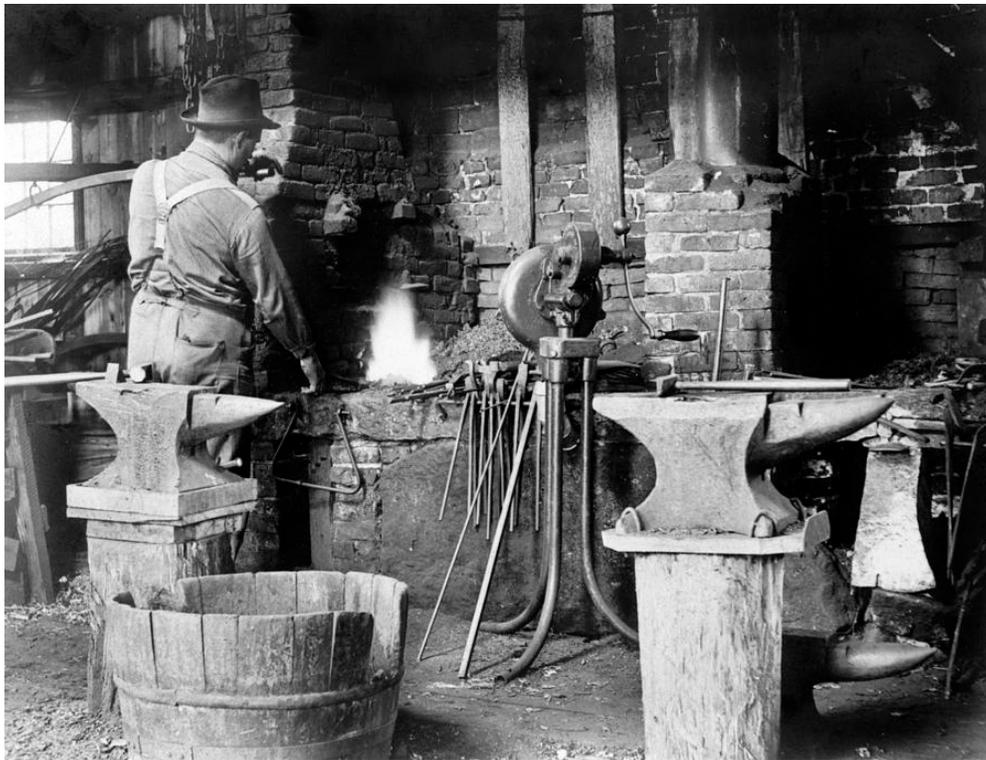


# REQUEST FOR PROPOSAL (RFP)

## **BLACKSMITH OPERATION & HISTORICAL EDUCATION/INTERPRETATION AGREEMENT**

EAST BAY REGIONAL PARK DISTRICT  
2950 Peralta Oaks Court  
Oakland CA 94605



September 30, 2016  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland CA 94605

## **A. INTRODUCTION**

The East Bay Regional Park District (“District”) is seeking an experienced operator to provide historic demonstrations and presentations dealing with the everyday operation of a Blacksmith shop on a large family farm. Shop operation also includes the production of hand-forged items for sale in Ardenwood Historic Farm. The Blacksmith shop is an important part of the farm’s history and has a story to tell. By visiting the shop, the public, families and school children can meet and talk with a skilled craftsperson and watch as they demonstrate a trade necessary for late 1800s farming.

Parties interested in operating a Blacksmith concession must submit proposals in accordance with the instructions contained herein. Depending on the proposals offered in response to this Request for Proposals (“RFP”), the intention is to negotiate a Concession Agreement for this shop and this work; however, the District is not bound to accept any proposal.

This RFP is issued by the Business Services Department of the East Bay Regional Park District. This office is the sole point of contact for the purpose of discussion regarding this RFP. Proposers may obtain a copy of the RFP and addendums, if any, by downloading them from the District website at <http://www.ebparks.org/about/proposals> or by contacting Renee Patterson, Administrative Analyst, [rpatterson@ebparks.org](mailto:rpatterson@ebparks.org).

Clarification of instructions, terms and conditions, insurance, and preparation or submission of proposals shall be made by email to Renee Patterson, [rpatterson@ebparks.org](mailto:rpatterson@ebparks.org). No other District source is authorized to explain, interpret, or give information concerning the RFP document except on the District website. All follow-up questions concerning this RFP and the selection process shall be submitted on or before 4:00 p.m. on **October 31, 2016** by email to [rpatterson@ebparks.org](mailto:rpatterson@ebparks.org). All questions submitted after 4:00 p.m. on **October 31, 2016** will not be accepted. Questions will NOT be taken or answered verbally. Should answers to questions amend the RFP, the District will issue an Addendum. All responses to questions submitted will be posted to the District website under the Proposals/RFPs by 4:00 p.m. on **November 4, 2016**.

The District reserves the right to amend the RFP prior to the final date of proposal submission. All proposers are responsible to inquire as to addenda issued. All addenda become part of the RFP. If the proposer fails to notify the District of an error in the RFP known to the proposer, or an error that reasonably should have been known to the proposer, the proposer shall submit a proposal at the proposer’s own risk; and if awarded the Agreement, the consultant shall not be entitled to additional compensation or time by reason of the error or its later correction.

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 proposer or a duly authorized representative of the proposer. The withdrawal of a proposal shall not prejudice the right of the proposer to submit a new proposal prior to the time set forth herein above.

All proposers are hereby notified that the selection of a concessionaire and any Agreements resulting from this RFP is dependent upon the approval of the District's Board of Directors. The District reserves the right to reject any and all submittals, waive or correct irregularities, request further information, terminate negotiations, reject proposals as non-responsive or to re-solicit if it is deemed to be in the public interest.

