400 of which is non-refundable)

NOT AVAILABLE ON FARM SPECIAL EVENT DAYS AND MOST HOLIDAYS

H. SNACK BAR

The concessionaire may offer historical food items in the snack bar or current options such as: hot dogs and hamburgers, sodas, slush drinks, sports drinks, ice cream, chips and candy.

The concessionaire may also sell additional items useful to the public in a picnic setting such as: charcoal, starter, condiments, plates and cups. Both snack bars have some existing equipment.

I. 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.

J. ORAL PRESENTATIONS

Proposers 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.

K. SITE VISITATION/S

A group site visit/s is scheduled for interested parties on July 6, 2016 10 a.m. – 12 p.m. If you are planning to attend the site visit please RSVP by e-mail at least 24-hours in advance, mwaluch@ebparks.org.

REQUIREMENTS DURING THE TERM OF THE AGREEMENT

- The successful proposer will be responsible for obtaining any and all necessary approvals, permits and licenses for any construction and lawful operation of this concession.
- The concessionaire will be required to carry at least \$1,000,000.00 in general liability insurance coverage and property damage liability insurance coverage, and replacement value in fire and casualty coverage with the District named as Additional Insured. Additional coverage may be required if the sale of alcohol is proposed.
- Proposers should be aware that this concession will be operated pursuant to a concession agreement issued by District. In the event that this agreement is terminated for reasons other than licensee's breach of the agreement, District will not consider proposals for reimbursement of unamortized capital improvement costs as of the date of termination.
- The successful proposer will be required to obtain all necessary city, state and federal permits necessary for the outfitting and operation of this concession.
- The concession agreement will be awarded to the proposer that most fits the criteria. A sample District concession agreement is included with this RFP.
- The concessionaire will be responsible for securing any equipment every evening. Storage will be permitted at the site.
- District makes no representations that there are adequate utilities currently in place at the site. The District will be responsible for any and all utility installation costs connected with the operation of this concession. This includes but is not limited to installing all necessary utilities, service lines, conduits, water meters, pipes, etc.
- The concessionaire will be required to remove any unsuitable existing materials as required.
- The District will not supply all equipment necessary for the operation of this concession. All fixed equipment is the property of District.

- The concessionaire will submit monthly reports of gross receipts, in a format approved by District. At the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year's operation.
- The concessionaire will comply with all city, state and federal laws relating to access for persons with disabilities.
- All prices, fees, and increases for any and all proposed products and services offered at the concession must be approved by District. Proposers should submit their proposed price lists and hours of operation.
- The concessionaire will remove all rubbish generated by this concession. In addition, the concessionaire will keep all signs and structures free of graffiti. The concessionaire must comply with all city, state, and federal regulations regarding recycling.
- The concessionaire will be responsible for maintaining total security within the licensed premises.
- District may hold special events on the site from time to time. The concessionaire must cooperate with District during District's special events or other unanticipated eventualities.
- The concessionaire must pay all taxes applicable to the operation of the concession; such applicable taxes may be deducted from gross receipts.
- District staff may visit the concession site unannounced to inspect operations and determine whether or not the concessionaire is complying with the terms of the permit. If District staff find violations, the concessionaire may be assessed a fine for each violation. Concessionaires must also comply with all directives originating from inspections by any other city, state or federal agency having jurisdiction over the operation of this concession, (e.g. State of California).

PROPOSAL SUBMISSION INSTRUCTIONS

Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.

All proposers must submit a proposal that includes a fee offer.

Proposals should be printed or typed on 8 1/2" x 11" paper. Proposers are encouraged to use discretion in the amount of information they submit.

The proposal and any additional information should be submitted in a sealed envelope with the following information written on the outside:

Your name and address

REQUEST FOR PROPOSALS

SNACK BAR & RESERVABLE PICNIC AND WEDDING CONCESSION

ARDENWOOD HISTORIC FARM

Do not submit proposals in spiral binders. Illustrations may be included. All plans are subject to District's approval. Oversized drawings may be submitted but must be accompanied by 8 1/2" x 11" sectionals or reductions to 8 1/2" x 11". No emailed or facsimile proposals will be accepted. All proposals become the property of the District and once a successful bidder is identified or all proposals are rejected, shall be deemed public records. All proposals should be submitted in a sealed envelope. **Submit five (5) original signed proposals to:**

Mimi Waluch
Operations Division
East Bay Regional Park District
2950 Peralta Oaks Court, 3rd floor
Oakland CA 94605

no later than 4 pm on July 29, 2016. No proposals will be accepted after that time; proposals received after the time and date listed above will be returned to the proposer and will not be considered for award.

