

REQUEST FOR PROPOSAL

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK



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, at or before the hour of 4:00 p.m., sealed proposals for the operation of a food concession at Lake Anza Tilden Regional Park, 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/s will be operated pursuant to a Concession Agreement/s 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, Lake Anza 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 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. 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. 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) 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 operation of food concession at Lake Anza, Tilden Regional Park which is located in Berkeley, California.

Announcement Open Proposal	July 15, 2016
Site visit	July 25, 2016 11:30 p.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 Tilden Regional Park at Lake Anza, which is a favorite getaway. Lake Anza's sandy beach is open to the sun and sheltered from the wind, with lifeguards posted during the swim season. Picnic grounds are located nearby.

The District is seeking an experienced concessionaire to operate a food concession at Tilden Regional Park Lake Anza Area which is located in Berkeley, California. It is expected that a Concession Agreement will be awarded following public advertisement for competitive proposals, evaluation of those proposals, selection of the best proposal and approval by the Board of Directors of the District. Parties interested in competing for the concession must submit proposals in accordance with the instructions contained herein.

LOCATION

The Park is located just over the hill from Berkeley and Lake Anza is on Lake Anza Road near the intersection of Wildcat Canyon and Shasta roads.

JURISDICTION

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

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 Districts 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, Lake Anza 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 11:30 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 FOUR (4) YEARS REVENUE

SALES DESCRIPTION	2012	2013	2014	2015	AVERAGE
FOOD & DRINK (taxable)	72,358	61,621	57,003	75,562	
TAXES	1,661	1,420	1,970	1,697	
NET REPORTED REVENUE	\$70,697	\$60,202	\$55,032	\$73,864	\$64,948.75
CONCESSION FEE	1,414	1,204	1,101	1,477	
MAINTENANCE FEE	1,414	1,204	1,101	1,477	
TOTAL FEES	\$2,828	\$2,408	\$2,201	\$2,955	\$2,598

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 capital improvement costs 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
LAKE ANZA FOOD CONCESSION
TILDEN REGIONAL PARK**

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to District's approval. Oversized drawings may be submitted but must be accompanied by 8 1/2" x 11" sectionals or reductions to 8 1/2" x 11". No emailed or facsimile proposals will be accepted. All proposals become the property of the District, and once a successful bidder is identified or all proposals are rejected, shall be deemed public records. All proposals should be submitted in a sealed envelope. **Submit five (5) original signed proposals to:**

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

no later than 4 p.m. on August 31, 2016. No proposals will be accepted after that time; proposals received after the time and date listed above will be returned to the proposer and will not be considered for award. To ensure fair competition, all proposers will receive the same information and materials; no telephone or personal inquiries about this RFP will be answered. Please do not

contact field staff. The East Bay Regional Park District website (www.ebparks.org) contains information. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the 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 Food Concessionaire for Lake Anza at Tilden Regional Park 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

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK

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

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

1. **PREMISES.** 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 for food concession ("Premises"), located in Tilden Regional Park Lake Anza Area ("Park"), on Lake Anza Road near the intersection of Wildcat Canyon and Shasta roads in Berkeley CA, and as shown in Exhibit "A".
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 and sole discretion of its Board of Directors that a food concession is an incompatible use or constitutes a nuisance or public safety hazard to other park users of Tilden Regional Park Lake Anza Area. 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 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 20th 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. **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). 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.
- c. **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 "Tilden Lake Anza Food 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.
- d. 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 “B”. The minimum dollar amount for a project to be approved for this fund is \$300. No maintenance fund activities shall begin without District's prior written approval. Work requiring design approval, specific plans and/or specifications, as appropriate, must be submitted to District and approved by District's Chief of Design or designee. Such review will be completed by District within thirty (30) working days of receipt, with Concessionaire responsible to meet all reasonable requests for revision or amendment.

- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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 "Tilden Regional Park Lake Anza Area an East Bay Regional Park District facility".