All proposers' proposals shall remain undisclosed until a successful proposer is identified or, if all proposals are rejected, after rejection of all such proposals; following that date all proposals shall be subject to review and shall be deemed public records.

**PROPOSAL SCHEDULE**

*All proposers must meet the deadlines below and/or be available on the dates listed below in yellow.*

| <b>ACTIVITY</b>                                  | <b>DATE</b>                  |
|--|------------------------------|
| Announcement Open Proposal                       | September 30, 2016           |
| Site visit                                       | October 26, 2016, 10:00 a.m. |
| Questions from Proposers deadline                | October 31, 2016, 4:00 p.m.  |
| Questions/Answers & Amendments posted to website | November 4, 2016, 4:00 p.m.  |
| Proposal Due                                     | November 30, 2016, 4:00 p.m. |
| Staff to review Proposals                        | December 1 - 9, 2016         |
| Proposers Notified                               | December 9, 2016             |
| Interview/Demonstration with Proposers           | December 15, 2016            |
| Staff Recommendations                            | December 28, 2016            |
| Board Operations Committee review                | January 19, 2017             |
| Board of Directors review                        | February 7, 2017             |
| Notification of Award                            | February 7, 2017             |

**B. QUALIFICATIONS and CONDITIONS**

1. Provide Blacksmithing services in a demonstrative and educational manner for the enjoyment of the visiting public, school groups, youth groups and the general visiting public.
2. Demonstrate Blacksmith techniques and discuss the history of Blacksmithing and the role of a Blacksmith on a large family farm from 1890-1930.
3. Provide special educational/interpretive demonstrations at reasonable times and in a manner as requested by the District.
4. Blacksmith services:
  - a. Manufacture agricultural, special order and historic items on the premises which shall be sold through the park's Blacksmith shop.
  - b. Perform Blacksmithing manufacturing and repair services directly for the public on an individual order basis.

- c. Produce souvenir horseshoes and other sale items for school groups and other park visitors.
  - d. Blacksmith shall supply, at his/her sole cost, all materials needed for these sale and special order items.
  - e. Blacksmith will assist park staff by providing Blacksmithing repair and manufacturing services in support of park operations and the maintenance of antique farm equipment.
5. Other or additional activities by the Blacksmith shall require prior written approval of the District.

Days & Hours of Operation

- 1. From April 1 through November 30 of each year of the term, the Blacksmith will perform public demonstrations and Blacksmithing services Thursdays, Fridays, every-other Saturday, and Sundays, Monday holidays the park is open and specified special event days. Access to the park and the shop will be between 7 am and 7 pm. Maximum annual hours is 1,560.
- 2. Additional days may be added upon mutual agreement.
- 3. Hours of operation will be arranged so as to maximize public exposure to Blacksmithing activities with a minimum of 5 hours to a maximum of 7 paid hours per day.
- 4. The Blacksmith may also operate on additional days without payment by the District. These days will be added upon mutual agreement.

Facilities and Equipment

- 1. The District shall provide the existing Blacksmith Shop structure and a portion of the equipment shed area.
- 2. The District shall provide some of the equipment necessary to establish a period (1890-1930) Blacksmith shop. District will supply one small Forge, Blower, Hood, Anvil, and Vise.
- 3. Other than the equipment listed above, the Blacksmith shall provide all equipment, hand tools and other equipment necessary for the operation of a Blacksmith shop.
- 4. The Blacksmith may provide, at his/her expense, equipment not provided by the District which the Blacksmith deems necessary for the good and proper operation of the Blacksmith shop.
  - a. This equipment will remain the property and responsibility of the Blacksmith.
  - b. The Blacksmith shall receive the District's written permission prior to providing such equipment.

**C. SUBMITTAL PROCESS**

Applicants are solely responsible for ensuring timely receipt of their proposals. All proposals become the property of the District upon receipt and will not be returned to the applicants. No proprietary or confidential information is to be submitted in or with the proposals. All proposals submitted shall be prepared by the applicant at no cost or obligation to the District.

The proposal shall contain the items listed below, organized in the following manner:

1. Understanding of Conditions and Scope of Work - Briefly describe your understanding of this RFP's key elements, how you will execute the RFP's key elements (the actual plan of work) and how you will provide educational / interpretive demonstrations.
2. Services - The proposal should contain a detailed list of services you will provide including any services and equipment needed from the District. Define information, services, and expertise needed from the District for the implementation of this Agreement.
3. Qualifications - Provide a succinct description of your capabilities, size and range of services you offer.
4. Relevant Experience - Describe your experience with similar agencies, particularly government agencies located in California. Provide not less than two (2) or more than five (5) examples of completed work which you have undertaken. Include client references with the following:
  - Client name and contact information
  - Description and location
  - Total value of the services provided
  - Key personnel involved
  - Sub-consultants, if any
5. Signature - Proposals must bear the signature of a Proposer.
6. Fees and District Payments
  - a. District Payment. In consideration for the services provided by Blacksmith, District will pay up to \$19.23 per hour and no more than \$30,000 per year, based on experience and qualifications.
  - b. Fee. Blacksmith shall pay to the District **5%** of gross receipts for sales made through Ardenwood.
7. Agreement – The proposal shall include a statement of the Proposer's willingness to accept the terms and conditions of the District's standard Agreement (copy attached). Prospective proposers shall review the Agreement (Proposer's attention is directed to sections 8 and 9), show levels of insurance coverage in each category, and return this information with the proposal. Two (2) originals of responses to this proposal must be received by the District on or before **November 30, 2016, 4 p.m.** to be considered. Proposals must be plainly marked on the outside of a sealed envelope:

**“BLACKSMITH OPERATION & HISTORICAL EDUCATION / INTERPRETATION PROPOSAL”**

Submit proposal to:

East Bay Regional Park District  
Attn: Renee Patterson  
2950 Peralta Oaks Court  
Oakland CA 94605

Any proposal received after the above stated time will not be considered.

