



REQUEST FOR PROPOSAL

FOOD and MARINA CONCESSION

SHADOW CLIFFS REGIONAL RECREATION AREA



Opening Date: June 21, 2016

Closing Date: July 29, 2016

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

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 or before the hour of 4:00 p.m. on July 29, 2016 sealed proposals for the operation of a food and marina concession at Shadow Cliffs Regional Park, California. District is offering a term of three (3) years with the opportunity for one additional seven (7) 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/s and the requirements of the operator are contained in "Request for Proposals for Operation of a Food and Marina Concession, Shadow Cliffs".

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 8, 2016 by email to mwaluch@ebparks.org. All questions submitted after 4:00 p.m. on July 8, 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 July 13, 2016.

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

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

A proposal may be withdrawn at any time prior to the time set for receipt of proposals, provided that a request for withdrawal is submitted by the bidder or a duly authorized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

Proposals shall conform to the requirements set forth in these Instructions. Failure to conform to the requirements may be cause for rejection of the Proposal.

The District's policy in awarding this Concession Agreement will be based primarily on the most qualified Proposer overall, and not simply on the rental payments proposed. The District will carefully investigate each Proposer's background and experience in the development and operation of like facilities. Proposers must be prepared to make all determinations of feasibility necessary to the operation of the proposed use.

Dated: June 21, 2016

EAST BAY REGIONAL PARK DISTRICT

REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the operation of food and marina concession at Shadow Cliffs Regional Recreation Area which is located in Pleasanton, California.

Announcement Open Proposal	June 21, 2016
Site visit	June 29, 2016 1:00 p.m.
Questions from Bidders deadline	July 8, 2016 4:00 p.m.
Questions and Answers posted to website	July 13, 2016
Proposals Due	July 29, 2016 4:00 p.m.
Staff to review Proposals	August 1 – 5, 2016
Bidders Notified	August 5, 2016
Interview with Bidders	August 10, 2016
Staff Recommendations	August 17, 2016
Board Committee – Operations review	September 15, 2016
Board of Director review	October 4, 2016
Notification of Award	October 4, 2016

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

SITE BACKGROUND/CURRENT SITUATION

The Concession is a part of Shadow Cliffs Regional Recreation Area (the “Park”) operated by the District. The park, formerly a gravel quarry, was donated to the District by Kaiser Industries. With the help of the U.S. Bureau of Outdoor Recreation, the District developed a 249 acre park including an 80 acre lake with ample parking and picnic areas. Trout and catfish are planted frequently at Shadow Cliffs and it has become popular with local anglers. The lake also is home to blue gill and black bass.

Besides the main lake, Shadow Cliffs Regional Recreation Area has an arroyo with a chain of smaller lakes and ponds. No swimming or boating is permitted there.

There is a food concession at the swim beach area and a boat concession at the marina, which includes row boats, electric motor boats, and paddle boats. Visitors may also launch their own boats but only electric motors are allowed.

The East Bay Regional Park District (“District”) is seeking an experienced concessionaire to operate the food and marina concession at Shadow Cliffs Regional Recreation Area which is located in Pleasanton, California. It is expected that the Concession Agreement(s) 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 in Pleasanton, California on Stanley Blvd., approximately one mile from downtown Pleasanton.

JURISDICTION

The site is owned by the East Bay Regional Park District. The District is a two-county special district providing regional parks and open space 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 among other factors. The proposal should demonstrate the concessionaire's capability to improve, maintain, and manage a food and marina 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 recreational opportunities to Bay Area residents.
2. Experience in operating a food and marina 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 improvements (using Concession Maintenance Fund).
 - (2) Promote use of the facility and provide a quality experience with a reasonable fee structure for community residents and visitors.
6. Maintain an economically viable operation with revenues sufficient to cover operating expenses, rental payment, capital improvement reserves, and provide the lessee an adequate return on its investment.
7. Generate revenue for the District.

TERM OF AGREEMENT

The Concession Agreement is offered for a term of three (3) years (the "Original Term"). The concessionaire may extend the Original Term for an additional seven (7) years (the "Extended Term") by notifying the District in writing of its request 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, Shadow Cliffs Regional Recreation Area Food and Marina 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 June 29, 2016 at 1:00 p.m. If you are planning to attend the site visit please RSVP by e-mail at least 24-hours in advance, mwaluch@ebparks.org.

