

## DRAFT CAMP ARROYO OPERATORS LICENSE AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_\_, 20\_\_, between the East Bay Regional Park District (District), a special District, 2950 Peralta Oaks Court, Oakland, California 94605 and \_\_\_\_\_ (OPERATOR),\_\_\_\_\_.

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, District grants to OPERATOR, pursuant to the authority of Section 5540 of the Public Resources Code of the State of California, the license to operate CAMP ARROYO, subject to the terms and conditions set forth below. The District and OPERATOR (the parties) intend that a license, not a lease, easement or any other interest in real property is created hereby and OPERATOR acknowledges that it is not receiving any interest in real property by this Agreement. The rights granted under this license are exclusive except as otherwise expressly provided herein.

1. PROPERTY. The lands to be used for CAMP ARROYO purposes will hereinafter be called the PROPERTY and includes the designated area shown on Exhibit A. Improvements and uses on the PROPERTY are contained in Exhibit B, and are subject to a use permit from the County of Alameda as shown in Exhibit C. In addition, the License will include the use of the Personal property listed in the Inventory attached as Exhibit D which shall be maintained in good and workable condition by OPERATOR and returned to the District at the end of the Term. The portion of the 138-acre area that is to be retained and operated by the District includes the section of Arroyo Road within park boundaries, the Shadow Cliffs to Del Valle Regional Trail, and the Open Space Areas as shown on Exhibit A (such retained land is referred to as "District Property").
2. TERMS of AGREEMENT. The term of this Agreement shall be for \_\_\_\_\_ years commencing on \_\_\_\_\_ and ending on \_\_\_\_\_. Assuming that OPERATOR is not in default under this Agreement, OPERATOR shall have the right to renew the agreement for an additional \_\_\_\_\_ year term provided that the OPERATOR has achieved the goals stated in the Business Plan as shown in Exhibit E, subject to reasonable negotiation of the License Fee and other terms, consistent with the purposes stated in this Agreement.
3. PUBLIC GOOD / BENEFIT to the DISTRICT and OPERATOR. This Agreement is entered into with the intention of providing additional services and activities for the public good which will mutually enhance the work of both the OPERATOR and the District.
4. UTILITIES. All utilities except for water service shall be provided and paid for by OPERATOR. The District shall pay for water. District and OPERATOR shall cooperate on developing signage and policies to promote water conservation and to reduce water usage where possible. All leaks shall be promptly reported to the District.

The District will continue to pump the sewage holding tanks at the Security Residence, the Meadow and Entrance Restrooms, the Staff Residence, and The Taylor Family Foundation office trailer until these units can be connected to the septic system.

**5. CAMP ARROYO OPERATIONS.** To best serve the diverse goals of District, The Taylor Family Foundation (TTFF), as contained in the Partnership Agreement between District and TTFF in Exhibit G, and the broader community, it is necessary to identify the functions of facility operations and program delivery. The Operation goals for the Camp are contained in the Camp Arroyo Business Plan as shown in Exhibit E. Under this Agreement the responsibility for Camp operation, facility management, and care of the site will be vested in the OPERATOR who will efficiently manage the Camp to deliver high quality experiences for the groups and individuals who attend camp or otherwise are users of the Property.

**a.** The Taylor Family Foundation. The District has entered into an agreement with The Taylor Family Foundation Exhibit G, providing for their cooperation in improving Camp Arroyo, for certain contributions to improvements at Camp Arroyo by TTFF and for the right of TTFF to conduct certain operations at Camp Arroyo, including a summer camp for children with special needs which agreement has been provided to OPERATOR.

**b.** Camp Arroyo Operations.

**i.** Facility Maintenance/Operations

One of the key elements for the operation of Camp Arroyo is the contracting and management of facility vendors. Following is a partial list of the Vendor Services Contracts needed to operate or provide services for this facility.

**1.** The Camp operations that are to be the responsibility of the OPERATOR are defined as follows:

- a. Food Service
- b. Housekeeping-daily/turnover/quarterly – based on set standard
- c. Janitorial services
- d. Kitchen Equipment – (extended warranties)
- e. Plumbing/Grease Traps
- f. Lifeguards/Aquatic Safety
- g. Ropes Course and Rock Wall Training (summer use, possible year-round)
- h. Environmental Education
- i. Recreational Equipment including Ropes Course and Rock Wall (purchase, maintain, and repair)
- j. Vehicles and Equipment owned by OPERATOR

**2.** The Camp operations that are to be the responsibility of the District are defined as follows:

- a. HVAC
- b. Water and Sewer Systems

- c. Pool Maintenance
- d. Landscaping/Irrigation and Grounds Maintenance
- e. Pest Control Management (except Kitchen)
- f. Building Maintenance (minor repairs and routine maintenance)
- g. Vehicles and Equipment owned by District

ii. Marketing

To insure the profitability of the Camp facility, the OPERATOR must solicit various outside parties to lease the Camp. Due to Camp Arroyo's diverse amenities, it is appealing to several groups to lease. The District envisions Camp Arroyo being marketed, yet not limited to the following sources for weekday or weekend use:

- 1. Environmental Education (Outdoor Education) for public schools (the District's Environmental Education curriculum is attached as Exhibit I.)
- 2. Non-profit Organizations
- 3. Corporate Events (staff teambuilding, picnics)
- 4. Conferences and Retreats
- 5. Special Events
- 6. Private Schools
- 7. Weekend Facility Rentals

iii. Reservations/Scheduling

The scheduling of Camp Arroyo's calendar is one of the most important aspects of managing the camp. The OPERATOR will make a reasonable effort to use calendar software compatible with both the District and TTF. The OPERATOR will be the only entity which will have the right to book dates; however, it is important for both the District and TTF to have online access to the calendar for viewing purposes only. The goal of both parties will be to achieve the full use and occupancy of Camp Arroyo at market rates. District will coordinate with OPERATOR so that the District may participate in establishing TTF Extra Days (TTF has the right to schedule each year as defined in the PARTNERS' Agreement).

iv. Staffing/Office Administration

The OPERATOR needs to have experience in the following areas:

- 1. Staffing/Training/Supervision
- 2. Payroll/Salary/Benefits
- 3. Accounting
- 4. Human Resources and Public Relations
- 5. Regulatory Compliance, ACA Accreditation
- 6. Equipment and Building Warranties

v. Hospitality/Customer Service

The function of hospitality is to provide an environment that supports the program or curriculum goals of the resident group. The tasks of hospitality include housekeeping and customer service. Customer Service is what “campers” and “guests” remember the most. The following is a partial list of customer service duties OPERATOR must provide at this facility:

1. Pre-use contact with group leader
2. Preparing for group arrival
3. Insuring buildings and grounds are ready for occupancy
4. Orientations of campers to the facility
5. On-going contact with group leaders to facilitate requests/complaints
6. Group Evaluation

vi. Coordination of Visiting Groups

The OPERATOR is responsible to integrate program and volunteer participants into the work-life of the camp operations, such as, Organic Gardens/Recycling/Kitchen Processes. CAMP ARROYO has become highly visible within our community with several outside groups showing interest in it as a community project. TTFE can assist with the facilitation of volunteer projects if referred by TTFE.

vii. Food Service

Food service is the largest single aspect of camp operations. OPERATOR may choose to provide its own food service or contract a local food vendor for CAMP ARROYO (with the exception of summer months). Additional components of food service include:

1. Kitchen Maintenance
2. Food Purchase, Storage, Preparation
3. Food Production and Garden Maintenance
4. Environmental Health
5. Special Food Service requirements for TTFE program:
  - a. Pureeing foods for children on request
  - b. Providing a smoothie and high calorie/protein milkshake bar
  - c. Providing very nutritious foods that cater to the very picky taste buds of children on special diets
  - d. Providing visual aids on the nutrition breakdowns such as carbohydrates, sugar, fat and calorie counts for the Diabetic group
  - e. Providing an extensive vegetarian program
  - f. Being available and having staff onsite for a 3 meal a day program
  - g. Providing executive chefs who visit with family, children and camper staff learning of the special needs of all individuals at that camp session
  - h. Providing a Registered Dietitian to prepare and compute the menu

viii. Health and Safety

The OPERATOR must be responsible for the coordination of the following:

1. Health forms and medical releases
2. Current Standing Orders on-site and infirmary supplies to fulfill Standing Orders
3. Certified First Aid Provider
4. Medications logged, stored, dispensed, returned and documented
5. Medical Log maintained

ix. Aquatic Safety

The OPERATOR will set rules for the pool area and is responsible for the aquatic safety of campers and guests at Camp Arroyo. The following duties must be performed:

1. Scheduling of Lifeguards (ratio of 1:25)
2. Insure Lifeguard Certification in compliance with TMCA standards
3. Water testing on pool use days
4. Removal and replacing of pool cover, pool toys, chairs, etc.

x. Caretaker

The OPERATOR is responsible to coordinate the caretaker duties as follows:

1. Emergency Response to camp visitors
2. Opening/closing entrance gates
3. Group orientation and assist with arriving groups
4. Assist groups during evening hours as needed

xi. Educational Services

1. Hire, train, and supervise Program Director
2. Recruit and train instructional staff
3. Oversee and manage the delivery of curriculum services and activities as set forth under the Environmental Education Curriculum as presented in Exhibit I and any modifications thereto
4. Oversee, on a year round basis, the planting and maintenance schedule (as provided by District) of the organic garden for its integrated use as part of curriculum
5. Market, schedule, and administer all reservations facets of filling available time slots for school services
6. Provide to District for review and approval, the OPERATOR's business plan setting forth the provision of educational services, and update the plan with the District's approval, as needed during the term of this Agreement

6. LICENSE FEE. OPERATOR shall pay to District as a License Fee, without deduction, setoff, or demand, \_\_\_\_\_% of OPERATOR's gross receipts beginning on \_\_\_\_\_.