To ensure fair competition, all proposers will receive the same information and materials; no telephone or personal inquiries about this RFP will be answered. Please do not contact field staff. The East Bay Regional Park District website (www.ebparks.org) contains information. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the proposals.

QUESTIONNAIRE/PROPOSAL

Your proposal must include written responses to the questions listed below and be delivered to District by the proposal due date and time. Written proposals must be mailed or hand delivered to the address above. No faxed or emailed proposals will be accepted.

1. Cover sheet on your organization's letterhead that includes all relevant contact information for your organization, including but not limited to, the name of the contact person and their phone numbers and a brief, concise summary of your proposed management plan.
2. Proposal (no more than ten (10) one-sided, single-spaced pages) that includes the following:
 - a. Describe your qualifications including experience and credentials in administering a concession at a public recreation facility. (Detail number of years, description of facilities managed, etc.)
 - b. Describe your strategies to implement your management plan for the facility. (How are you staffing it? How will you pay for ongoing maintenance and operation costs? Etc.)
 - c. What improvements, if any, are you proposing to make to the premises to enhance the customer's experience? Will you be securing loans or investments from third

parties to finance facility improvements and any required maintenance? (Detail your financial institution and other funding sources.)

- d. Describe your proposed snack bar options in detail. Describe your goals and objectives for the snack bar.
 - e. Describe your proposed event services in detail. Describe your goals and objectives for event services.
 - f. Describe how you will market the products and services offered at the site. Describe how you will create a welcoming space at the premises.
 - g. What percentage of your monthly gross sales are you proposing to District for the operation of the concession?
3. Provide background information on your organization including the mission and history, and any other relevant information you would like District to know.
 4. Provide a detailed budget for your organization in order to operate and maintain the concession.
 5. Provide a Statement of Financial Condition. Significant weight will be given to such financial information in the selection process. The District may request a bond of \$10,000 as a security deposit when awarding the contract.

BASIS OF AWARD

In seeking a Concessionaire for Ardenwood Historic Farm, the District desires to provide quality service to park users in an atmosphere compatible with the setting of the Park. Proposals will be evaluated based on a Proposer's ability to offer a variety of programs and services, among other factors. The proposal should demonstrate the proposer's proven ability to improve, maintain and manage the concession as a Snack Bar & Reservable Picnic and Wedding concession.

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 an 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 listed 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 (Concession Fee and Maintenance Fund Fee), 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.; and proposed investment in promotion.
Enhancement	Proposed enhancement plan of services and evidence of ability to accomplish these enhancements.
Concession	Reasonable requests for changes will be at District's sole discretion.
Insurance	Strength of issuing company, ability to secure.

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 _____, (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 two Snack Bars & the Reservable Picnic and Wedding concession at Ardenwood Historic Farm with the exception of District Special Event days, 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 and the City of Fremont, that District, and the business plan for Ardenwood Historic Farm (“Ardenwood”), 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, does hereby license to Concessionaire for the purposes hereinafter specified that certain property (“the Premises”), located in Ardenwood, comprised of the snack bar and picnic area in the farm yard, the gazebo and lawn by the Patterson House, the “pool site” and lawn, as well as the adjacent area known as Deer Park Picnic Area with snack bar and as shown 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 an extension of the term of the Agreement for one three-year period. Concessionaire shall give notice to District sixty (60) 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 snack bar, reservable picnic and wedding concession is an incompatible use of Ardenwood. The Board of Directors shall have sole discretion to determine whether this concession 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, rentals, and services at the concession upon the Premises during each year of the Term.

If concessionaire's groups are to tour the Patterson House or ride the railroad, they will be required to pay any applicable fees.

Concessionaire shall reimburse District for alarm, electric, sewer, and water service. Concessionaire will pay PG&E directly for gas service.

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 Fees for that period. The monthly statement and the Fees shall be mailed to the Finance Department, P.O. Box 5381, Oakland, California 94605-0381.

- b. 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 "Ardenwood Snack bars & Reservable Picnic and Wedding Maintenance Fund" and maintain adequate records thereof. These funds are solely 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.