SALES HISTORY

LAST FIVE (5) YEARS GROSS SALES

SALES DESCRIPTION	2011	2012	2013	2014	2015	AVERAGE
Boat Rentals	30,536	43,566	54,919	41,850	50,729	44,320
Bait/Merchandise	42,716	69,530	55,103	39,214	55,013	52,315
Food	55,061	31,224	38,043	32,301	36,462	38,618
Tax	3,851	6,410	5,048	3,641	5,024	4,795
TOTAL	132,164	150,730	153,113	117,006	147,228	140,048
CONCESSION FEE @ 3%	3,849	4,330	4,442	3,401	4,266	4,058
MAINTENANCE @ 3%	3,849	4,330	4,442	3,401	4,266	4,058

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

FOOD CONCESSION ITEMS:

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

Beach Toys - inflatable toys, sand toys, water guns, beach shoes, beach towels, etc.

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

BOAT RENTALS: Aluminum/Electric Boat, Kayak, Paddle Boat, and Paddle Boards

HOURS OF OPERATION

Boat Rentals, Marina, and Concessions Hours

Open Memorial Weekend – Labor Day, 6AM – 8PM, 7 Days a Week

Snack Shack Hours

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 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.
- Proposers should be aware that this concession will be developed and 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 not supply all equipment necessary for the operation of this concession. All fixed equipment is the property of District.

- The concessionaire will submit monthly reports of gross receipts, in a format approved by District. At the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year's operation.
- The concessionaire will comply with all city, state and federal laws relating to access for persons with disabilities.
- All prices, fees, and increases for any and all proposed 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 required to make all necessary repairs to the licensed premises during the term of the license.
- 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.
- The concessionaire must pay all taxes applicable to the operation of the concession; no such applicable taxes may be deducted from gross receipts.
- The concessionaire will also be required to obtain all necessary city, state and federal permits necessary for the outfitting and operation of this concession.
- 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 AND MARINA CONCESSION
SHADOW CLIFFS 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, 3rd floor
Oakland CA 94605

no later than 4:00 p.m. on July 29, 2016. No proposals will be accepted after that time; proposals received after the time and date listed above will be returned to the proposer and will not be considered for award.

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

1. Cover sheet on your organization's letterhead that includes all relevant contact information for your organization, including but not limited to, the name of the contact person and their phone numbers; and a brief, concise summary of your proposed management plan.
2. Proposal (no more than ten (10) one-sided, single-spaced pages) that includes the following:
 - a. Describe your qualifications including experience and credentials in administering a rental and/or other type of public recreation facility and experience and credentials in operating a food concession (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? Describe your goals and objectives for the concession.
 - d. Describe your proposed rental list and food list in detail.
 - e. Describe how you will market the activities and services offered at the site. How will you address public access and create a welcoming space at the premises.
 - f. What percentage of your monthly gross sales are you proposing to pay to the District for the operation of the concession?
3. Provide a detailed budget for your organization in order to operate and maintain the concession.
 4. Provide a Statement of Financial Condition. Significant weight will be given to such financial information in the selection process. The District may request a bond of \$10,000 as a security deposit when awarding the contract.
 5. Provide background information on your organization including the mission and history, and any other relevant information you would like District to know.

BASIS OF AWARD

In seeking a Food and Marina Concessionaire for Shadow Cliffs Regional Recreation Area, the District desires to provide quality service to park users in an atmosphere compatible with the lake setting of the Park. The Proposal will be evaluated based on a concessionaire's ability to offer a variety of services, among other factors. The proposal should demonstrate the concessionaire's proven ability to improve, maintain and manage the concession as a public concession, in addition to providing a range of services.

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.