## **D. PROPOSAL SELECTION PROCESS**

The requirements in this section are mandatory and failure to comply completely will deem your proposal nonresponsive.

Submitted proposals will be evaluated by District committee and rated according to satisfying objectives, completeness, proposers' qualifications, and cost-effectiveness. The District will determine which, if any, references to contact to assess the quality of work performed with advance notice to the applicant. The results of any references will be provided to the proposal evaluation committee and used in scoring the proposal. Proposers should be able to meet the requirements of the District Agreement (EXHIBIT B). Any questions regarding the Agreement should be sent to [rpatterson@ebparks.org](mailto:rpatterson@ebparks.org) prior to submitting proposals. The District may or may not, invite proposers to an in-person interview at the District headquarters in Oakland, California. The District may or may not, invite proposers to provide a demonstration at Ardenwood in the Blacksmith shop.

Based on proposal scores and interviews, if any, the District committee will recommend a proposer. The recommended proposer will be responsible for accepting the terms and meeting the requirements of the District Agreement prior to its award.

### **SELECTION CRITERIA**

Proposer selection shall be based upon:

- |                 |  |
|-----------------|--|
| Up to 25 points | Approach to completing the tasks involved in the Scope of Services.        |
| Up to 25 points | Demonstration of scope of service understanding and organized approach.    |
| Up to 25 points | Professional experience and previous projects of a similar type and scale. |
| Up to 25 points | Experience making public demonstrations or presentations.                  |

### **FEE**

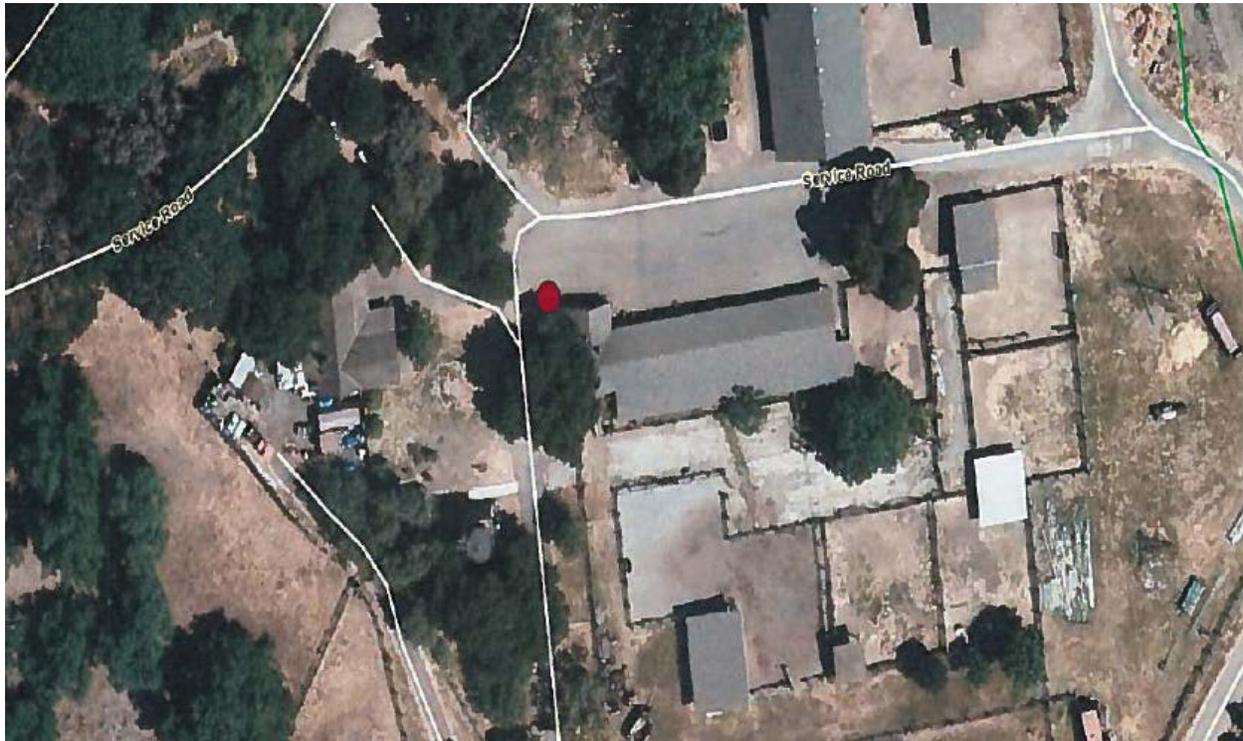
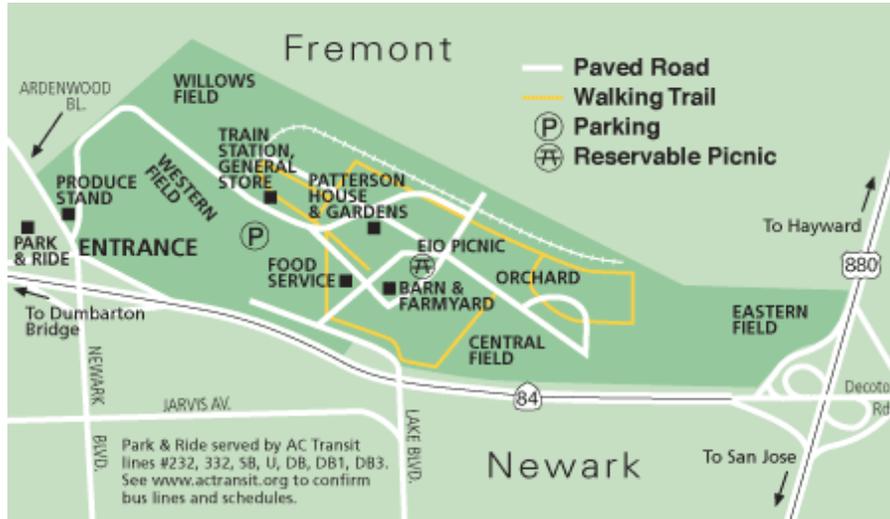
Compensation for services shall be based on the Proposer's qualifications. The fee proposal will be a factor but may not be the deciding factor in the selection.

