



REQUEST FOR PROPOSALS

WATERSPORTS and RECREATIONAL RENTALS CONCESSION

DEL VALLE REGIONAL PARK



Opening Date: November 27, 2013

Closing Date: January 29, 2014

**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 **January 29, 2013**, at or before the hour of 3:00 p.m., sealed proposals for the operation of a watersports and recreational rentals concession at Del Valle Regional Park in Livermore, California. District is offering a term of three (3) years with an option for one additional two (2) year term at District's option for this concession. This concession will be operated pursuant to a Concession Agreement issued by District; no leasehold or other proprietary right is offered.

Description of the concession and the requirements of the operator are contained in "Request for Proposal for Operation of a Watersports and Recreational Rentals Concession".

You can download the RFP documentation package from the District website at <http://www.ebparks.org/> or email Renee Patterson at rpatterson@ebparks.org to request a hard copy of the RFP documents.

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 are subject to Public Disclosure laws. A proposal may be withdrawn at any time prior to the time set for receipt of proposals, provided that a request for withdrawal is submitted by the bidder or a duly authorized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.

Please be certain that your Proposal is complete and is delivered at District Operations Division Office, 2950 Peralta Oaks Court, Oakland, California 94605-0381, by 3:00 p.m. on **January 29, 2014**. Under no circumstances will proposals be accepted after that time. Should you have any questions regarding this matter, please contact Renee Patterson at rpatterson@ebparks.org.