- 5. CONDITION OF PREMISES AND EQUIPMENT.** Concessionaire acknowledges and agrees that the Premises are in good and tenantable condition. Concessionaire further acknowledges that the equipment to be provided by District is in good operating condition. Concessionaire shall accept the Premises and equipment to be provided by District in their presently existing "as is" condition and agrees that District shall not be obligated to make any alterations, additions or improvements thereto.
- 6. USE OF THE PREMISES.** Concessionaire shall use the Premises to operate, manage and maintain the service operations for the public described below in this Section upon the terms and conditions of this Agreement and for no other purposes, refer to Exhibit "C" for Hours of Operation.
 - a. Food Concession.** Concessionaire shall operate the existing food concession. Concession food service should include healthy options as well as standard snack foods such as hot dogs, chips and ice cream. Concessionaire shall operate food service at a level consistent with the required Alameda 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 the 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 shall be marked for identification. Concessionaire and District shall from time to time review items sold and containers or utensils used or dispensed by Concessionaire. District prohibits the use of Styrofoam containers by Concessionaire.
- c. Waste Reduction. District prohibits the sale or use of non-recyclable containers or plastics. No pull-top cans with removable tabs are to be used or sold by Concessionaire. Concessionaire must maintain a recycling program or make arrangements with park staff to utilize the park's recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.
- d. Chemicals. No pesticides, herbicides or fungicides may be used or sold by Concessionaire on the Premises that are not approved in writing by District in advance of proposed use or sale.
- e. Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage. District shall provide Concessionaire continued use of storage sheds located behind the public restrooms.
- f. Private Vehicles. Concessionaire's personnel may drive private vehicles into areas of the Park restricted to non-District vehicles only as required for loading and unloading items used to operate the Premises. Operation of such vehicles shall be subject to regulations established by District from time to time.
- g. Noise. Concessionaire shall not install, use, or permit to be operated or used on the Premises any public address equipment, television equipment, juke box, radios, loudspeaker, or other equipment producing noises that can be heard outside the Premises, except as approved in writing by District in advance of such operation and use. Systems to announce readiness of food orders or to facilitate boat rentals are permissible as long as noise level is restricted to that necessary for public convenience.

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

District shall provide hookup for electrical, telephone, DSL, 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 District. District will pay for electrical and plumbing upgrades if District deems necessary.

9. FACILITIES AND EQUIPMENT PROVIDED BY CONCESSIONAIRE.

Concessionaire shall provide, at its own expense, all utilities and equipment, as needed, which is not provided by District. Concessionaire will pay for phone, DSL, and electricity. The 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 concession. Concessionaire should refrain from tampering with or connecting additional equipment to the services provided by the District.

10. PROTECTION OF PARK AND GENERAL PUBLIC USE.

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

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

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

In the case of abuse of the facility or unsafe actions on the part of any person(s), Concessionaire shall courteously and respectfully point out such abuse or unsafe action and request that such person(s) refrain from so doing. Should such action persist or in the case of any dispute, the matter shall be promptly referred to the Supervisor of the Park or, in case of present danger, to a District Police Officer.

While District shall provide the normal level of public safety services to the Premises that it supplies to the adjacent and other District areas, Concessionaire shall be responsible for having adequately trained personnel on hand during hours of operation as required to

perform foreseeable needs for maintaining an orderly operation, protecting visitors, on the Premises and providing emergency response in the event of accident or fire, including first-aid assistance on the Premises. Concessionaire agrees to instruct its personnel to use all reasonable efforts to notify District's Public Safety Department in the event of emergencies or other significant disturbances.

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

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

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

13. CONCESSIONAIRE'S MAINTENANCE OBLIGATION. Concessionaire agrees to maintain in good order and repair any and all concession structures, facilities, improvements, and equipment on the Premises, at Concessionaire's cost and expense, during the entire term. Concessionaire shall perform, at Concessionaire's own expense, any required maintenance and repairs, including small structural maintenance as outlined in Exhibit F. 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 Notwithstanding the apportionment of liability between District and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District its officers, directors, agents, or employees.