ITEM	CONSIDERATION
Payment to District	Evaluation of projected payments (Concession and Maintenance Fund Fees), 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 costs and sustain possible losses; sources of financing and availability of immediate funds and back-up funds; proposed investment in promotion.
Enhancement	Proposed enhancement plan of services at the Food and Marina Concession and evidence of ability to accomplish these objectives.
Concession Agreement	Reasonable requests for 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 _____, 2016 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 and marina concession facility (Concession) at Shadow Cliffs Regional Recreation Area, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. **PREMISES.** That District, in consideration of the payment of concession fees hereinafter specified to be paid by Concessionaire and of the covenants and agreements herein contained to be performed and observed by Concessionaire, does hereby license to Concessionaire for the purposes hereinafter specified that certain property, the Concession ("the Premises"), in Shadow Cliffs Regional Recreation Area, and as more particularly shown in Exhibit "A".
2. **TERM.** This License is granted for a term of three (3) years beginning _____ and terminating _____. In District's sole discretion, District may grant Concessionaire an extension of the term of the Agreement for one seven-year period. Concessionaire shall give notice to District sixty days prior to expiration of initial term to request entering into the second period. District shall respond within thirty 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. Upon the failure of Concessionaire or its members to observe any of the requirements of this Agreement, after at least fifteen days' notice from District to correct such default.
 - c. By District upon determination by its Board of Directors that the Concession is an incompatible use of Shadow Cliffs Regional Recreation Area. The Board of Directors shall have sole discretion to determine whether the Concession is an incompatible use or constitutes a nuisance or public safety hazard to other park users. Upon such a determination, Concessionaire shall be given 180 days to remove all its property and restore the site to its "before" condition, and repair any damage Concessionaire has caused.
- 3. FEES AND CHARGES.**
- a. **Concession Fee.** Concessionaire shall pay to District as the Concession Fee, without deduction, set off, or demand, the sum equal to the following percentage of Concessionaire's Gross Receipts, as defined in Section 3.c., for the prior calendar month for the initial term of this Agreement, the sum equal to ___% of

Concessionaire's gross receipts upon the Premises for the prior calendar month.

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.** Concessionaire is required to recognize its revenue with a cash basis accounting method. The term "gross receipts" herein shall include the total aggregate amount of the business done, sales made, rentals, commissions received, 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 cash (or a check) is actually received by Concessionaire). In addition, gross receipts shall also include the total aggregate amount received by Concessionaire from the operating of vending machines. 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 upon the Premises for the prior calendar month. District will account for these funds in a separate account designated as "Shadow Cliffs Maintenance Fund" and maintain adequate records thereof. These funds are solely for maintenance and improvements to the facility. Concessionaire acknowledges that they possess no right, title or interest in these funds other than to administrate pursuant to this Section. Expenditures from this maintenance fund shall require District's prior written approval and the projects approved in the maintenance fund plan shall be completed during the term of this agreement. If Concessionaire uses its own labor for these projects, payment for such labor for the purpose of this Section 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 with projected costs each year**

with the Park Supervisor, the Unit Manager and Business Services staff 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 Design and/or Trades staff. Such review will be completed by District within ninety (90) working days of receipt, with Concessionaire responsible to meet all reasonable requests for revision or amendment.

- f. Upon completion of an approved maintenance project or equipment purchases, the Concessionaire will submit to the Business Services Analyst or the Park Supervisor a summary of project costs, original invoices, and copies of front and back of canceled checks to vendors. 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**.

Concessionaire will maintain detailed records regarding food and rentals by category by retaining independently verifiable written reports that show date sold at least for seven (7) years, to substantiate accuracy of Concessionaire's reported gross receipts.

- h. User Rates and Agreements. The rates and charges to users of the Concession are listed in Exhibit “C” which is attached hereto and made a part hereof.
 - i. Rate Increases. Concessionaire shall not increase the user rates in Exhibit C 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 boat rental prices below competitors' pricing. District agrees to approve any price changes that are below immediate competitor prices.
4. **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.

5. 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. Marina - Boat Rentals.** District grants Concessionaire the exclusive right, privilege and concession within the Park to operate the public rental of fishing boats, outboard motors, pedal boats, row boats, and kayaks. All rentals will include safety instructions from concession staff and strict adherence to craft capacity. Concessionaire shall conduct adequate patrol of the lake to ensure the safe, reasonable and proper use of rented craft.
- b. Food Concession.** Concessionaire shall operate the existing food concession at the Marina complex. Concession food service should include healthy options as well as standard snack foods such as hot dogs, fries, 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.
- c. 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.

