

# REQUEST FOR PROPOSAL

## CONTRA LOMA FOOD CONCESSION CONTRA LOMA REGIONAL RECREATION AREA



**Opening Date: July 15, 2016**

**Closing Date: August 31, 2016, 4:00 p.m.**

**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 (District) will receive at District's Operations Division Office, 2950 Peralta Oaks Court, Oakland, California, 94605-0381 on August 31, 2016 at or before the hour of 4:00 p.m., sealed proposals for the operation of a food concession at Contra Loma Regional Recreation Area, California. District is offering a term of two (2) years with an option for one additional three (3) year term at District's option for this concession. This concession will be operated pursuant to a Concession Agreement issued by District; no leasehold or other proprietary right is offered.

Description of the concession and the requirements of the operator are contained in "Request for Proposal, Contra Loma Food Concession". You can download the RFP documentation package from the District website at <http://www.ebparks.org/> or email Mimi Waluch at [mwaluch@ebparks.org](mailto:mwaluch@ebparks.org) to request a hard copy of the RFP documents.

Questions regarding the RFP shall be made by email to Mimi Waluch at [mwaluch@ebparks.org](mailto:mwaluch@ebparks.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 29, 2016 by email to [mwaluch@ebparks.org](mailto:mwaluch@ebparks.org). All questions submitted after 4:00 p.m. on July 29, 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.ebparks.org](http://www.ebparks.org)) under the Bids/RFPs by 4:00 p.m. on August 2, 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, 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: July 15, 2016

EAST BAY REGIONAL PARK DISTRICT

## REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the food concession at Contra Loma Regional Recreation Area which is located in Antioch, California.

Announcement Open Proposal	July 15, 2016
Site visit	July 25, 2016 10:00 a.m.
Questions from Bidders deadline	July 29, 2016 by 4 p.m.
Questions and Answers posted to website	August 2, 2016 by 4 p.m.
Proposals Due	August 31, 2016 by 4 p.m.
Staff to review Proposals	September 1 - 9, 2016
Bidders Notified	September 9, 2016 by 4 p.m.
Interview with Bidders	September 19, 2016
Staff Recommendations	September 23, 2016
Board Committee – Operations review	October 20, 2016
Board of Director review	November 15, 2016
Notification of Award	November 15, 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.*

## SITE BACKGROUND/CURRENT SITUATION

The Food Concession is a part of the Swim Complex at Contra Loma Regional Recreation Area, which is a favorite getaway. The lake's swim lagoon has a sandy beach with restrooms and shady picnic areas on a surrounding green lawn. 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. The surrounding lands, owned by the U.S. Bureau of Reclamation, are managed by the East Bay Regional Park District.

## LOCATION

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

## JURISDICTION

The site is managed by the District subject to the terms and conditions contained in the Master Lease Contract Number 14-LC-20-0470, the controlling document, between the District and the

Federal Bureau of Reclamation. A copy of the Master Lease is attached to the Sample agreement that follows. The District is a two-county special district providing regional parks for both Alameda and Contra Costa Counties.

## **OBJECTIVES**

The proposal will be evaluated based on a Concessionaire's ability to offer a variety of services. The proposal should demonstrate the concessionaire's capability to improve, maintain, and manage a food operation. The principal objectives in entering into a long-term agreement for the management, operation, and maintenance of the concession include:

1. Organizational mission congruent with District's mission of offering refreshment opportunities to Bay Area residents.
2. Experience in operating a food concession.
3. Ability to foster and maintain positive relationships with District and customers.
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 approved improvements, if any (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.

## **TERM OF AGREEMENT**

The Concession Agreement is offered for a term of two (2) years (the "Original Term"). The concessionaire shall have the option of extending 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.

## **REQUEST FOR PROPOSAL**

### **PURPOSE.**

This Request for Proposals (RFP) provides all potential operators of the East Bay Regional Park District, Contra Loma Food Concession with relevant information, a proposed preliminary Concession Agreement sample and the requirements to submit a proposal for operation of the Concession.

**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.

**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.

**SITE VISITATION/S.**

A group site visit/s is scheduled for interested parties on July 25, 2016 at 10 a.m. If you are planning to attend the site visit please RSVP by e-mail at least 24-hours in advance, mwaluch@ebparks.org.