### **EXHIBITS & ATTACHMENTS**

- |           |                    |
|-----------|--------------------|
| EXHIBIT A | Map of Ardenwood   |
| EXHIBIT B | "Sample" Agreement |

**EXHIBIT A**  
**Map of Premises**

Area consists of the forge area, the patio to the side and to the back of the forge area (corral space), and also extends approx. 15 feet in and the full width of the horse equipment barn for storage.



## EXHIBIT B

### SAMPLE AGREEMENT

THIS AGREEMENT is entered into as of \_\_\_\_\_ between the EAST BAY REGIONAL PARK DISTRICT (District), a California Special District, whose address is 2950 Peralta Oaks Court, Oakland, CA 94605, and \_\_\_\_\_ ("Blacksmith"), 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 and pursuant to District Resolution \_\_\_\_\_, and subject to terms and conditions contained in the Master Lease, the controlling document, between the East Bay Regional Park District and the City of Fremont, dated June 8, 2010 and expiring on June 7, 2111, the license to operate a Blacksmith shop at Ardenwood Historic Farm Regional Park, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. PREMISES. The Blacksmith shop in the Barn/Farmyard area at Ardenwood Historic Farm ("Park") as generally shown in Exhibit "A". Notwithstanding such Exhibit A, the District shall have the right to designate and specify exact locations on the ground in such generalized locations.
2. TERM. From \_\_\_\_\_ to \_\_\_\_\_, subject to approval by District's Board of Directors and at District's sole discretion, based on satisfactory performance by adhering to all terms of the Agreement. This Agreement shall be subject to early termination as follows:
  - a. In the event the City of Fremont assumes operational responsibility of Ardenwood Farm from the District, the Blacksmith will have sixty (60) days to remove the Blacksmith equipment and tools, unless otherwise agreed in writing by City of Fremont.
  - b. Upon at least ninety (90) days prior written notice to such effect by Blacksmith to District.
  - c. By District upon determination by its Board of Directors at their sole discretion that the Premises are needed for other uses. Upon such a determination, Blacksmith shall be given ninety (90) days to conclude its operations, remove all its property, restore the site to its "before" condition, and repair any damage Blacksmith has caused.
3. FEES AND DISTRICT PAYMENTS.
  - a. District Payment. In consideration for the services provided by Blacksmith, District will pay no more than \$19.23 per hour, up to \$30,000 per year.

- b. Fee. For the right to exercise the privileges herein contained, Blacksmith shall pay to the District 5% of gross receipts. Payments to the District for the term shall be made semi-annually to the District Finance Department, P.O. Box 5381, Oakland CA 94605-0381. A sales report, in reasonable detail as specified by District, showing detailed individual sales and the computation of the fee shall accompany the payment. The Park Supervisor will receive a copy of the statement. A semi-annual report is required whether or not sales were made during the months reported.
- 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 Blacksmith in, on, or from the Premises for cash and on credit. 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 Blacksmith's customers, and remitted directly to the taxing authorities by Blacksmith.

#### 4. QUALIFICATIONS, DAYS & HOURS OF OPERATION, AND FACILITIES AND EQUIPMENT

See Exhibit "B".

#### 5. RESTRICTED SALES AND USES

- a. Sales. District reserves the right to prohibit the sale or use by Blacksmith 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. Blacksmith and District shall from time to time review items sold and services provided by Blacksmith.
- b. Waste Reduction. District prohibits the sale or use of non-recyclable containers or plastics. Blacksmith 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 Blacksmith on the Premises.
- d. Storage. Blacksmith shall not store food, supplies, equipment or other items outside of the Premises.
- e. Private and Blacksmith Vehicles. Blacksmith and Blacksmith's personnel shall park private vehicles only in the staff parking area or main Park parking areas unless

otherwise approved by District. Blacksmith's personnel may drive vehicles into areas prohibited to non-District vehicles only as required for vehicle access for forge operations and loading and unloading items used to operate the Premises. Special permission from Park Supervisor is required prior to driving in during hours open to the public, including historic days and special events.