6. RESTRICTED SALES AND USES

- a. Sales and Rentals.** District reserves the right to prohibit the sale, rental, or use by Concessionaire of any article or item which District regards as objectionable or beyond the scope of merchandise or equipment deemed necessary for proper services to the public or of inferior quality.
- b. Containers.** Beverages in air-tight containers under pressure of carbonation sold from the Premises shall be marked for identification. Concessionaire and District shall from time to time review items sold and containers used or dispensed by Concessionaire and, whenever possible, District prohibits the use of Styrofoam containers by Concessionaire.
- c. Waste Reduction.** District prohibits the sale or use of non-recyclable containers or

plastics. No pull-top cans with removable tabs are to be used or sold by Concessionaire. Concessionaire must maintain a recycling program or make arrangements with park staff to utilize the park's recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.

- d. Chemicals. No pesticides, herbicides or fungicides may be used or sold by Concessionaire on the Premises that are not approved in writing by District in advance of proposed use or sale.
- e. Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage.
- f. Private Vehicles. 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.

7. FACILITIES AND EQUIPMENT PROVIDED BY DISTRICT. Upon commencement of the Term, District shall provide to Concessionaire the equipment listed on Exhibit "E" as well as the following:

- a. One rescue boat to conduct patrol of the lake (for Marina Concession)
- b. Communication system (two-way radio for Marina Concession)

District shall provide hookup for electrical, telephone, sewer, and potable water service at the existing locations at no cost to Concessionaire. Electrical service at these locations shall be 100 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, burglar alarms, garbage pickup, and water service.

8. FACILITIES AND EQUIPMENT PROVIDED BY CONCESSIONAIRE.

Concessionaire shall provide, at its own expense, other equipment, as needed, which equipment is not provided by District. This equipment will remain the property and responsibility of Concessionaire who shall obtain written approval of District prior to providing any other equipment that Concessionaire deems to be necessary for the good and proper operation of the recreation area. Concessionaire must equip the chase boat with a fire extinguisher, a throw ring, spare life jackets, first aid kit, bail bucket and rope. Concessionaire shall be responsible for telephone service at either concession. Concessionaire shall refrain from tampering with or connecting additional equipment to any phone and DSL equipment installed by the District.

9. PROMOTION; SIGNS. Concessionaire shall not display any signs whatsoever within Shadow Cliffs Regional Recreation Area 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 "Shadow Cliffs Regional Recreation Area an East Bay Regional Park District facility".

10. PROTECTION OF PARK AND GENERAL PUBLIC USE. It is recognized by Concessionaire that the Premises are within a Regional Park, owned, 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 and use of the adjoining parkland. All such rules and regulations must be approved in advance in writing by the District's General Manager and shall not conflict with District Board policy and other rules and regulations established by District. District ordinances and rules and regulations shall take precedence. Concessionaire shall post all marina rules and instruct customers on the safe operation of water vessels.

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

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

11. EMPLOYEES-PERSONNEL. All persons employed or utilized in connection with the operation of the Premises, including relatives, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees of Concessionaire, and in no event shall any such person be under the age of sixteen (16) years. If in the reasonable judgment of District, any such person is incompetent, disorderly, discourteous, or otherwise objectionable, such person, including relatives, shall be discharged or reassigned to a non-District facility upon Concessionaire's receipt of written notice from District's General Manager to such. Concessionaire shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Premises to the extent reasonably required to ensure such standards of operation called for in this Agreement.

Concessionaire shall insure all employees who supervise minors meet the provisions of the Public Resources Code, Section 5164, Exhibit "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.

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 all meet current health and sanitation regulations, as well as all necessary business licenses and permits.

13. CONCESSIONAIRE'S MAINTENANCE OBLIGATION. Concessionaire agrees to maintain any and all concession structures, facilities, improvements, and equipment on the Premises in good order and repair, at Concessionaire's cost and expense, during the entire term. 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 10 days' written notice of its intention to perform such maintenance. District shall not be obligated to make any repairs to or maintain any improvements on the subject Premises unless otherwise required by this Agreement.