Dated: November 27, 2013

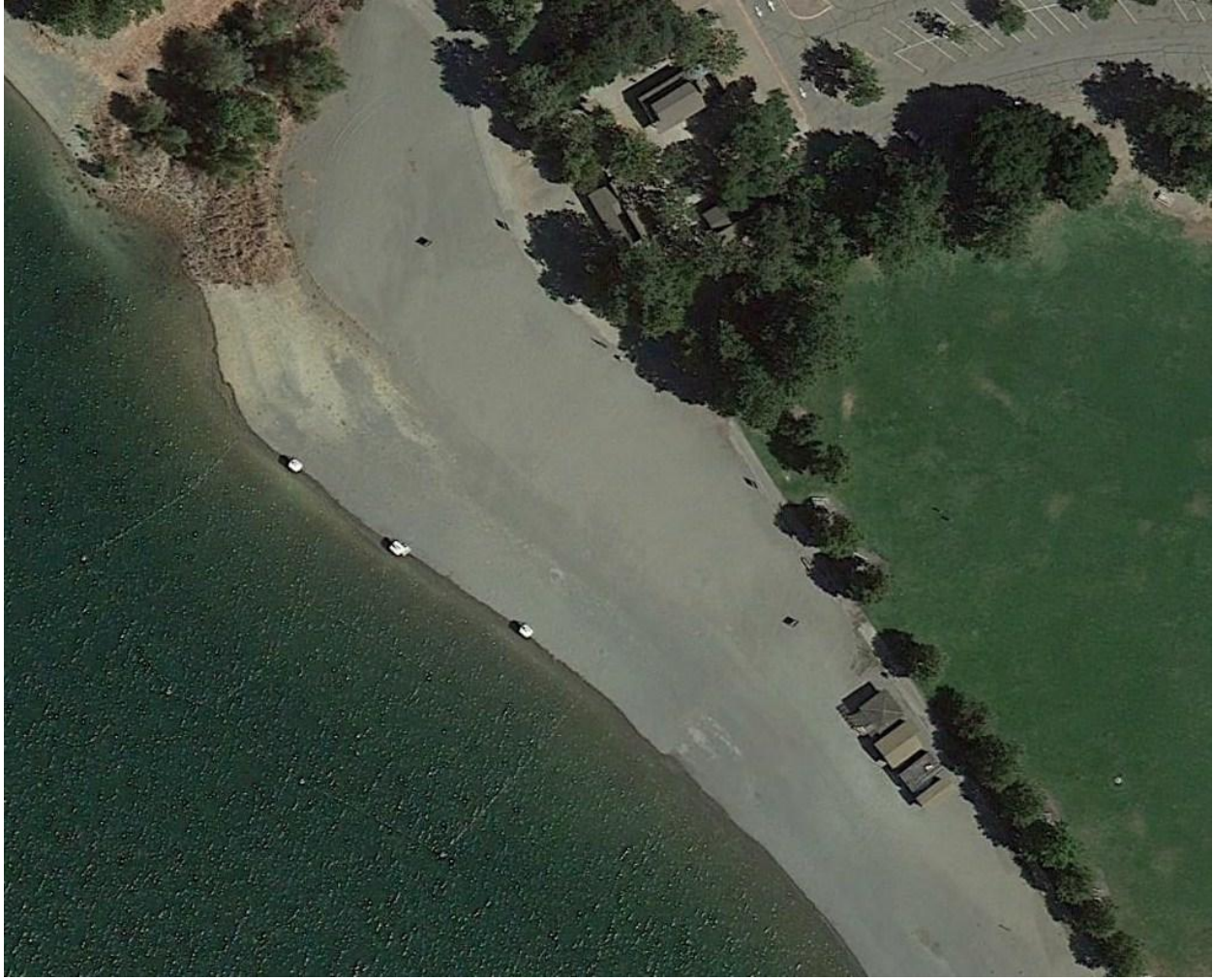
EAST BAY REGIONAL PARK DISTRICT

REQUEST FOR PROPOSALS TIMETABLE

The following schedule has been established for the Request for Proposals for the operation of a water sports and recreational rentals concession at the swim beach at Del Valle Regional Park located in Livermore California.

Del Valle Watersports Request For Proposals Schedule	
Internal Review of Draft RFP	November 18, 2013
Internal Reviews due	November 27, 2013
Announcement Open Proposal	November 27, 2013
Site visit	December 3, 2013
Questions from Bidders deadline	January 10, 2014
Questions and Answers posted to website	January 13, 2014
RFP Due	January 29, 2014
Staff to review RFP's	January 30, 2014
Bidders Notified	January 31, 2014
Interview with Bidder	February 10, 2014
Interview with Bidder	February 11, 2014
Staff Recommendations	February 11, 2014
Board Committee – Operations review	February 20, 2014
Board of Director review	March 4, 2014
Notification of Award	March 5, 2014

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.*



PRE-PROPOSAL SITE VISIT

A pre-proposal site visit is scheduled for Tuesday, December 3, 2013 from 11:00 a.m. to 1:00 p.m. at the East swim beach south of the marina near the Eastside snack bar in Del Valle Regional Park in Livermore CA for the purpose of seeing the site and addressing concerns regarding this RFP. Any questions will be gathered and posted later to the District's website along with the responding information.

SITE BACKGROUND/CURRENT SITUATION

Del Valle Regional Park is operated by the District under a cooperative agreement with the State of California Department of Parks and Recreation. The District must obtain final approval from the state prior to executing the proposed agreement. The five-mile lake is controlled by the Department of Water Resources and is used for flood control, off-stream water storage, and recreation.

A portion of the swim beach at Del Valle Regional Park has operated various types of watersport recreational rentals and lessons such as kayak, sailboard and/or paddle board. These activities

have been conducted by different concessionaires for over thirty years. In 2006, a RFP was issued seeking operators for this concession. Sunrise Mountaineering was chosen to offer kayak rentals and lessons. Their agreement expires March 31, 2014.

The current concessionaire owns the structures used for conducting business, displaying their products and storing excess inventory. These structures, a wooden modular building and three cargo containers enclosed by chain-link fencing, are **not** part of the District’s proposal. These structures may or may not be available for purchase to the next concessionaire.

The District encourages any type of recreational rental suggestions, land or water to be presented with this proposal, excepting boats, canoes and pedal boats offered by the Marina and Food concession also located at the park.

RFP OBJECTIVES

District’s primary objective in this RFP is to secure a concession operation that will be financially viable, profitable and will be maintained and operated at the highest standards. In addition, another objective is to have an operation that will make a significant improvement to the feel of the park while providing a convenience for the public.

FINANCIAL HISTORY

SUNRISE MOUNTAINEERING					
Gross Receipts Summary					
SALES DESCRIPTION	2009	2010	2011	2012	2013
					thru October
Rentals	87,273.74	116,749.93	130,303.20	141,820.43	169,540.11
Lessons	11,826.84	6,669.13	6,493.94	6,966.61	4,824.26
Del Valle Sales from the store	8,704.99	7,392.77	15,501.00	14,315.00	17,028.70
TOTAL W/O TAX	107,805.57	130,811.83	152,298.14	163,102.04	191,393.07

CURRENT LINE OF BUSINESS - The line of business of the current Concessionaire is as follows: Kayak and paddle board sales, rentals & instruction.