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

- a. **General Liability** (Bodily Injury and Property Damage) including Premises and Operations (including off-site operations), Blanket Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, and Owners and Contractors Protective Liability in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate which amount may be satisfied through an umbrella policy.
- b. **Fire/Property Insurance** on all improvements and equipment owned by the Concessionaire. Standard Fire Insurance with extended coverage and vandalism and malicious mischief endorsements thereon, on all improvements owned by the concessionaire, placed or constructed upon the premises by Concessionaire, in an amount equal to 90% of the full replacements cost thereof, and insuring the interests of the District and the Concessionaire as same shall appear. Concessionaire and District agree, to extent permissible, that they will waive their rights to subrogate fire damage. The policy shall contain a special endorsement that such proceeds shall be disbursed and used to repair or rebuild and such improvements so damaged or destroyed (if such course of action is required by this Agreement.)
- c. **Automobile Liability** (Bodily Injury and Property Damage) extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under the License in an amount not less than \$1,000,000 per occurrence.
- d. **Worker's Compensation** as required by law and Employer's Liability with limits of \$500,000 per occurrence. The insurer will waive all rights of subrogation against District, its officials, directors, employees, agents and volunteers.
- e. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and are subject to approval by District.
- f. **Other Insurance Provisions:** The policy is to contain, or be endorsed to contain, the following provisions:
 - i. Concessionaire shall name District, its officials, directors, employees, agents and volunteers as additional insured in its General Liability and Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to District, its officials, directors, employees, agents or volunteers.
 - ii. Concessionaire's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to District, its officials, directors, employees, agents or volunteers.
 - iii. All endorsements to policies shall be executed by an authorized representative of the insurer.
- g. **All Coverages:**

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

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

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

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

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

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

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

23. ASSIGNMENT AND SUBLETTING. Concessionaire shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Concessionaire's interest in the License or in the Premises.

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

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

26. CONCESSIONAIRE AS INDEPENDENT CONTRACTOR. It is expressly agreed that under the license to operate the facility granted by this Agreement, Concessionaire shall be, and is, an independent contractor, and is not an agent or employee of District. Except as otherwise expressly limited by other provisions of this Agreement, Concessionaire has and shall retain the right to exercise full control and supervision of the

operation of the facility, and full control over the employment, direction, compensation and discharge of all persons assisting Concessionaire in the operation of the facility under this Agreement. Concessionaire shall be solely responsible for all matters, and shall be solely responsible for Concessionaire's own acts and those of subordinates and employees.

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

- a. Fire Protection. Concessionaire shall take all necessary precautions to prevent fire in or about the Premises, and Concessionaire shall carefully observe all rules of District relative to fire prevention. District shall, at its expense, install and maintain such fire prevention and firefighting practices and equipment as may be specified or required by Contra Costa County or any other agency having jurisdiction to regulate fire prevention measures at the Premises.
- b. Hazardous Substances. No goods, merchandise or material shall be kept, stored, or sold in or on said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, other than as is provided for in this contract, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.
- c. Concessionaire represents and warrants to District that Concessionaire will not generate, store, release or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below). Concessionaire shall hold District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.
- d. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications

promulgated pursuant to those laws (all collectively "hazardous substance laws").

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

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

- a. The abandonment, vacation, or discontinuance of operations on the concession premises for more than thirty days.
- b. The failure of Concessionaire to make any payment of license fees or any other payment required to be made by Concessionaire hereunder, upon ten days written notice from District of non-payment.
- c. The interest of Concessionaire in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation without the written consent of the District.
- d. The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than thirty days after written notice from the District to correct the condition specified.
- e. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than thirty days after written notice from the District for correction thereof.
- f. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Concessionaire under the Agreement which is not corrected within thirty days after written notice from the District for correction thereof; and the failure to maintain service standards thereafter.
- g. The failure of Concessionaire to keep, observe and perform all other promises, covenants, conditions and agreements set forth in this Agreement including compliance with local, state and federal law, where such failure continues for more than thirty days after written notice from the District for correction thereof.
- h. The filing of a voluntary petition in bankruptcy by Concessionaire, the adjudication of Concessionaire as a bankrupt, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefit of creditors, and or a petition or answer seeking a reorganization of

Concessionaire under the federal bankruptcy laws or any other federal or state laws.

- i. Concessionaire's material misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of Concessionaire to perform the services under this Agreement.
- j. The filing of any lien or stop notice on account of Concessionaire where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten days.

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

- a. Terminate this License in which case Concessionaire shall immediately surrender possession of the Premises to District.
- b. Take possession of the Premises as the agent and on account of Concessionaire, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this License and retain any license fees received and apply the same in payment on account of Concessionaire. The performance of any or all of said acts by District shall not release Concessionaire from the full and strict compliance with all of the terms, conditions and covenants of this License on Concessionaire's part and Concessionaire shall pay any deficiency that may exist after deducting any license fees received, if any.
- c. It is understood that the remedies herein provided for District in case of a violation of the terms of this License by Concessionaire are not exclusive, but are in addition to the remedies provided by law or at equity, and any of which remedies District shall have the right to use at its option.