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

Concessionaire expressly agrees, at its own cost and expense, to maintain and operate all of the Premises in a clean, safe, wholesome, and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all present and future laws, rules or regulations of any governmental authority now or in the future 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 repairs, improvements, and programs in a prompt manner:

- Post hours of operations
 - Replace burned out bulbs promptly
 - Monitor plumbing
 - Monitor pest problems – flies and bees
 - Check all fire hoses regularly and outside water source for fire engines
 - Clean all concession and other buildings prior to off-season.
- 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, except that thirty (30) day prior to expiration or termination of this Agreement, Concessionaire shall ascertain from the District whether the District desires to have any such alterations removed from the Premises or have the Premises or any portion thereof restored to their condition as of the date of this Agreement. If District so desires, Concessionaire shall remove or restore same before the end of the term at no cost to 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 or District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Concessionaire, Concessionaire shall immediately notify District of such fact, and at District's option shall either retain legal counsel 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 both District and Concessionaire for the joint and several liabilities of District and Concessionaire, the determination as to the apportionment of liability between District and Concessionaire shall be made by the judge in a court of competent jurisdiction. Notwithstanding the apportionment of liability between District and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District, its officers, directors, agents, or employees.

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

- a. **“All Risk”** property insurance of Concessionaire’s property located at the Premises.
- b. **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.

- c. **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).
- d. **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.
- e. **Worker's Compensation** as required by law and Employer's Liability with limits of \$1,000,000 per occurrence. The insurer will waive all rights of subrogation against District, its officials, directors, employees, agents and volunteers.
- f. **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and are subject to approval by District.
- g. **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.
- h. **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 (2) 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. For breaches or violation of this paragraph, District shall have the right both to annul this contract without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee or business entity.
- 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. Concessionaire 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. Hazardous Substances. No goods, merchandise or material shall be kept, stored, or sold in or on said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, other than as is provided for in this contract, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.
- c. Concessionaire represents and warrants to District that Concessionaire will not generate, store, release or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below). Concessionaire shall indemnify, defend and hold District harmless from any costs, losses, claims, damages, penalties and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.
- d. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

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 vacating or abandonment of the Premises by Concessionaire.
- b. The failure of Concessionaire to make any payment of license fees or any other

payment required to be made by Concessionaire hereunder, upon 10 days written notice from District of non-payment.

- c. The failure of Concessionaire to observe or perform all of the covenants, conditions or provisions of this License to be observed or performed by Concessionaire where such failure continues for a period of thirty days after written notice thereof from District to Concessionaire. If the nature of Concessionaire's default is such that more than thirty days are reasonably required for cure thereof, then Concessionaire shall not be in default if Concessionaire shall commence such cure within the thirty day period and thereafter diligently prosecutes such cure to completion.
- d. The failure of Concessionaire to comply with any written order or directives relating to the Premises from any governmental entity within the time set forth in such order and all applicable appeal rights have been exhausted.
- e. If any petition is filed by Concessionaire under any section or chapter of the federal Bankruptcy Code as it may be amended from time to time and such petition is not dismissed within ninety days after the filing thereof; if Concessionaire becomes insolvent or makes a transfer in fraud of creditors; if Concessionaire makes a general arrangement or general assignment for the benefit of creditors; if a receiver, custodian or trustee is appointed for any of the assets of Concessionaire located at the Premises and the appointment is not vacated within ninety days.
- f. The discovery by District that Concessionaire has provided the District with false financial information.

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

EXHIBIT A
MAP OF PREMISES

The Food Concession is approximately 225 square feet with a large cook, prep, and serve area, a storage area, and a bathroom; comes with all equipment to run a snack bar.



The Marina Concession has an office and two storage containers in addition to the dock and rental boats.