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.

Upon completion of an approved maintenance project, the Concessionaire will submit to the Supervisor a summary of project costs, original invoices, and copies of front and back of canceled checks to vendors. If Concessionaire uses its own labor for these projects, payment for such labor for the purpose of this

Section must be preapproved by the District. Credit for management or supervision staff will only be allowed for reimbursement if: there are no other employees that regularly do the work, reimbursement must be at the regular rate of pay for the work not the supervisor or manager rate; and the hours and rate must be preapproved by the District. Reimbursement will include 16% of wages for payroll taxes.

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.

- c. Late Charge. If any installment of the Fees 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.
- d. 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 when the charge is made by 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 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.
- e. 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**.
- f. 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 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.

- g. Rate Increases.** Concessionaire shall not increase the user rates and/or institute any additional services and charges as listed in Exhibit “C” 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. USE OF THE PREMISES.** Concessionaire shall use the Premises to operate, manage and maintain the service operations for the public of two Snack bars & the Reservable Picnic and Wedding concession in Ardenwood Historic Farm upon the terms and conditions of this Agreement and for no other purposes. Refer to Exhibit “D” for Hours of Operation.

5. 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 sold 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.
- f. Private Vehicles.** No vehicles will be allowed at the Concession except for deliveries from 8:00 a.m. to 10:00 a.m. and after 5:00 p.m. 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. Concessionaire's staff will park near the Park office. 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 reservation areas, except as approved in writing by District in advance of such operation and use. Systems to announce readiness of food are permissible as long as noise level is restricted to that necessary for public convenience.

6. **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.

7. **FACILITIES AND EQUIPMENT PROVIDED BY DISTRICT.** Upon commencement of the Term, District shall provide to Concessionaire the equipment listed on Exhibit "F". District shall provide hookup for electrical, telephone, sewer and potable water service at the existing locations at no cost to Concessionaire. Electrical service at these locations shall be 100 or 200 amp. Any future utility hookups deemed necessary by District in its sole discretion will be provided by the District. District will pay for electric, water, and sewer service and bill Concessionaire accordingly.

8. **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 garbage pickup and telephone service.

9. **PROMOTION; SIGNS.** Concessionaire shall not display any signs whatsoever within the park or on the Premises without the prior written consent of the 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 "Ardenwood Historic Farm an East Bay Regional Park District facility".

10. CONCESSIONAIRE'S MAINTENANCE OBLIGATION. Concessionaire agrees to maintain any and all concession structures, facilities, improvements, and equipment on the Premises in good order and repair, at Concessionaire's cost and expense, during the entire term. (See Exhibit G.) 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 10 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
 - Clean all concession buildings
 - Clean public restrooms in the concession daily
 - Replace burned out bulbs promptly
 - Monitor plumbing and irrigation system (report leaks or breaks etc.)
 - Monitor and control pest problems - flies, wasps
 - Check all fire alarms and fire extinguishers regularly
- 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.

11. PROTECTION OF PARK AND GENERAL PUBLIC USE. It is recognized by

Concessionaire 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 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 and use of the adjoining parkland. 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 rules and instruct customers on the safe operations of all activities at the concession.

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 Regional Parkland 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.

12. **EMPLOYEES-PERSONNEL.** All persons employed or utilized in connection with the operation of the Premises, including relatives, 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, and in no event shall any such person be under the age of sixteen years. 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 "H" 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.

13. **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.
14. **HEALTH DEPARTMENT REQUIREMENTS.** Concessionaire shall, at its own expense, correct any deficiencies at the Premises as required by the Alameda County Environmental Health Department. If deficiencies are major, they may be corrected through use of the Major Maintenance and Improvement Fund if approved by the District.
15. **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.

16. **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.
17. **INDEMNITY.** Concessionaire hereby waives all claims and recourse against the District and the City of Fremont, 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 or 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 of District's choice 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 both 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. 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.

18. 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. Bests' 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.

19. **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.
20. **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.
21. **NON-DISCRIMINATION.** 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. 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.
22. **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.

23. **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.
24. **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,
25. **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.
26. **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.
27. **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.
28. **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 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. Concessionaire 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 indemnify, defend and 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").

29. **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.

30. **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 ninety 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.

31. **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.

32. **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.

33. **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.

34. **ATTORNEYS' 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.