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

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

33. 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.

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

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

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

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

CONCESSIONAIRE

EAST BAY REGIONAL PARK DISTRICT

By _____

By _____
Robert E. Doyle, General Manager

Date _____

Date _____

EXHIBIT A
MAP OF PREMISES

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK

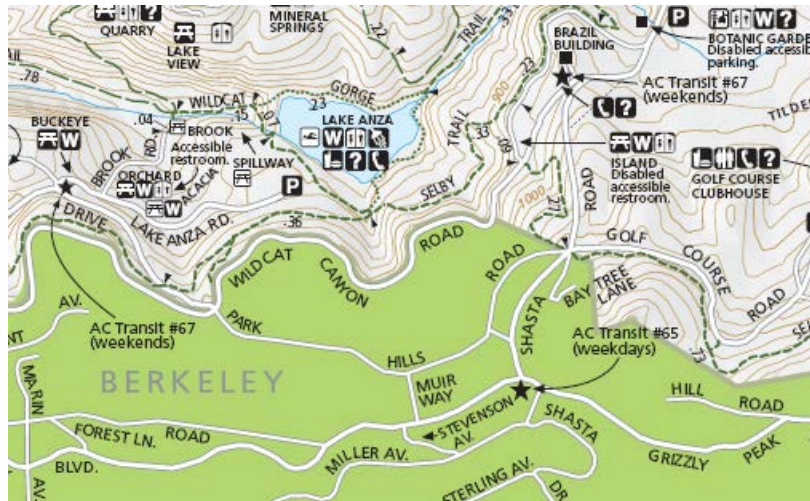
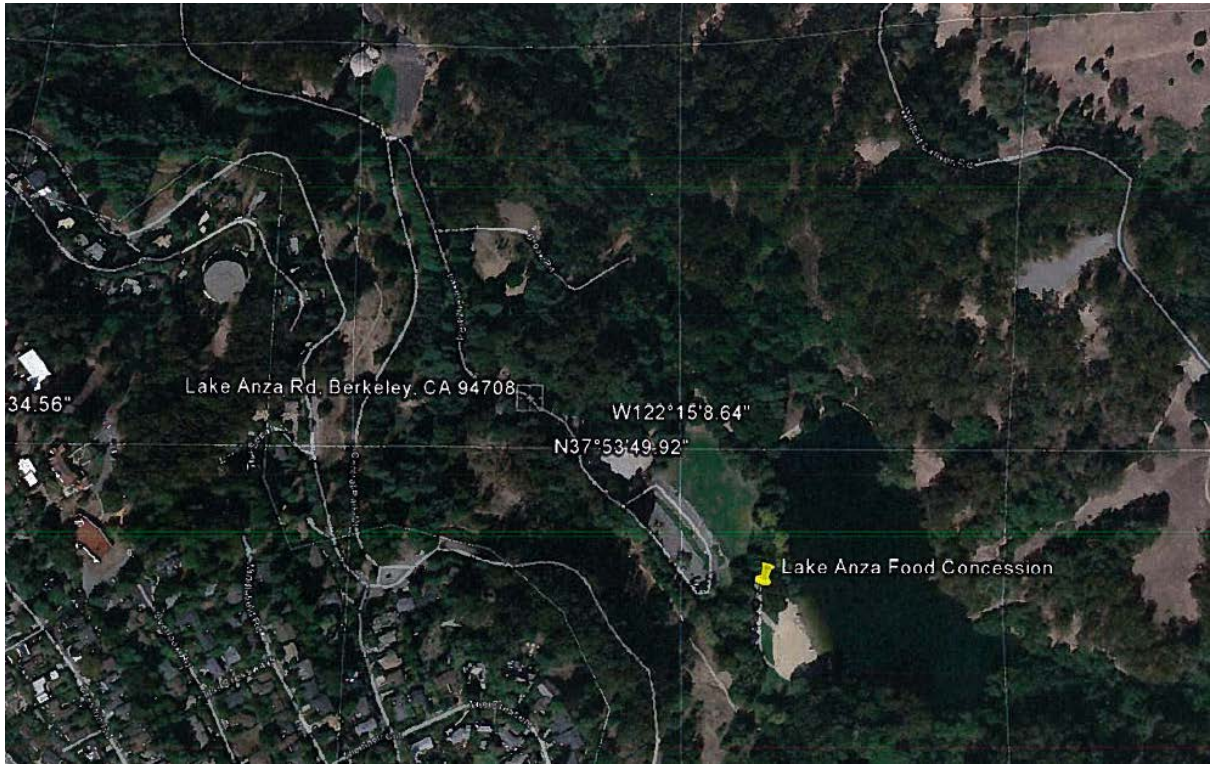