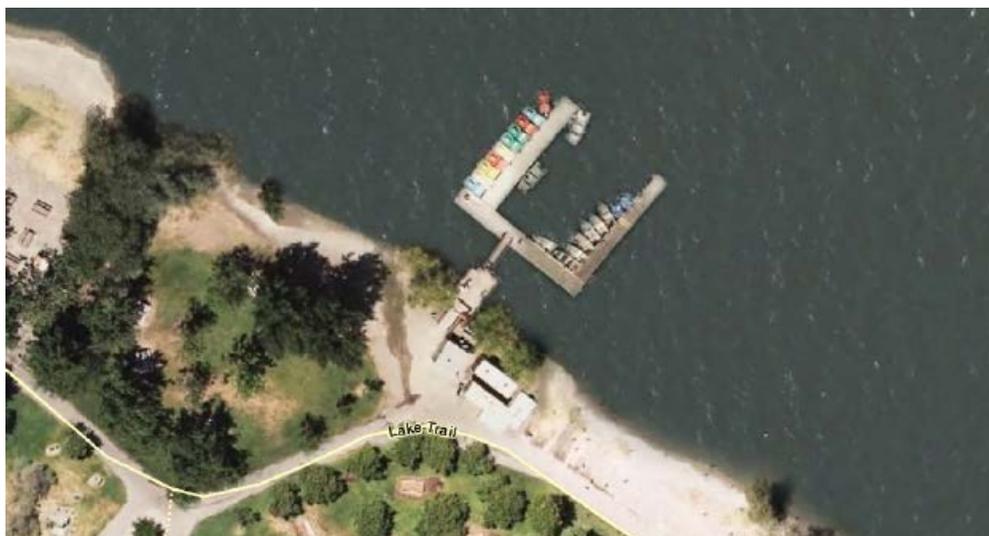


EXHIBIT B
CONCESSIONAIRE MAINTENANCE FUND CATEGORIES

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

1. Repair, replacement and/or expansion of dock.
2. Repair, replacement and/or additions to interior equipment in the snack bar and boat rental facility, plus boat fleet: Concession equipment repairs such as freezers, ice machines, cooking equipment, major electrical work, holes in boats, etc.
3. Repair, maintenance and/or additions to fleet motors and other related equipment.
4. Other items as the parties may mutually agree upon in writing.
5. All fixed assets (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.
6. Inclusion of expendable items (life jackets, oars, etc.) not to exceed 25% per year of the total fund.

EXHIBIT C
SAMPLE RATES AND CHARGES

Refundable Deposit	\$20, \$40/rowboat, \$50/electric
Rowboats	\$15/hr; \$7/each add'l hr
4-person Pedal Boats	\$15/hr
Electric Boats	\$20/hr; \$10/addt'l hr
Kayaks: Hourly Rate	\$10/hr
Capsized Boat Charge	\$50

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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).

Food Concession	From 11:00 a.m. - 6:00 p.m. on all Weekends from the beginning of April through the end of September and daily beginning the second Monday in June through the weekend after Labor Day
Marina	Feb. through Oct. open weekends 7 a. m to closing

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 unreasonably withheld.

EXHIBIT E

SHADOW CLIFFS FOOD CONCESSION AND MARINA – EQUIPMENT PROVIDED BY DISTRICT			
Description	Serial #	Location	Asset #
BOAT DOCK			281PC1040001
BOAT RENTAL COMPLEX			281SC9250001
DOCK STORAGE CONTAINER		Dock	5098
GREGOR BOAT CF2288XC #15	GBC-33488G586	Dock	10416
GREGOR BOAT CF2287XC #5	GBC-33431G586	Dock	10417
GREGOR BOAT CF2284XC #10	GBC-33512G586	Dock	10418
GREGOR BOAT CF2430XC #20	GBC-33475G586	Dock	10420
GREGOR BOAT CF2434XC #19	GBC-33432G586	Dock	10422
GREGOR BOAT CF2295XC #14	GBC-33398G586	Dock	10423
PEDAL BOAT BLUE 4-PERSON	KAX04598D097	Dock	13161
PEDAL BOAT BLUE 4-PERSON	KAX03402A093	Dock	13162
PEDAL BOAT YELLOW 4-PERSON	KAX04609E097	Dock	13163
PEDAL BOAT YELLOW 4-PERSON	KAX03408A093	Dock	13164
PEDAL BOAT GREEN 4-PERSON	KAX04593D097	Dock	14706
PEDAL BOAT RED 4-PERSON	KAX04599D097	Dock	14707
PEDAL BOAT RED 4-PERSON	KAX03637B094	Dock	14708
PEDAL BOAT RED 4-PERSON	KAX07424G909	Dock	
PEDAL BOAT RED 4-PERSON	KAX07423G909	Dock	
PEDAL BOAT YELLOW 4-PERSON	KAX07425G900	Dock	
PEDAL BOAT GREEN 4-PERSON	KAX03654B097	Dock	19173
PEDAL BOAT YELLOW 4-PERSON	KAX04616E097	Dock	19174
CONCESSION TRAILER - DOCK OFFICE	1S9- CX202631175252	Dock	18958
GREGOR BOAT CF2285XC	GBC35685A787	Dock	4932
GREGOR BOAT CF2292XC	GBC34918E787	Dock	4933
GREGOR BOAT CF2890XC	GBC35684A787	Dock	4934
GREGOR BOAT CF2432XC	GBC34813E787	Dock	4935
GREGOR BOAT CF2293XC	GBC35759A787	Dock	4936
GREGOR BOAT CF2290XC	68027696M83A	Dock	8632
Boat batteries (22)		Dock Building	
Mincodas (5)		Dock Building	
Motorquids (6)		Dock Building	
Endura Max 50 & C2 50 (3)		Dock Building	
REFRIGERATOR (small)		Dock Office	5096
TWIN KAYAK (Blue) - Future Beach	QJE45397A606	Dock Shed	19412
TWIN KAYAK (Blue) - Future Beach	QJE45396A606	Dock Shed	19413
TWIN KAYAK (Blue) - Future Beach	QJE35780C505	Dock Shed	19414
TWIN KAYAK (Blue) - Future Beach	QJE35782C505	Dock Shed	19415
Continued next page			