35. **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.

36. **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.

37. **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

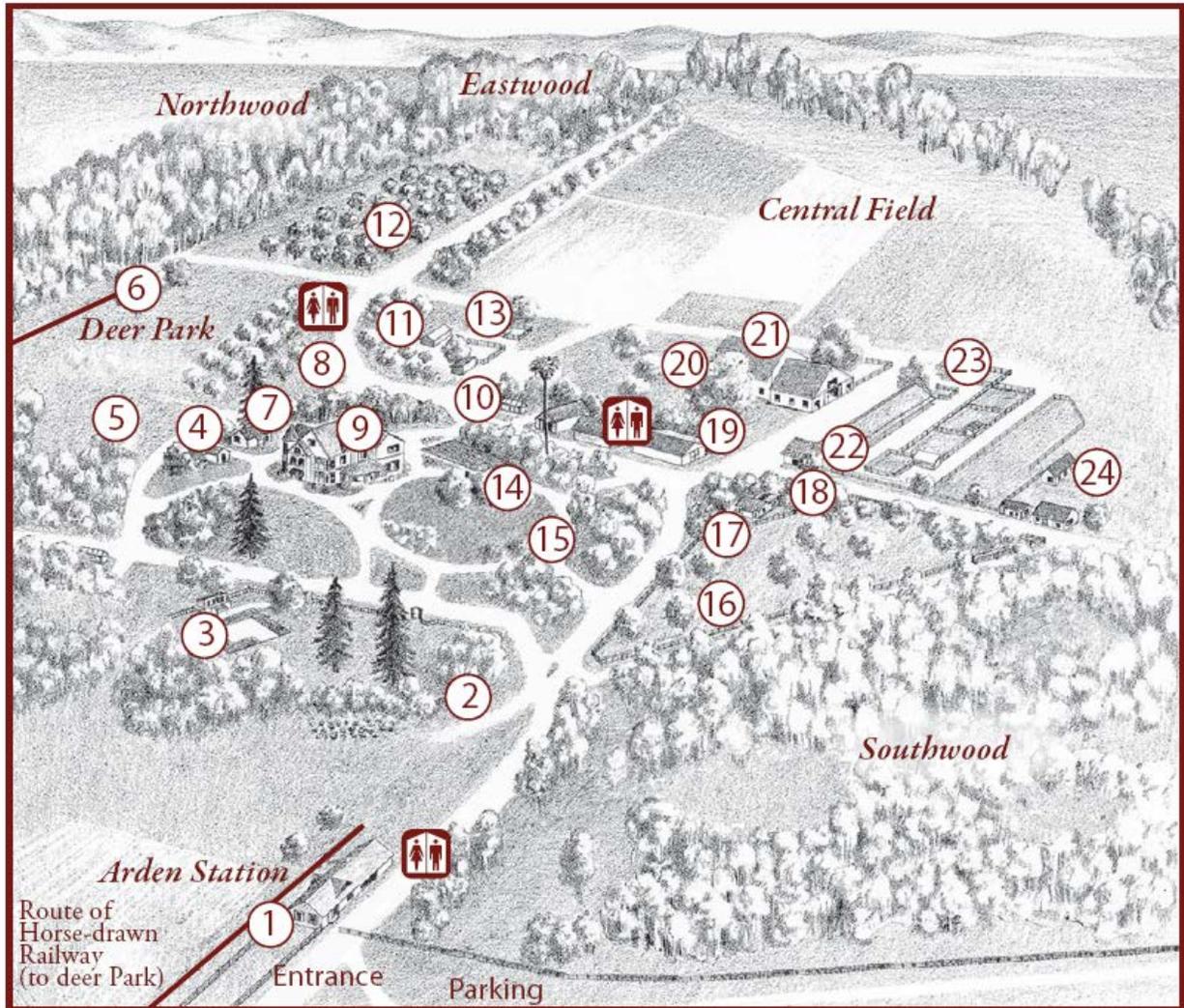
By _____
President

By _____
General Manager

Date _____

Date _____

EXHIBIT A
MAP OF PREMISES



34600 Ardenwood Blvd., Fremont, CA 94555

The building is located at #17, lawn area at #14, #15, and #2, the “pool site’ at #3 and the snack bar and picnic area are located at #5.