6. SPECIAL EVENTS. All Special Events (Special Event information is attached herein and made a part hereof in Exhibit "C") are subject to approval by the Park Supervisor and the District in its sole discretion and shall require Blacksmith to obtain a Special Use Permit from District's Reservations Supervisor. Special Event fees are waived for two Special Events per year. Any Special Events beyond the two free events allowed under this agreement will pay the regular District fees as detailed in the East Bay Regional Park District's Special Event Permit information on the District website. Blacksmith shall apply for all Special Use Permits at least sixty (60) days in advance of the event.
7. EMPLOYEES/VOLUNTEERS.
  - a. Blacksmith will provide the District with a list of current employees and volunteers authorized to work in the shop. This list shall be kept by the Park Supervisor.
  - b. All employees and volunteers will dress in clothes similar to that of an historic Blacksmith's clothes while working in the shop or demonstrating for park visitors.
  - c. The District retains the right to ban a Blacksmith volunteer or employee from the park for violating park policy and practices, and/or for having a criminal record that might be considered unacceptable for working within the park.
  - d. Blacksmith shall insure all employees or volunteers 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 Blacksmith will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted.
8. UTILITIES. District will provide water, electricity, and garbage. Blacksmith agrees to furnish at Blacksmith's own cost and expense heating fuels and telephone service at the Premises.
9. TAXES. Blacksmith shall pay when due all taxes levied on personal property on the Premises and shall pay any possessory interest tax that may be levied in connection with use of the premises, Blacksmith agreeing to indemnify and save District harmless from all such taxes.
10. SIGNS and ADVERTISING. 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 "Ardenwood Historic Farm 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.

11. **FACILITY AND EQUIPMENT DISTRICT SHALL PROVIDE.** District pays for electric and subsidizes coal and shall provide the existing Concession structure along with the following equipment items:
  - Forge, Blower, Hood, Anvil, Vise, and miscellaneous Hand Tools.
12. **EQUIPMENT BLACKSMITH SHALL PROVIDE.** Blacksmith shall furnish all equipment and items necessary to properly operate the Premises. This equipment shall remain the property and responsibility of the Blacksmith. Blacksmith shall obtain written approval before providing such equipment. Blacksmith agrees that he/she will maintain high standards of operation.
13. **SAFETY.** In order to insure the safety of the public, these safety precautions will be followed at all times:
  - a. Smoking shall be prohibited at the Premises.
  - b. No pets shall be permitted within the premises.
  - c. All injury accidents shall be reported to the Park Supervisor within 24 hours.
  - d. Blacksmith will be responsible for picking up all litter and repairing damage which may occur to the Premises. Public areas and walkways shall be kept free and clear for public access.
  - e. Fire Protection. Blacksmith shall take all necessary precautions to prevent fire in or about the Premises, and Blacksmith shall carefully observe all rules of District relative to fire prevention. Blacksmith 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.
  - f. 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 Agreement, 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 Blacksmith as required by present or future regulations and laws.
  - g. Blacksmith represents and warrants to District that Blacksmith 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). Blacksmith shall indemnify, defend and hold District harmless from any costs, losses, claims, damages, penalties and liabilities arising from Blacksmith's

generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.

- h. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

14. **CONDITION OF PREMISES.** The taking of possession of the Premises by the Blacksmith shall, in itself, constitute acknowledgment that the subject Premises are in good and tenantable condition. Blacksmith agrees to accept said Premises in their presently existing condition, as is, and that the District shall not be obligated to make any alterations, additions, improvements, or repairs.

15. **ALTERATIONS: IMPROVEMENTS.** Blacksmith shall not install or construct any new structures, make alterations, additions and/or improvements to the Premises, without the prior written approval of the District which approval may be granted or withheld in District's sole discretion.

Whenever Blacksmith desires to construct alterations, it shall prepare specifications and working drawings and submit the same to District's Chief of Planning and Design for review and shall obtain an Encroachment Permit from the District prior to commencing any work. All work performed by Blacksmith under this section shall be subject to inspection by the District and performed at Blacksmith's sole cost and expense and without reimbursement from the District.

16. **MAINTENANCE OF FACILITIES.** Blacksmith agrees to maintain any and all Blacksmith structures, facilities, improvements, and equipment on the Premises in good order and repair, at Blacksmith's cost and expense, during the entire term. Should Blacksmith fail, neglect, or refuse to do so, the District shall have the right, but not an obligation, to perform such maintenance or repairs for Blacksmith's account and Blacksmith agrees to promptly reimburse the District for the cost thereof, provided, however, that the District shall first give Blacksmith sixty days' written notice of its intention to perform such maintenance or repairs for the Blacksmith's account for the purpose of enabling Blacksmith to proceed with such maintenance or repairs at its own expense. District shall not be obligated to make any repairs to or maintain any improvements on the subject Premises. Blacksmith hereby expressly waives the right to make repairs at the expense of District.

Blacksmith expressly agrees, at its own cost and expense, to maintain and operate all of the equipment on the Premises in a clean, safe, wholesome, and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any applicable laws, rules or regulations of any governmental authority having jurisdiction over the Premises. Blacksmith shall remedy without delay any defective, dangerous, or unsanitary conditions.

- 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 Blacksmith. Blacksmith shall have the obligation to repair or replace to the extent damage or destruction is caused by Blacksmith, or to the extent insurance proceeds are received by Blacksmith (which shall be held in trust for such purposes), or to the extent that proceeds would have been obtained by Blacksmith if Blacksmith had been carrying the insurance required by this Agreement.
17. PROTECTION OF PARK AND PUBLIC. It is recognized by Blacksmith that the Premises are within a Regional Park operated and maintained by the District as an essential part of its system for furnishing park and recreation use of the residents and visitors to the District. Blacksmith will not disturb or alter surrounding natural areas of the Park. Blacksmith agrees to cooperate with the District to protect the 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 Blacksmith and to protect the public at all times from hazards.

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

In the case of abuse of the facility or unsafe actions on the part of any person(s), Blacksmith shall courteously and respectfully point out such abuse or unsafe action to the person(s) committing them and request that they refrain from so doing. In the case of any dispute, the matter should be referred to the Park Supervisor or to a Public Safety Officer.