**SALES HISTORY**

**LAST FIVE (5) YEARS REVENUE**

	2011	2012	2013	2014	2015	AVERAGE
<b>REPORTED REVENUE</b>	<b>48,706</b>	<b>51,324</b>	<b>49,431</b>	<b>55,032</b>	<b>67,443</b>	<b>54,387</b>
<b>TOTAL FEES PAID TO DISTRICT</b>	<b>\$1,461</b>	<b>\$2,053</b>	<b>\$1,977</b>	<b>\$2,201</b>	<b>\$2,698</b>	<b>\$2,078</b>

**CURRENT LINE OF BUSINESS** - The line of business of the current Concessionaire is as follows:

**CONCESSION ITEMS:**

Food - hot dogs, nachos, chili, sodas, slush drinks, sports drinks, ice cream, chips and candy.

Picnic Items - charcoal, starter, condiments, plates and cups.

**CURRENT HOURS OF OPERATIONS**

11:00 am - 6:00 pm

Easter Weekend - Memorial Day: Weekends Only

Memorial Weekend - Labor Day: Open 7 days a week

**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 successful proposer will be required to obtain all city, state and federal permits necessary for the outfitting and operation of this concession.
- The concessionaire will comply with all city, state and federal laws relating to access for persons with disabilities.

- The concessionaire will be required to carry at least \$2,000,000.00 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.
- Proposer shall identify the percentage of gross receipts which he/she is willing to pay. The minimum percentage concession fee required is **3%** of gross receipts. The minimum percentage concession maintenance fee required is **7%** of gross receipts.
- The concessionaire must pay all taxes applicable to the operation of the concession.
- 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 Concession Maintenance Fund as of the date of termination.
- 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.
- The concessionaire will be responsible for any and all utility 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. District makes no representations that there are adequate utilities currently in place at the site.
- The District will supply all equipment necessary for the operation of this concession. All 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.
- 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. The concessionaire will be responsible for cleaning the licensed premises and the area within 50 feet of the licensed

premises. 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.
- The concessionaire must cooperate with District during special events or other unanticipated eventualities.
- 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  
FOOD CONCESSION  
CONTRA LOMA REGIONAL RECREATION AREA**

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, 3<sup>rd</sup> floor  
Oakland CA 94605

**no later than 4 p.m. on August 19, 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](http://www.ebparks.org)) contains information. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the process.

## **QUESTIONNAIRE/PROPOSAL**

Your proposal must include written responses to the questions listed in the following section 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 responses 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 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 park patron's experience? Will you be securing loans or investments from third parties to finance facility improvements, required maintenance, and payment of utilities at the site? (Detail your financial institution and other funding sources.)
  - d. Describe your goals and objectives for the concession.
  - e. Describe your proposed event services in detail.
  - f. Describe how you will market the product and services offered at the site. Describe how you will address public access and 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?
  - h. Provide the specific language of any proposed changes to the attached Sample Concession Agreement, and provide a full written explanation of why each change is proposed. The District, in its sole discretion, shall approve or reject each proposed change and have the right to make other modifications in the Concession Agreement

prior to final execution as agreed by the parties.

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 for \$10,000 as a security deposit when awarding the contract.
  - a. Provide proof of financial condition and credit rating with a set of personal or business financial statements, prepared by a CPA or Public Accountant, or three years of Federal income tax returns.
6. Provide a five-year (5) Pro Forma Income or Cash Flow Statement, a projection of revenues and expenditures anticipated from the proposed concession activities. Revenues should include all sales and any other service performed for which a fee is charged. The statement must show month-by-month projections for the first twelve months.

## **BASIS OF AWARD**

In seeking a Concessionaire for Contra Loma Regional Recreation Area, the District desires to provide quality service to park users in an atmosphere compatible with the 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.
Enhancement	Proposed enhancement plan of services at the Food Concession and evidence of ability to accomplish these enhancements.
Concession Agreement	Reasonable changes will be at District's sole discretion.
Insurance	Strength of issuing company, ability to secure.