EXHIBIT B
CONCESSIONAIRE MAINTENANCE FUND CATEGORIES

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

1. Repair of picnic areas.
2. Repair, replacement and/or additions to interior equipment in the kitchen area; such as, freezers, ice machines, cooking equipment, major electrical work, etc.
3. Other items as the parties may mutually agree upon in writing, inclusion of expendable items not to exceed 25% per year of the total fund.
4. All concession assets (that will become property of the District) must be placed on an inventory and a District identification number affixed. This will be the responsibility of the Business Services Administrative Analyst II or the Supervisor. The Concessionaire will notify the Supervisor upon receipt of such items and will forward the appropriate invoices, warranties, etc., to the Business Services Administrative Analyst II or the Supervisor.

EXHIBIT C
SAMPLE RATES AND CHARGES

Friday 5pm-12am \$2,200 (event or wedding ceremony and reception)

Saturday, Sunday and Holidays

10am-3pm \$1500 (ceremony only) or

5pm-12am \$2500 (event or wedding ceremony and reception)

\$300 deposit is required to book a Ceremony-Only (\$200 of which is non-refundable)

\$600 deposit is required to book an Event or Wedding Ceremony-and-Reception (\$400 of which is non-refundable)

**EXHIBIT D
DAYS AND HOURS OF OPERATION
SNACK BAR FACILITY**

Year-round (by reservation during winter season)
SATURDAYS & SUNDAYS 10:00 A.M. to 4:00 P.M.
And Memorial Day, Labor Day and Independence Day
Other days by Supervisor request

From the 1st weekend in April to the 2nd weekend in November
THURSDAY & FRIDAY 11:00 A.M. to 2:00 P.M.

Other hours available by agreement with Supervisor

**DAYS AND HOURS OF OPERATION
RESERVABLE PICNIC AND WEDDING SERVICE**

NOT AVAILABLE ON FARM SPECIAL EVENT DAYS AND MOST HOLIDAYS
Friday 5pm-12am
Saturday, Sunday
10am-3pm
5pm-12am

EXHIBIT E
ADDITIONAL ACTIVITIES AND
RULES AND PROCEDURES

Concessionaire must check Ardenwood Activity Calendar at Supervisor's office prior to scheduling an activity to verify that an area is available.

Any set-up or activities by Concessionaire must be in keeping with the farm setting and be approved by the Supervisor.

Concessionaire will, at all times, have a responsible employee with any group that the Concessionaire scheduled or is catering to during their visit to Ardenwood. If alcoholic beverages are served, this employee must be a minimum of 21 years old.

Scheduling groups larger than the maximum capacity will require approval from the Supervisor.

Concessionaire shall make sure that rental groups use the Premises in a considerate manner at all times. Disorderly conduct may require the Concessionaire to expedite the immediate forfeiture of the Premises. In such cases, no refund of the admission fee shall be made. Children must be under the control of an adult at all times.

Ardenwood closes at 5:00 p.m. Concessionaire will politely ask any general public visitors not part of the reservation group to leave Ardenwood immediately.

Reservation picnic groups must vacate Ardenwood before dark. Supervisor will define a specific time for closing for each month; any exception will require the Supervisor's approval.

Concessionaire will close and lock all facilities and gates after public have left. Concessionaire will be required to patrol Ardenwood if there are any remaining vehicles in the parking lot after closing.