18. PARK INSPECTION AND MAINTENANCE. District reserves the right to enter and inspect the Premises at any time as deemed necessary by District and the right to do any and all work of any nature necessary for preservation, maintenance, and operation of the park in which the Premises are located. Blacksmith will adjust its operations in such a manner that District may proceed expeditiously without unnecessary interruption or interference with scheduled events.
19. INDEMNITY. Blacksmith acknowledges that the District operates Ardenwood Historic Farm pursuant to Agreement with the City of Fremont. Whenever the term "District" is used in sections 18, 19, 20, and 21, the term "District" specifically includes the City of

Fremont and all their offices, employees, and/or agents.

Blacksmith 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 Blacksmith, 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 of District, its officers, directors, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

Blacksmith 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 Blacksmith, including, but not limited to, Blacksmith's development, construction, occupation, use, operation, or maintenance of the concession, Premises, or any facilities, including events occurring on or off 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 Blacksmith or any of its invitees. District shall have no responsibility to safeguard or protect the Blacksmith, 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 Blacksmith, Blacksmith 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 Blacksmith'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 Blacksmith for the joint and several liabilities of District and Blacksmith, the determination as to the apportionment of liability between District and Blacksmith shall be made by the judge in a court of competent jurisdiction. Neither District nor Blacksmith shall request that the apportionment of liability be determined by a jury.

Notwithstanding the apportionment of liability between District and Blacksmith, Blacksmith 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.

20. **INSURANCE:** Blacksmith shall procure and keep in force during the term of the Agreement, at Blacksmith's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, with a rating of A or better by Best's Key Rating Guide and which are acceptable to District in District's sole opinion. Blacksmith shall, prior to the commencement of the Agreement, supply District with a completed Certificate of Insurance and additional insured endorsements, as required, for all policies outlined below:

- a. General Liability (Bodily Injury and Property Damage) including Premises and Operation in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy will include all special event functions approved, authorized, or sponsored by the Blacksmith.
- b. Fire/Property Insurance. Except as required with the City of Fremont, District, at its sole discretion, may or may not carry fire insurance on structures at the Premises. Standard Fire Insurance on all improvements and equipment owned by the Blacksmith with extended coverage and vandalism and malicious mischief endorsements thereon, on all improvements owned by the Blacksmith, placed or constructed upon the premises by Blacksmith, in an amount equal to 90% of the full replacements cost thereof, and insuring the interests of the District and the Blacksmith as same shall appear. Blacksmith 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 any such improvements so damaged or destroyed, if such course of action is required by this Agreement.
- c. Worker's Compensation as required by law and Employer's Liability with limits of \$500,000 per occurrence (if employees are to be hired).
- d. Each policy of insurance shall contain a provision that the policy shall not be canceled or materially changed without 30 days' prior written notice to District. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Blacksmith to furnish the required insurance during the term of this Agreement.
- e. The District, its officers, directors and employees shall be named as an additional insured under the General Liability policy of insurance.
- f. The coverage afforded on behalf of District shall be primary insurance and any other insurance available to District under any other policies shall be excess over the insurance outlined above.
- g. Policies should be written on an occurrence basis. Only by special permission of the District may a claims-made form be used. The retroactive date on any policy written on a claims-made basis shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the

same as the original policy provided that the extended reporting or discovery period shall not be less than 36 months following expiration of such policy.

- h. In case of the breach of any provision of this section, District may treat such breach as a default under this Agreement and/or, at District's option, take out and maintain at the expense of Blacksmith, such types of insurance in the name of the Blacksmith as District may deem proper, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Blacksmith under this Agreement or may demand Blacksmith to promptly reimburse the District.
21. **WAIVER OF CLAIMS.** The Blacksmith 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 voidable or delaying the same or any part thereof from being carried out.
22. **WAIVER OF AGREEMENT 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 Blacksmith 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.

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 Blacksmith for any purpose or for the performance of any obligation of Blacksmith hereunder.

23. **NON-DISCRIMINATION.** The Blacksmith 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 Blacksmith or Blacksmith's employees 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 Agreement, the Blacksmith will not discriminate against any applicant because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

24. 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 in the following paragraph. 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.

East Bay Regional Park District  
Revenue Manager  
2950 Peralta Oaks Court  
Oakland CA 94605

25. DEFAULT. The occurrence of any one or more of the following events shall constitute a material default of this License by Blacksmith.
- a. The abandonment, vacation, or discontinuance of operations on the concession premises for more than thirty days.
  - b. The failure of Blacksmith to make any payment of concession fees or any other payment required to be made by Blacksmith hereunder, upon ten days written notice from District of non-payment.
  - c. The interest of Blacksmith in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation without the written consent of the District.
  - d. The failure of Blacksmith to operate in the manner required by this Agreement, where such failure continues for more than fifteen days after written notice from the District to correct the condition specified.
  - e. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than fifteen days after written notice from the District for correction thereof.
  - f. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Blacksmith under the Agreement which is not corrected within fifteen days after written notice from the District for correction thereof; and the failure to maintain service standards thereafter.
  - g. The failure of Blacksmith to keep, observe and perform all other promises, covenants, conditions and Agreements set forth in this Agreement including compliance with local, state and federal law, where such failure continues for

more than fifteen days after written notice from the District for correction thereof.

- h. The filing of a voluntary petition in bankruptcy by Blacksmith, the adjudication of Blacksmith as a bankrupt, the appointment of any receiver of Blacksmith's assets, the making of a general assignment for the benefit of creditors, and or a petition or answer seeking a reorganization of Blacksmith under the federal bankruptcy laws or any other federal or state laws.
- i. Blacksmith's material misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of Blacksmith to perform the services under this Agreement.
- j. The filing of any lien or stop notice on account of Blacksmith where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten days.