HOURS OF OPERATION

Summer

Monday – Thursday 11:00am – 7:00pm Saturday & Sunday 9:00am 9:00 pm

Winter

Monday – Thursday by appointment Saturday & Sunday 9:00am 4:00 pm

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 successful proposer will be required to submit plans for the concession and must obtain all required City, state and federal approvals and permits. All plans are subject to the approval of District and any other city or state requirement. In any construction and alteration of the Premises, Lessee shall comply with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act (ADA) and its design standards.
- 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 Concessionaire will supply any and all structures and equipment necessary for the operation of this concession. These structures will remain the property and responsibility of Concessionaire who shall obtain written approval of District prior to providing the structures that Concessionaire deems to be necessary for the good and proper operation of the recreation area.
- 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 regulations regarding recycling from all city, state, and federal entities tied to the concession.
- 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. There is no page limit for proposals, but 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
WATERSPORTS and RECREATIONAL RENTALS CONCESSION
DEL VALLE 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 telegraphic or facsimile proposals will be accepted. All proposals become the property of the District and are subject to public disclosure laws. All proposals should be submitted in a sealed envelope. **Submit five (5) original signed proposals to:**

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

no later than 3:00 pm on January 29, 2014. 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.ebparcs.org) contains all needed information.

Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the proposals.

Selection of the successful proposer will be made by March 5, 2014.

PROTEST PROCEDURE

All Protests against the Request for Proposal (RFP) process must be in writing and signed by the protesting party or its authorized agent(s). Such protest must state all facts and arguments on which the protesting party (ies) is relying as the basis for its action. Protest against the Request for Proposal (RFP) must be received by the District's Revenue Manager no later than 5:00 P.M. local time within 5 (Five) days of the award announcement, to be considered.

The Revenue Manager will review the RFP process and the facts alleged as grounds for the protest. The Revenue Manager will render a written decision within a reasonable time. The decision of the Revenue Manager will be final and conclusive.

Protests shall be addressed to:

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

QUESTIONNAIRE/PROPOSAL

Your proposal to the RFP must include written responses to the questions listed in the following section and be delivered to District by the proposal due date. Written proposals may be emailed, mailed, or hand delivered to the following address by the due date. No faxed 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 (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? (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 rental operation (watersports and/or bicycles).
 - e. Describe your proposed rental list in detail.
 - f. Describe how you will market the activities 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?
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.

BASIS OF AWARD

In seeking a Watersports and Recreational Rentals Concessionaire for Del Valle Regional Park, the District desires to provide quality service to park users in an atmosphere compatible with the lake setting of the Park.

The District will investigate the financial capability, reputation, integrity, skill, relevant experience, and quality of performance of each Proposer, including its stockholders and principals, before making the 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 so 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 relative priority.

ITEM	CONSIDERATION
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 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 CONCESSION AGREEMENT

THIS AGREEMENT is entered into as of _____, 201__ 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 Licensee, pursuant to its powers under Section 5540 of the Public Resources Code of the State of California, the exclusive license to operate a Watersports and Recreational Rentals Concession with equipment such as kayaks, sail boards, paddle boards, bicycles etc. and lessons for this equipment at Del Valle Regional Park, signed by the parties, and incorporated herein, subject to the following terms and conditions.

- I. **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 uses hereinafter specified, that certain property ("the Premises") as more particularly shown in Exhibit "**A**", of approximately 3,000 square feet located on the east side beach in Del Valle Regional Park.
2. **TERM.** This License is granted for a term of three (3) years beginning _____ and terminating _____ (the "Original Term"). The concessionaire may request the option of extending the Original Term for an additional two (2) years (the "Extended Term") by notifying the District in writing of its intent to extend. Notification must be no more than ninety (90) days or less than thirty (30) days before the end of the Original Term; provided, however, that the District approve the extension in its sole discretion.

This Agreement shall be subject to early termination as follows:

- a. Upon at least ninety (90) 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 a Watersports and Recreational Rentals Concession is an incompatible use of Del Valle Regional Park. The Board of Directors shall have sole discretion to determine whether watersports and recreational rentals and lessons is an incompatible use or constitutes a nuisance or public safety hazard to other park users. Upon such a determination, Concessionaire shall be given ninety (90) days to remove all its property and restore the site to the "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.** 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 whether or not payment is actually made to 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 the time of payment or when title passes. Gross receipts shall not include the amount of any tax on sales from the Premises where such taxes are added to the selling price, stated separately, and paid by Concessionaire's customers, and remitted directly to the taxing authorities by Concessionaire.
- d. **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.
- e. **User Rates and Agreements.** The rates and charges to users of the Concession are listed in Exhibit "**B**" which is attached hereto and made a part hereof.

- f. Rate Increases. Concessionaire shall not increase the user rates in Exhibit B 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. Concessionaire acknowledges and agrees that the Premises are in good and tenantable condition. Concessionaire shall accept the Premises 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 "C" for Hours of Operation.

- a. Recreational Rentals and Lessons. District grants Concessionaire the exclusive right, privilege and License within the Park to operate a concession for recreational lessons and equipment rentals. Concessionaire shall provide all equipment necessary to operate the concession at the premises and shall mark all rentals with an identifying concession logo.