Exhibit E continued			
Description	Item #	Location	Concession ID
SINGLE KAYAK (Blue) - Future Beach	QJE46418B606	Dock Shed	19416
SINGLE KAYAK (Blue) - Future Beach	QJE46371B606	Dock Shed	19417
Traverse Paddle Board lime green (Emotion)		Dock	
Traverse Paddle Board lime green (Emotion)		Dock	
Traverse Paddle Board lime green (Emotion)		Dock	
Traverse Paddle Board lime green (Emotion)		Dock	
Refrigerator - Kenmore #65172 - 21 CU.	EF2719416	Dock Storage Trailer	16616
10 AMP BATTERY CHARGER		Dock Storage Trailer	19418
10 AMP BATTERY CHARGER		Dock Storage Trailer	5095
REFRIGERATOR (CAME FROM PARK LOUNGE)		Dock Storage Trailer	
4-SHELF RACK - METAL		Dock Storage Trailer	5099
FOOD SVC CONCESSION BLDG			281SC9260001
AIR CURTAIN UNITS (4)	86PE25-L	Snack Bar	10444
TRUE SILVER 2 DOOR REFRIGERATOR	1-242-9539	Snack Bar	19176
MANITOWOC ICE MAKER & BIN	11019896	Snack Bar	19257
BEVERAGE AIR 2 DOOR FREEZER	8704581	Snack Bar	19394
24" ELECTRIC GRIDDLE	SG24000C188	Snack Bar	19410
SANDWICH PREP TABLE (with 2 shelves)	4897994	Snack Bar	19419
STAINLESS STEEL SHELF RACKS (10)		Snack Bar	5101
3-COMPARTMENT SINK W/ PREP TBL		Snack Bar	5100
1-SHELF SERVICE COUNTER		Snack Bar	5104
2-SHELF FOOD PREP TABLE		Snack Bar	5105
1-SHELF FOOD PREP TABLE		Snack Bar	5106
REFRIGERATED COLD PREP UNIT		Snack Bar	5108
PREP UNIT FOR FRIED FOODSW/ FAN, EXHAUST, STORAGE		Snack Bar	5110
HANDWASH SINK		Snack Bar	5111
MOP SINK		Snack Bar	5112
Royal Cash Register		Snack Bar	5103
Commercial Fryer 32lb.		Snack Bar	5261
Double Fryer (waiting to be reimbursed thru CMF)		Snack Bar	
Desk - wood		Snack Bar Office	
Office shelving - white		Snack Bar Office	

EXHIBIT F

SB 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.

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

PLUMBING SYSTEM GUIDELINES

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

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

HVAC SYSTEM GUIDELINES

Maintained by Concessionaire.

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

FOOD AND BEVERAGE STANDS

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