EXHIBIT F - SAMPLE Snack bar & Reservable Picnic and Wedding Concession		
Qty	Item	Loc.
1	2 Compartment Sink	Café
1	3 Compartment Sink	Café
1	8'x8' Walk-In Cooler W/Refrige	Café
1	AC unit	Café
1	Ahm Horizontal Safe	Café
1	Air Compressor - No Fly Zone	Café
1	Beer / Cooler Dispenser (Concession #5079)	Café
1	Blue 3 Shelf Wire Rack	Café
1	Cafe	Café
1	Freezer - Leer 1 Locker 6 x 10	Café
1	Gaylord Vent With Fire Hood System	Café
1	Hand Wash Sink	Café
1	Honda Generator	Café
1	Kitchen Oven With Burners/Griddle - American Range	Café
1	Manitowoc Ice Maker	Café
4	Miscellaneous Shelving In Café Sheds	Café
1	Montague Stove	Café
1	Mop Sink	Café
1	Portable BBQ	Café
1	Portable BBQ	Café
1	Portable BBQ	Café
1	Pressure Washer	Café
1	Shed - Beige	Café
1	Shed - Brown	Café
1	Shed - Green	Café
1	Shed - Green	Café
1	Shed - Green Flammable Metal	Café
1	Stainless Steel 2 Shelf Prep Table	Café
1	Stainless Steel 2 Shelf Prep Table	Café
1	Stainless Steel 2 Shelf Prep Table	Café
1	Stainless Steel 3 Shelf Wire Rack	Café
1	Stainless Steel 3 Shelf Wire Rack	Café
1	Stainless Steel 3 Shelf Wire Rack	Café
1	Stainless Steel 3 Shelf Wire Rack	Café
1	Stainless Steel 3 Shelf Wire Rack - Small	Café
1	Stainless Steel 5 Shelf Wire Rack - Small	Café
1	Stainless Steel Microwave Stand	Café
1	Star Commercial Popcorn Maker	Café
1	True 2-Door Refrigerator	Café
1	True Sandwich Refrigerator	Café
1	Us Range Full Size Single Deck	Café
1	Wall Furnace	Café
1	Water Heater - 100 Gal.	Café
4	Ceiling Fans With Lights	Office
4	Shutter Blinds	Office
1	3 Compartment Sink	Deer Park
1	4'x8' Portable Barbeque	Deer Park
2	Canopy - White	Deer Park
2	Canopy, Hard Frame	Deer Park
1	Dunk Tank	Deer Park
1	Food Concession Bldg/Deer Park	Deer Park
1	Ice Cream Freezer, 7.6 Cu. Ft.	Deer Park
1	Ice Machine Freezer	Deer Park
1	Ice Machine Maker - Toshizaki	Deer Park
1	irrigation controller	Deer Park
1	Mars Air Door - model W25	Deer Park
2	Mars Air Door - model WA36	Deer Park
1	Shed - Green	Deer Park
1	Shed - Green	Deer Park
1	Shed - Green	Deer Park
1	Stainless Steel 3 Shelf Wire Rack	Deer Park
1	Stainless Steel Rack - 4 Shelves	Deer Park
18	Tables - Metal Frame Picnic	Deer Park
1	True Ice Cream Storage Chest	Deer Park
1	Wash Sink Cabinet	Deer Park
1	Water Heater	Deer Park
1	Wire Wall Racks	Deer Park
5	Stainless Steel 3 Shelf Wire Rack	Deer Park Sheds
1	Honda Generator	Pool
1	Honda 2000 Generator - portable	Pool
1	Honda 2000 Generator - portable	Pool
1	Shed - Black Flammable Metal (FA# 12540) from café	Pool
1	Shed - Green (from Deerpark)	Pool
536	Chairs, Folding - Plastic (new & old)	Pool
1	Large Wooden Shed (red-brown)	Pool
1	Large Wooden Shed (red-brown)	Pool
11	Table 6' Banquet - plastic	Pool
3	Table 6' Banquet - wood	Pool
13	Table 8' Banquet	Pool
31	Tables - Round	Pool
1	Tables - Round	Pool
2	Carts - metal, small (Uline Handy Mover)	Pool
3	Carts - metal, small (Uline Handy Mover)	Pool

EXHIBIT G

PARK OPERATIONS FACILITY MAINTENANCE GUIDELINES

Concessionaire will place a high priority on keeping the structures and public facilities well maintained and available to serve its many parkland visitors.

Concessionaire will also view the park infrastructure as a significant part of the public trust that must be properly maintained and operated to ensure a long and useful service.

BUILDING EXTERIORS

GENERAL GUIDELINES

1. Siding is not cracked, broken, loose, rotted or missing sections.
2. Siding or other wood is not in direct contact with soil and no vines or plant material will be allowed to grow near thus discouraging rot, loosening damage, and infestation by insects.
3. Stucco and masonry walls is free of chips, cracks, and efflorescence.
4. Paint does not exhibit signs of peeling, flaking, or blistering.

ROOF GUIDELINES

1. Surface is free from debris and overhanging tree branches and will remain structurally sound with no sagging beams or decks.
2. Decking is free of water intrusion, especially around roof vents and skylights.
3. Eaves are kept straight and rafter tails free of rot.
4. Roof is free from displacement, warping and moss.
5. Deteriorating or curling composition shingles will be replaced as well as loose, damaged, or missing wood shingles.
6. Flat surfaces are free of ponding, blistering or splitting.
7. Flashings are kept fastened, caulked and free of corrosion.
8. Gutters and downspouts are kept fastened and free of debris and corrosion.