- b. Other. Other or additional activities by Concessionaire shall require the prior written consent of District, which consent may be granted or withheld in District's sole discretion. Concessionaire shall comply with any and all present laws, general rules or regulations of District and any governmental authority now in force relating to sanitation or public health, safety or welfare and environmental matters relating to the condition, use or occupancy of the Premises during the Term. Such rules, regulations and policies of District may include, without limitation, containers for trash removal to aid in the control of yellow jackets and other insects. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions within Concessionaire's responsibility. Concessionaire shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to the public.

6. FACILITIES, UTILITIES, AND EQUIPMENT PROVIDED BY CONCESSIONAIRE. Concessionaire shall provide, at its own expense, any structures, as needed, to perform the operation of the concession. These structures will remain the property and responsibility of Concessionaire who shall obtain written approval of District prior to providing the structures that Concessionaire deems to be necessary for the good and proper operation of the recreation area.

Concessionaire shall install and pay for any services and utilities consumed on the premises, including, without limitation, garbage and telephone.

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.

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. 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.
- c. Chemicals. No pesticides, herbicides or fungicides may be used by Concessionaire on the Premises that are not approved in writing by District in advance of proposed use or sale.
- d. 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.
- e. 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.
- f. 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.

8. 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 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.

- 9. 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 "D" 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.

- 10. 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.

11. PROMOTION; SIGNS. All promotional materials and signs to be placed at the premises must be submitted to the Park Supervisor for prior written approval. Application for such consent shall show in reasonable detail the type, character, and size of any such sign Licensee desires to display, contain the reference "Del Valle Regional Park an East Bay Regional Park District Facility", and the District's leaf logo. District agrees not to withhold nor delay approval of reasonable requests for promotional materials or signs.

Concessionaire shall maintain one or more bulletin boards for posting notices for 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 "Del Valle Regional Park an East Bay Regional Park District facility", and the District's leaf logo.

12. 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. 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.

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 post hours of operations and 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.

13. CONCESSIONAIRE'S ALTERATIONS AND IMPROVEMENTS TO STRUCTURES. 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 its structures, 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 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 the property of the Concessionaire. Concessionaire shall remove all structures before the end of the term at no cost to the District.

14. TITLE TO IMPROVEMENTS. Concessionaire hereby acknowledges the title of District in and to the Premises described in this Agreement, and hereby covenants and agrees never to assail, contest, or resist said title.

District hereby acknowledges the title of Concessionaire in and to the structures located on the Premises described in this Agreement, and hereby covenants and agrees never to assail, contest, or resist said title.

15. 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 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. Neither District nor Concessionaire shall request that the apportionment of liability be determined by a jury.

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

16. 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 Operations, Personal Injury, and Owners and Contractors Protective Liability in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- c. **Standard Fire Insurance** 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 percent of the full replacement 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 right to subrogate fire damage. The policy shall contain a special endorsement that such proceeds shall be disbursed and used to repair or rebuild any 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. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. ASSIGNMENT AND SUBLETTING. Concessionaire shall neither assign, sublease or otherwise convey any interest in this Agreement or arising hereunder to any person or persons, entity or entities whatsoever. Any attempt to assign or sublet shall be void. The Concessionaire's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law.

23. 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.

24. 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.

25. 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.

26. 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; (l) 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").

27. 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.

28. 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.

29. 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.

30. 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 (30) days written notice to Concessionaire.

31. 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.

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

33. 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.

34. 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.

35. 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.

EAST BAY REGIONAL PARK DISTRICT

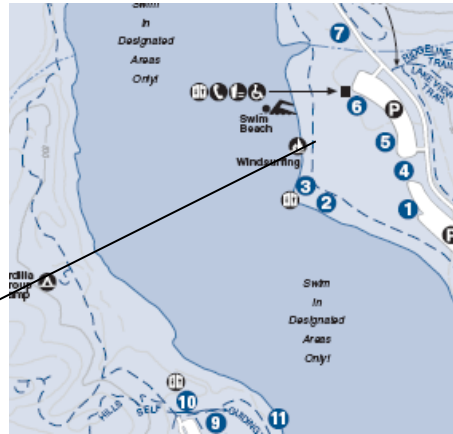
By _____
Robert E. Doyle, General Manager

By _____
Owner

Date _____

Date _____

EXHIBIT A
MAP OF PREMISES



Watersports and Recreational Rentals Area



Current Concession

EXHIBIT B
RATES AND CHARGES

To be determined

EXHIBIT C

DAYS AND HOURS OF OPERATION

Activities appropriate for the Season and daylight hours

Summer

Monday – Thursday 11:00am – 7:00pm Saturday & Sunday 9:00am 9:00 pm

Winter

Monday – Thursday by appointment Saturday & Sunday 9:00am 4:00 pm

EXHIBIT D
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.