EXHIBIT B

CONCESSIONAIRE MAINTENANCE FUND CATEGORIES

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK

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

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

EXHIBIT C
DAYS AND HOURS OF OPERATION

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK

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 Memorial Day through Labor Day

Concessionaire is to staff and open the facilities for swim season as expected per the terms of the agreement. Concessionaire must inform Park Supervisor if they want to close earlier than posted hours.

EXHIBIT D
CONCESSION ITEMS

LAKE ANZA FOOD CONCESSION, TILDEN REGIONAL PARK

Qty	Item	Loc.	Fixed Asset ID /or Concession ID	Disposition
1	Ice Machine (Manitowoc)		5131	AC
1	5 shelf storage unit - green	backdoor above	5132	AC
1	stainless steel rack - 2 shelves	sink	5133	AC
1	3 compartment stainless steel sink		5134	AC
1	stainless steel rack	sink area	5135	AC
1	Wash sink		5136	AC
1	Lockers		5137	AC
1	Chip Warmer		5138	AC
1	wrap-around prep counter stainless steel with sink		5139	AC
1	5 shelf storage unit - green	shed	5140	AC
1	stainless steel condiment table	outside	5141	AC
1	stainless steel rack - 3 shelves - green		5142	AC
1	stainless steel rack - 3 shelves - green		5143	AC
1	stainless steel rack - 2 shelves - green		5144	AC
1	stainless steel rack - 2 shelves - green		5145	AC
1	Hot dog grill and bun warmer		5146	AC
1	1 door refrigerator - under-counter (Beverage Air)		5147	AC
1	stainless steel L-shaped shelf		5148	AC
1	stainless steel shelf - small		5149	AC
1	Soft serve ice cream maker (Taylor)		5150	AC
1	Slushy machine		5151	AC
1	stainless steel microwave shelf		5152	AC
1	Microwave (Amana)		5153	AC
1	Sandwich prep unit - refrigerated		5154	AC
1	2 door refrigerator - under-counter (Beverage Air)		5155	AC

EXHIBIT E

S B 5164

(a)

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

(2)

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

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

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

(b)

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

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

EXHIBIT E

PARK OPERATIONS FACILITY MAINTENANCE GUIDELINES

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

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

BUILDING EXTERIORS

GENERAL GUIDELINES

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

ROOF GUIDELINES

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

FOUNDATION GUIDELINES

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

FRAMING GUIDELINES

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

3. Joists and girders are free of rot, deterioration and sagging.

DESIGN COLOR CONTROL GUIDELINES

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

BUILDING INTERIORS

GENERAL GUIDELINES

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

WALLS AND WALL COVERINGS GUIDELINES

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

DOOR AND WINDOW GUIDELINES

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

FLOOR GUIDELINES

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

FURNISHING GUIDELINES

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

ELECTRICAL SYSTEM GUIDELINES

Concessionaire shall promptly notify Park Supervisor of emergencies.

SYSTEM	GUIDELINES
Wiring	<ol style="list-style-type: none"> 1. Electrical code compliant, insulation not frayed or damaged, and no open splices. 2. Panel box has ample service, correctly sized fuses, or circuit breakers, and is properly grounded. 3. Panels are accessible, obstruction free, and properly labeled.
Fixtures, Lamps, and	<ol style="list-style-type: none"> 1. Contain the proper size elements (wattage) and operate properly.

Appliances	2. Fixtures are appropriate for use and secure.
Outlets	1. Not overloaded for rated carrying capacity. 2. Have cover plates. 3. Outlets in bathroom areas or areas directly adjacent to sinks should have ground-fault circuit protection.
Motors and Electrical Equipment	1. Clean and operating within designed temperature and pressure settings.

PLUMBING SYSTEM GUIDELINES

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

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

HVAC SYSTEM GUIDELINES

Maintained by Concessionaire.

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

FOOD AND BEVERAGE STANDS

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