FOUNDATION GUIDELINES

1. Structurally sound with no excessive cracking or bowing.
2. Walls are free of termite shelter tubes.
3. Sill plates are anchored to foundation for earthquake safety and are free of rot or insect infestation.
4. Area is clear of debris that would attract wood-destroying insects and pathogens.
5. Foundation is free of differential settlement or displacement.
6. Concrete pads are level, well drained and free of excessive cracks.
7. Crawl space entrances are operable and screened.
8. Foundation is adequately vented for proper air circulation.

FRAMING GUIDELINES

1. Wood is plumb and free of termites, insect damage and rot.
2. Steel beams and columns are free of rust and corrosion
3. Joists and girders are free of rot, deterioration and sagging.

DESIGN COLOR CONTROL GUIDELINES

1. Color control of all structures should be consistent with the original design concept.
2. The colors applied in the construction of new facilities, and in their maintenance thereafter, are approved by the District's Design Department.
3. All park sites should also use only District-approved standard colors on furniture and structures.

BUILDING INTERIORS

GENERAL GUIDELINES

1. Free of damage attributable to accumulated moisture.
2. Clean and free of evidence of vandalism, unnecessary markings, excessive dirt, etc.

WALLS AND WALL COVERINGS GUIDELINES

1. Clean, dry and free from moisture damage.
2. Free from graffiti or markings and paint is free of cracking or peeling.

DOOR AND WINDOW GUIDELINES

1. Hung correctly and operable.
2. Equipped with necessary locking devices for security.
3. Caulked and free film cracks, chips, or missing sections.

FLOOR GUIDELINES

1. Structurally sound with no signs of displacement or sagging
2. Free from surface deterioration, excessive wear or safety hazards.

FURNISHING GUIDELINES

1. Safe, serviceable, and usable.
2. Clean and compatible and appropriate to their surroundings.

ELECTRICAL SYSTEM GUIDELINES

Concessionaire shall promptly notify Park Supervisor of emergencies.

SYSTEM	GUIDELINES
Wiring	<ol style="list-style-type: none"> 1. Electrical code compliant, insulation not frayed or damaged, and no open splices. 2. Panel box has ample service, correctly sized fuses, or circuit breakers, and is properly grounded. 3. Panels are accessible, obstruction free, and properly labeled.
Fixtures, Lamps, and Appliances	<ol style="list-style-type: none"> 1. Contain the proper size elements (wattage) and operate properly. 2. Fixtures are appropriate for use and secure.
Outlets	<ol style="list-style-type: none"> 1. Not overloaded for rated carrying capacity. 2. Have cover plates. 3. Outlets in bathroom areas or areas directly adjacent to sinks should have ground-fault circuit protection.
Motors and Electrical Equipment	<ol style="list-style-type: none"> 1. Clean and operating within designed temperature and pressure settings.

PLUMBING SYSTEM GUIDELINES

Concessionaire shall promptly notify Park Supervisor of emergencies and MAST work requests.

1. Piping free from corrosion and leaks.
2. Fixtures functioning correctly and free from leaks.
3. Porcelain/ enamel fixture surfaces smoothed and free from chipping.
4. Drain, waste, and vents have tight fittings and free from odors.
5. Clean outs accessible with locations mapped and placed in POG.
6. Water heaters strapped, wrapped, and free of leaks, including pressure relief valves.

HVAC SYSTEM GUIDELINES

Maintained by Concessionaire.

1. Components inspected annually.
2. Filters changed at least annually.
3. No signs of leakage through ducts, vents, or roof penetrations.
4. Thermostats set for maximum energy efficiency and fully operational.

FOOD AND BEVERAGE STANDS

1. Thoroughly clean inside and out and checked daily to meet all public health requirements. See Concessions Manual or agreement requirements if necessary.
2. Adequate storage facilities, both dry and refrigerated, to allow for good housekeeping and easy access.
3. Service area designed to serve the public without undue delay.
4. Weekly inspection for cleanliness, sanitary handling of food, and fire and health hazards, such as dirty grease traps and grease filters.

EXHIBIT H

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.