## SAMPLE DRAFT 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, the District, subject to the terms and conditions contained in the Master Lease Contract Number 14-LC-20-0470, the controlling document, between the District and the Bureau of Reclamation, 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 Contract Number 14-LC-20-0470, the controlling document between the East Bay Regional Park District and the Bureau of Reclamation ("Reclamation") (see Exhibit "A" for Reclamation Concession Directives) 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 "B".
- 2. TERM.** This License is granted for a term of two (2) years beginning \_\_\_\_\_ and terminating \_\_\_\_\_. In District's sole discretion, District may grant Concessionaire the option to extend the term of the Agreement for one three-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 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.
- 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 Concession 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 help administrate pursuant to this Section. Expenditures from this

maintenance fund will be at the District's discretion and will require prior written approval from the District. 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, and reimbursement must be at the regular rate of pay for the work, not the supervisor or manager rate; hours and rate must be preapproved by the District. Reimbursement will include 16% of wages for payroll taxes.

- e. Concessionaire will prepare a maintenance fund plan by January 1, each year and forward a copy to District's Business Services Manager to obtain the necessary District approvals and prioritization. Concession maintenance and/or replacement categories are listed in Exhibit "C". 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 Business Services 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 "D" 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 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 “E”. 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 "F" 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, at Concessionaire's own expense, any required maintenance and repairs, including small structural maintenance as outlined in 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 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 chosen by District 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.

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. 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.

**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.** In order to insure the safety of the public, these safety precautions will be followed at all times:

- 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 firefighting 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. All injury accidents shall be reported to the Park Supervisor within 24 hours.
- c. Smoking will be strictly prohibited on the Premises and the surrounding area

## **28. HAZARDOUS MATERIALS, RECYCLING, AND WASTE REDUCTION**

- a. Bureau of Reclamation (“Reclamation”) is responsible for Hazardous Materials and pollutants resulting from existing conditions on federal land, under the jurisdiction of Reclamation, such as mines and mine tailings or other Hazardous Materials existing on such federal lands which may or may not be associated with lands transferred or under the management of District by this Agreement.
- b. Reclamation shall be responsible for existing hazardous features on the federal lands within the Recreation Area, including but not limited to, abandoned mines, drainage tunnels associated with historic mining and unstable cliffs and slopes resulting from past mining.
- c. District shall not knowingly allow contamination or pollution of any Federal Lands and Waters or Recreation Facilities by its employees or agents within its control. District shall also take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to Hazardous Materials, refuse, garbage, sewage effluent, industrial waste, petroleum products, misused pesticides, and pesticide containers.
- d. District shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any Hazardous Material that will be used, produced, transported, stored, or disposed of on or in the Recreation Area.
- e. Upon discovery of any event which may or does result in contamination or pollution of the Recreation Area, District shall initiate any necessary Emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Reclamation's authorized representative. District shall make a serious incident notification to Reclamation's designated representative within one working day of knowledge of the incident. District shall submit a written incident report to Reclamation's designated representative as soon as practicable but no later than fourteen (14) calendar days of the verbal notice.
- f. 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.

- g.** 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.
- h.** 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 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.

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

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**CONCESSIONS MANAGEMENT NON-FEDERAL DIRECTIVES AND STANDARDS**  
**Reclamation Manual / Directives and Standards LND 04-02**

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**Subject:** Concessions Management by Non-Federal Partners

**Purpose:** Establishes minimum approval standards for all new, modified, or renewed non-Federal concession contracts.

**Authority:** Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

1. **Non-Federal Partners.** Reclamation may transfer to non-Federal partners the responsibility to develop and manage public Recreation Area and concession services. Transferred areas are managed by a partner under Federal authorities, the partner's authorities, specific contracts, and agreements with Reclamation. Well-planned and -managed concessions on the Federal estate are of mutual interest to Reclamation and its partners. Reclamation is responsible for continuous management oversight of States and their concessions operations.
2. **Compliance with Directives and Standards.** New concession contracts issued by Parks must comply with these directives and standards. Existing concession contracts issued by Parks must, at the first opportunity, be brought into compliance with these directives and standards. If a concession contract is amended or terminated because of contract default or for other reasons and a subsequent concession contract is issued by the non-Federal partner, the subsequent concession contract must be in compliance with these directives and standards.
3. **Definitions.**
  - a. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
  - b. **Exclusive Use.** Exclusive use is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, boat docks, cabins, trailers, manufactured or mobile homes, structures, or amenities that are determined by Reclamation to be exclusive use.
  - c. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
  - d. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
  - e. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
  - f. **Management Agreement.** A management agreement is a binding contract between Reclamation and a partner to provide public recreation opportunities and concession services on the Federal estate.
  - g. **Non-Federal Partner.** A non-Federal partner is a non-Federal public entity that manages recreation and other resources through a contractual agreement with Reclamation.
  - h. **Total Benefits to the Government.** Total benefits include:

1. **Direct Returns.** These are fees generated by authorized concession contracts and paid directly to the managing entity or to the United States Treasury.
2. **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
3. **Indirect Benefits.** These are services performed by the Concessionaire that benefit the public or improvements made to the Federal estate by the Concessionaire.

#### 4. Parks Agreements.

- a. **Third-Party Concession Agreements.** Third-party concession agreements are agreements between the non-Federal Partner and another entity to provide concession related services and facilities.
  1. **Agreement Standards.** Any concession contract, including a contract renewal or modification, issued by the non-Federal Partner must meet the requirements of these Concessions Management Directives and Standards.
  2. **Contract Approval.** Before issuing or renewing a non-Federal concession contract, the contract must be approved by Reclamation.
  3. **Stand In Stead Conditions.** All concession contracts must state that Reclamation will not stand instead for the Parks should the management agreement expire or be terminated. At Reclamation's discretion, Reclamation may issue a new concession contract that is in compliance with Reclamation Manual (RM), *Concessions Management by Reclamation, LND 04-01*. Reclamation will not issue a new contract until all exclusive use has been removed.
- b. **Review and Evaluation.** All management agreements will require Reclamation to conduct annual concession operation reviews and evaluations. Reclamation may also conduct unplanned reviews, as necessary. If a review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office to correct these deficiencies.
- c. **Exclusive Use.** New, renewed, or modified management agreements and concession contracts will include clauses that prohibit new exclusive use and require that existing exclusive use be phased out. When existing concession contracts issued by the partner are modified or renewed, Reclamation and the partner must establish a timetable in the concession contract that phases out existing exclusive use before the expiration of the contract. This timetable must be established before the concession contract is resubmitted to Reclamation for approval. The Concessionaire and a person hired to guard the Concessionaires investment may reside on the Federal estate, with the written approval of Reclamation.
- d. **Disposition of Fees.** Unless State or local laws direct how concession fees paid to the partner will be used, the following will apply:

1. fees will be returned to the area to provide for operation, maintenance, and replacement of recreation facilities and new facility development
  2. any excess fees (profit) will be returned to Reclamation and disposed of according to RM, Crediting of incidental Revenues, PEC 03-01
- e. **Statistical Data.** Each year, Parks will be required to provide Reclamation with the information specified in Reclamation's Recreation Use Data Report. Other information may be required, as necessary. This information will provide an accurate inventory of facilities. The report will also contain other data about Parks recreation and concession operations on the Federal estate.
5. **Concessions Planning.** Concession development will adhere to the concessions principles listed in RM, Concessions Management (LND P02), will be based on appropriate plans developed by the partner or Reclamation, and will be approved by the Regional Director or delegate. Reclamation can provide direction and assistance in the process, as necessary, to accomplish effective commercial services planning.
6. **Concessions Contracting.** The following items will be addressed in all new and renewed concessions contracts issued by non-Federal partners.
  - A. **Sale and Transfer.** The sale and transfer of existing concessions must be approved according to the management agreement and reported to Reclamation in a timely manner.
  - B. **Contract Language.** The partner will develop and use contract language that complies with all applicable Federal laws, rules, regulations, and Executive Orders. Reclamation can provide examples of standard contract structure and language.
  - C. **Length of Term.** The term for a concession may not exceed the term of the management agreement between Reclamation and the partner. In general, terms should be as short as possible and based on the new investment required as determined by a financial feasibility evaluation.
  - D. **Sub concessions.** All sub concessions must meet the terms and conditions of the prime concession contract. The partner must approve all sub concessions and notify Reclamation in advance of any authorization that needs Reclamation approval. Generally, sub concessions are discouraged in order to keep operations under single management.
  - E. **Concessions Building and Improvement Program.** All designs and construction must comply with applicable Federal, State, and local environmental and historic preservation laws and regulations and building code requirements. In areas where no State or local construction standards exist, Reclamation may provide appropriate standards. Where required and before construction, building permits must be obtained from local authorities by the Concessionaire. All facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
  - F. **Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by the partner. The concession contract must clearly State Parks what the plan will contain. Reclamation can provide examples of such plans for the partner and the Concessionaire.
  - G. **Reimbursement for Fixed Assets.**
    - Fees will be returned to the area to provide for operation, maintenance, and replacement of recreation facilities and new facility development. Unless State

or local laws direct how concession fees paid to the partner will be used, the following will apply:

- A right to reimbursement may exist when a Concessionaire places Reclamation-approved fixed assets on the Federal estate. Title to fixed assets must be established in the concession contract. Reimbursement of a Concessionaire for fixed assets is the responsibility of the partner. The method for determining the amount of reimbursement and the method of payment will be specifically addressed in the concession contract between the partner and the Concessionaire.
- In the event the partner's agreement with Reclamation expires or is terminated without a commitment by both Reclamation and the partner to enter into another agreement, the entire Concessionaires' fixed assets and personal property must be removed from the Federal estate unless Reclamation decides to issue a new concessions contract and decides to retain the fixed assets. [See paragraph 4A (3).] The partner will be responsible for ensuring that the concession area is returned in a condition satisfactory to Reclamation.
- It must be clearly stated that no financial obligation or risk will reside in the Federal Government for reimbursement for fixed assets or personal property as a result of the partner awarding a concession contract. All new concession contracts issued by the partner will address rights for reimbursement to the Concessionaire for fixed assets. Interests in a Concessionaire's fixed assets may not extend beyond the term of the management agreement. In addition, the concession contract must provide appropriate language regarding interests in fixed assets and methods of reimbursement, if any, to the Concessionaire by the partner.

**H. Area of Operation.** Each concession contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. Concession boundaries must be surveyed by the partner and easily recognizable by the visiting public.

**I. Additional Facilities or Services.** Any proposal for expansion of facilities or services must be reviewed by Reclamation and approved by the partner before the expansion takes place.

**J. Exclusive Use.** The contract must state that that no new facility, service, or site determined by Reclamation to be exclusive use will be allowed. New, renewed, or modified concession contracts issued by the partner will include clauses that establish a timetable for phasing out existing exclusive use before the contract expires.

**K. Reclamation Rights.** All concession contracts must be subject to the rights of Reclamation and its agents to use the subject lands and waters for project purposes.

**L. Termination of Concession Contract.** Concession contracts will acknowledge the right of Reclamation to terminate, for cause, any concession contract authorized by a non-Federal partner.

**M. Total Benefits.** The partner will establish and recover fair benefits, including direct return and direct and indirect benefits, for the uses, rights, and privileges granted by a concession contract. For disposition of fees, see paragraph 4D.

**N. Rates and Merchandise.** Rates charged by Concessionaires for services, food, lodging, and merchandise will be based on charges for comparable facilities, services, and

merchandise provided by the private sector in similar situations. The partner must approve the rates requested by Concessionaires.

- O. Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.
  - P. Environmental Compliance.** Concession contracts will address all activities with potential environmental impacts resulting from the release of Hazardous Materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the Concessionaire.
  - Q. Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation regulations.
  - R. Advertising and Signs.** The Reclamation logo or name, along with the non-Federal partner logo or name, will be displayed at all concession entrances used by the public. Outdoor signs or other forms of advertising on the Federal estate must be approved by Reclamation before they are displayed.
  - S. Sale of Personal Property.** The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party will be permitted to sell personal property, including vehicles, manufactured or mobile homes, house trailers, travel trailers, boats, or personal water craft, on the Federal estate.
  - T. Utility Services Provided by Reclamation.** The fee charged for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
  - U. Insurance Program.** Concessionaires must have and maintain an appropriate insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and must provide that the United States is named as an additional insured. The partner may establish similar requirements itself, but it must provide Reclamation with a copy of the insurance certificate that identifies the above conditions.
  - V. System of Recordkeeping.** Financial reports and records necessary for management and oversight of concessions must be maintained and available to the partner and to Reclamation upon request. At a minimum, each Concessionaire will complete Reclamation's Annual Financial Report form(s).
- 7. Concessions Administration.**
- A. Annual Review and Evaluation.** All concession agreements issued by the non-Federal partner will require Reclamation and the non-Federal partner to conduct annual concession reviews and evaluations. The review should identify problems, solutions, and a timetable for resolving the problems in a written report. The non-Federal partner must ensure that any operational or administrative deficiencies noted by the review are corrected in accordance with the established timetable.