26. **REMEDIES.** In the event of a material default by Blacksmith, District may:

- a. Terminate this License in which case Blacksmith shall immediately surrender possession of the Premises to District.
- b. Take possession of the Premises as the agent and on account of Blacksmith, and if it so elects may license the whole or any part of the Premises for the balance or any part of the term of this Agreement and retain any fees received and apply the same in payment on account of Blacksmith. The performance of any or all of said acts by District shall not release Blacksmith from the full and strict compliance with all of the terms, conditions and covenants of this Agreement on Blacksmith's part and Blacksmith 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 Agreement by Blacksmith 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.

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

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

29. **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 Blacksmith for any purpose or for the performance of any obligation of Blacksmith hereunder.
30. **ATTORNEYS' FEES.** Should either party bring any legal action or proceeding for the breach of any term, covenant or Condition of this Agreement, the Court shall award reasonable attorneys' fees to one or more of the parties therein based upon the degree to which each party prevails in such action or proceeding, as determined by the Court.
31. **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.
32. **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.
33. **ENTIRE AGREEMENT.** This Blacksmith 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 \_\_\_\_\_

By \_\_\_\_\_

Robert E. Doyle, General Manager

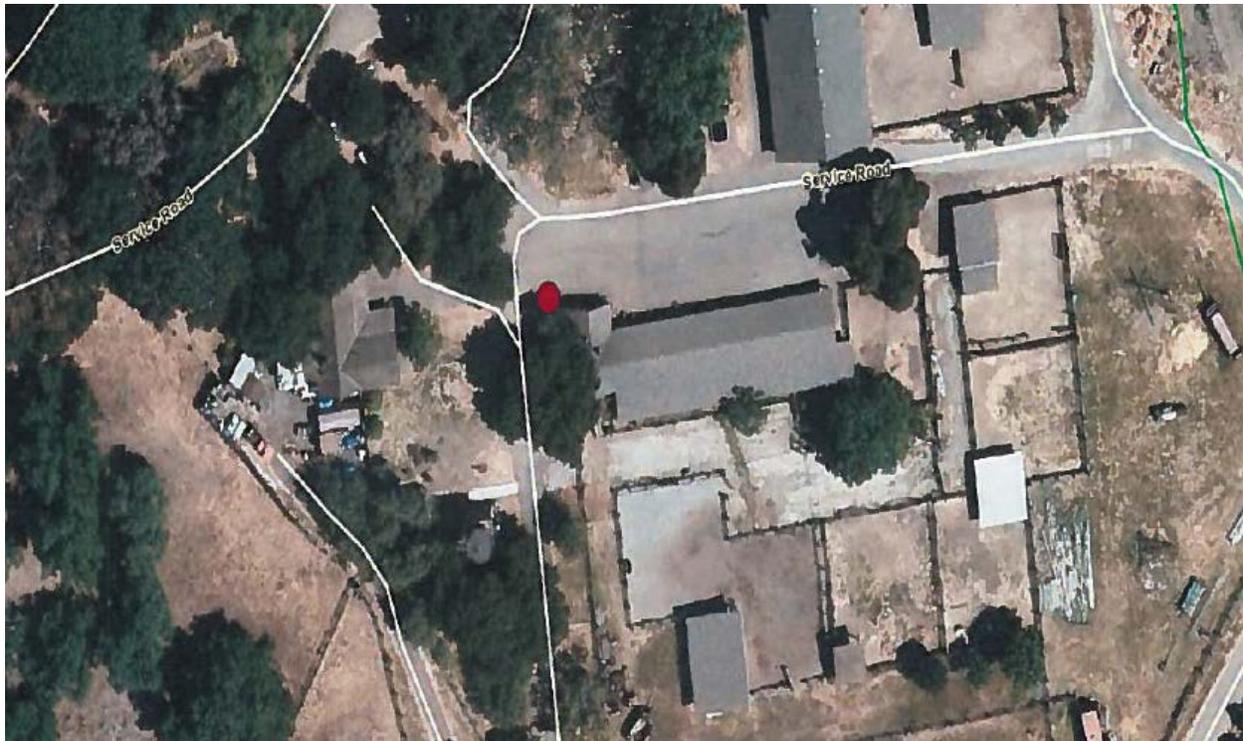
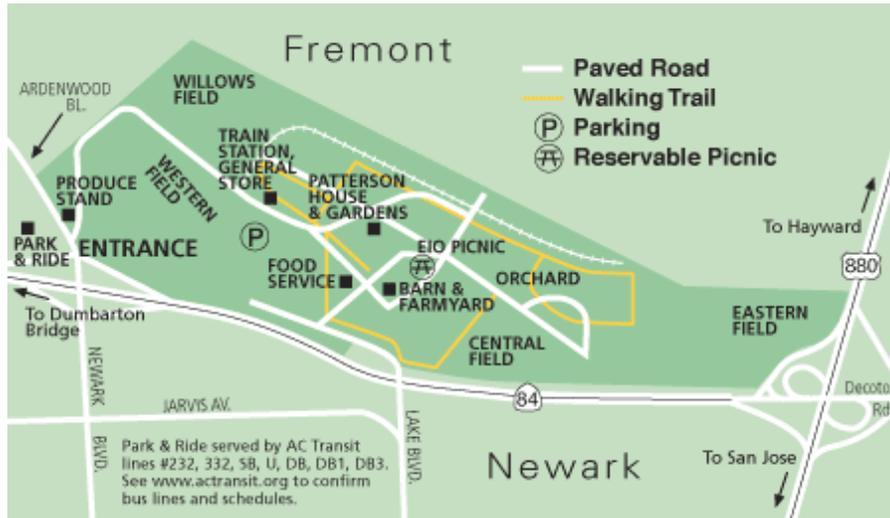
Date \_\_\_\_\_

Date \_\_\_\_\_

## EXHIBIT A

### Map of Premises

Blacksmith area consists of the forge area, the patio to the side and to the back of the forge area (corral space), and also extends approx. 15 feet in and the full width of the horse equipment barn for storage.



## **EXHIBIT B**

### Qualifications

1. Provide Blacksmith services in a demonstrative and educational manner for the enjoyment of the visiting public, school groups, youth groups and the general visiting public.
2. Demonstrate Blacksmith techniques and discuss the history of Blacksmithing and the role of a Blacksmith on a large family farm from 1890-1930.
3. Provide special educational/interpretive demonstrations at reasonable times and in a manner as requested by the District.
4. Blacksmith services:
  - a. Manufacture agricultural, special order and historic items on the premises which shall be sold through the park's Blacksmith shop.
  - b. Perform Blacksmithing manufacturing and repair services directly for the public on an individual order basis.
  - c. Produce souvenir horseshoes and other sale items for school groups and other park visitors.
  - d. Blacksmith shall supply, at his/her sole cost, all materials needed for these sale and special order items.
  - e. Blacksmith will assist park staff by providing Blacksmithing repair and manufacturing services in support of park operations and the maintenance of antique farm equipment.
5. Other or additional activities by the Blacksmith shall require prior written approval of the District.

### Days & Hours of Operation

1. From April 1 through November, the Blacksmith will perform public demonstrations and Blacksmithing services Thursdays, Fridays, every-other Saturday, and Sundays, Monday holidays the park is open and specified special event days. Access to the park and the shop will be between 7 am and 7 pm. Maximum annual hours is 1,560.
2. Additional days may be added upon mutual agreement.
3. Hours of operation will be arranged so as to maximize public exposure to Blacksmithing activities with a minimum of 5 hours to a maximum of 7 paid hours per day.
4. The Blacksmith may also operate on additional days without payment by the District. These days will be added upon mutual agreement.

### Facilities and Equipment Provided by the District

1. The District shall provide the existing Blacksmith Shop structure and a portion of the equipment shed area.
2. The District shall provide some of the equipment necessary to establish a period (1890-1930) Blacksmith shop. District will supply one small Forge, Blower, Hood, Anvil, and Vise.
3. Other than the equipment listed above, the Blacksmith shall provide all equipment, hand tools and other equipment necessary for the operation of a Blacksmith shop.
4. The Blacksmith may provide, at his/her expense, equipment not provided by the District which the Blacksmith deems necessary for the good and proper operation of the Blacksmith shop.
  - a. This equipment will remain the property and responsibility of the Blacksmith.
  - b. The Blacksmith shall receive the District's written permission prior to providing such equipment.

## EXHIBIT C

### SPECIAL EVENTS

Special event permits are required for events such as walkathons, organized trainings, athletic competitions, festivals or other activities which may go beyond the scope of normal park use, Or which require partial or exclusive use of a park or area within a park, or by discretion of the Park Supervisor. The Park Supervisor must have all the details of the event and approve those details before an event can take place. To receive a special event application, please email the Reservations Supervisor at [specialeventpermit@ebparks.org](mailto:specialeventpermit@ebparks.org) or call (510) 544-2540.

**Applications are not available online.** To request an application, please include your event date, location and a short description of your request.

Application timeline: **New events** must submit application AT LEAST 60 days prior to the event. **Repeat events** must submit application AT LEAST 45 days prior to the event. Late event requests will not be accepted. New or unusual events may require up to 90 days plus Board approval. You may make a reservation for a special event up to one year in advance. You are encouraged to start planning as early as possible to be sure that your date and location are available and that your application has enough time to be processed. Your application is complete only when the Reservations Department has received your completed application packet with all necessary signatures and proof of insurance, and all fees applicable have been paid. Your event may be cancelled if your application is not complete 15 days prior to the event.

Special event permits are required for events such as walkathons, organized trainings, athletic competitions, festivals, or other organized activities. In addition to the criteria above, a permit is also required for:

- Events that are advertised and/or are open to the public
- Events with a participation fee
- Events that go beyond the scope of “normal” park use
- Training runs or walks of 30 or more people
- Non-EBRPD agencies or individuals sponsoring smaller and/or on-going classes or programs
- Events that require partial or exclusive use of an area of the park.

If you are not sure if your event requires a special event permit or not, please email the Reservations Supervisor [SpecialEventPermit@ebparks.org](mailto:SpecialEventPermit@ebparks.org) with information about your requested activity and she will respond within 2 business days with additional information.

The steps for obtaining a Special Event Permit are: Step 1 - Tentative Booking; Step 2 - Complete Application, Event Plan and Map; Step 3 - Mandatory Pre-Event Meeting; Step 4 - Insurance and Liability; Step 5 - Fees and Payment; Step 6 - Permit; Other Permits.

## **EXHIBIT D**

### **S B 5164**

SECTION 1. Section 5164 is added to the Public Resources Code, to read:

5164. A county or city or city and county or special district shall not hire a person for employment at, 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 the person has been convicted of any offense specified in paragraph (1) of subdivision (g) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision (g) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision (g) of Section 11105.3 of the Penal Code, unless the person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period. To give effect to this section, a county or city or city and county or special district may screen, pursuant to Section 11105.3 of the Penal Code or any such prospective employee or volunteer for their criminal background.