- B. Nonprofit Organizations.** In certain circumstances, it may be suitable for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet the goals and objectives of both Reclamation and the partner. These associations and organizations must be approved by the partner if the cooperating association operates within a concession or elsewhere on the Federal estate. The cooperating association will be responsible for maintaining its accounting system, and the system cannot be combined with a Concessionaire's annual financial report. Nonprofit organizations will also be given very clear instructions identifying the type of business they are authorized to conduct and the types of goods and services they may provide. All organizations must provide written proof of their nonprofit status to Reclamation and the partner.
- C. Employment of Reclamation Personnel or Family Members.** Reclamation employees or family members may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these directives and standards. Reclamation employees are further prohibited from using their public office for Private or family gain. A Reclamation employee involved in preparing specifications, awarding a contract, or administering a concession may not be involved in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee or family member responsible for any phase of a concession contract will be excused from duties related to the concession contract if the employee or a family member is involved in competing for the contract or if the Reclamation employee may benefit financially from the awarding of the contract.
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### **CONTRACT GUIDANCE for CONCESSIONAIRE CONTRACTS**

When Parks is considering a third party contract with a Concessionaire the following guidelines shall be followed.

- (a) When soliciting third part concessions proposals, Parks will prepare and distribute a prospectus as part of the proposal solicitation. The prospectus must include historical information about the concession; area details; projected concessionaire revenue and costs; area map; operation, maintenance and environmental plans; risk management plan; list of available utilities; Property Record Inventory and associated depreciation schedules; fee schedule; schedule of underground storage tanks; and area interpretive themes, if available.
- (b) The solicitation and prospectus shall not include proprietary information of current or former Concessionaire and prescription of future concession organization and operation.
- (c) Contract proposals shall be evaluated on five principles:
  - i. Responsiveness of proposal to the objectives of preserving and protecting resources of the area;
  - ii. Responsiveness of proposal to the objectives of providing high quality visitor services;
  - iii. Experience and related background of offeror;
  - iv. Financial capability to meet necessary financial obligations; and
  - v. Financial benefit to the government.

- (d) Reclamation will review solicitations prior to Parks issuing the solicitation. Reclamation will review contract proposals and contract award with Parks, prior to Parks issuing contract award.
- (e) The contract will provide authorization to the Concessionaire to collect fees for the identified goods and services. The Concessionaire will pay operating costs associated with the concessions. The contract will provide no guarantee of profit for the Concessionaire. The contract will establish a Concession Fee based on a percentage of gross receipts, which the Concessionaire will pay the Parks.

The third party concessions contract will include the following items. For additional guidance on each item, refer to the RM. Statement of parties;

- i. Contract term;
- ii. Termination clause;
- iii. Notice of bankruptcy or insolvency;
- iv. Requirements in event of termination or expiration;
- v. Contract suspension and extension;
- vi. Right of revenue;
- vii. Contract sale or transfer of interests;
- viii. Assignment, sale, or encumbrance of interests;
- ix. Statement of no subcontract allowed;
- x. Required and authorized services;
- xi. Scope of concessions and operating plan;
- xii. Legal, regulatory and policy compliance;
- xiii. Rates for goods and services;
- xiv. Nondiscrimination of service employment;
- xv. Concessionaire employee conduct and conditions;
- xvi. Land and facility used in concession;
- xvii. Protection and interpretation of resource area; and
- xviii. Inventory record requirements for Fixed Assets and Equipment.

- (f) Reclamation will review and approve the third party concessions contract prior to contract execution.

**EXHIBIT B**  
**MAP OF PREMISES**



## **EXHIBIT C**

### **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 D**  
**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 E**  
**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 F

### 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.

## **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.

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

### **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.

Weekly inspection for cleanliness, sanitary handling of food, and fire and health hazards, such as dirty grease traps and grease filters.