OPERATOR's License Fee will be due and payable on the sixtieth day following the end of each calendar quarter, in arrears, starting on the quarter ending \_\_\_\_\_, and delinquent ten days later. The fee shall be mailed to the Finance Office, P.O. Box 5381, Oakland, CA 94605-0381.

By September 30 of each year during the term of this Agreement, OPERATOR shall provide to District a statement showing budgeted and actual income and expenses for the prior year (July 1 – June 30). This statement shall be mailed to the address listed above each year of operation. By September 1 of each year, a proposed budget (Exhibit Fb) and list of use fees (Exhibit Fa) for the next calendar year will be submitted to District for its review and consideration.

- a. **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 OPERATOR in, on, or from the premises for cash or credit (it being understood that sales on credit are to be included in gross receipts whether or not payment is actually made to OPERATOR). In addition, gross receipts shall also include the total aggregate amount received by OPERATOR from the operating of vending machines and general store. 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 refunds made by OPERATOR to a user for returned merchandise or unaccepted service; the amount of any grants, gifts, and donations not specifically received or used to subsidize CAMP ARROYO user fees and charges; and, the amount of any tax on sales from the premises where such taxes are added to the selling price, stated separately, and paid by OPERATOR's customers, and remitted directly to the taxing authorities by OPERATOR.
- b. **Late Charge:** OPERATOR hereby acknowledges that late payment by OPERATOR to District of any License Fee or other sum payable by OPERATOR pursuant to this Agreement will cause District to incur costs not contemplated by this Agreement, the exact amount of which would be difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges, personnel costs and late charges, which may be imposed on District by the terms of any indebtedness secured by the Premises. Accordingly, if District does not receive any License Fee or any other sum owed by OPERATOR within five days of its due date, OPERATOR shall pay to District a late charge equal to ten percent (10%) of any such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs District will incur by reason of late payment by OPERATOR. Acceptance of such late charge by District shall in no event constitute a waiver of OPERATOR's default with respect of such overdue amount, nor prevent

District from exercising any of its other rights and remedies. Any audit undertaken on behalf of District to determine any overdue amount(s) shall be in addition to audits allowed under the section titled "Records Inspection" and shall be at the cost of OPERATOR.

- c. **Renewal Period:** The parties shall establish an increase or decrease of the percentage of gross for the option period at least forty-five (45) days before the beginning of the renewal period for second five year term. All terms and conditions of the original Agreement shall be the same that at the time of exercise of the option, the percentage used as the License Fee will be adjusted upward or downward based on the agreement of both parties.
  - d. **Records Inspection:** OPERATOR shall keep true and accurate books and records showing all of its income and expenses and business transactions in connection with CAMP ARROYO in separate records of account in a manner reasonably acceptable to District. District shall have the right through its representatives, and at all reasonable time, 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. OPERATOR will reimburse District for any cost incurred by it to reconstruct the books and records in an acceptable manner.
  - e. **User Rates and Annual Budget:** The current rates and charges to users of CAMP ARROYO are listed in Exhibit F which is attached hereto and made a part hereof. Camp fees will be updated annually each September by agreement and posted at the business office of CAMP ARROYO. The Operating Budget will also be reviewed annually by the District as part of its process for approving fees.
  - f. **Rate Increases:** OPERATOR shall not increase the user rates in Exhibit F and/or institute any additional services and charges without the prior written consent of the District, which consent shall not be withheld unreasonably. Requests for rate increases shall be based on the "Market" for similar camps and services and the OPERATOR'S budgeted operating costs. Requests for fee increases must be submitted during the annual Fees and Charges update review period set by the District.
7. **PAYMENT OF DEBTS - NO LIENS.** OPERATOR 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. OPERATOR shall permit no liens to be levied upon or to attach to any property used by it in the performance of this Agreement.
8. **TAXES/POSSESSORY INTEREST.** OPERATOR shall pay before delinquency all license fees, taxes, and assessments imposed, levied or assessed upon items or upon any property used

by OPERATOR in the performance of this Agreement or upon OPERATOR's possessory interest therein, upon OPERATOR's business or activity conducted hereunder or OPERATOR's right to conduct same, or based upon the proceeds of such business or activity.

9. USE OF PREMISES. The premises shall be used by OPERATOR solely for the purposes described in the Business Plan and consistent with the goals and provisions of this Agreement

10. PROTECTION OF PARK AND GENERAL PUBLIC USE. It is recognized by OPERATOR 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 residents of Alameda and Contra Costa Counties. OPERATOR 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 OPERATOR and to protect the public at all times from hazards. The provisions of this Agreement shall at all times be considered in order to accomplish the above-mentioned objectives.

All OPERATOR-sponsored activities and camp users are subject to the provisions of the Districts' Ordinance No. 38 (Exhibit I) and OPERATOR agrees to abide by all rules and regulations therein. Accidents that occur on the premises must be reported to the Park Supervisor. Major accidents, property damage, or threats to individuals must be reported immediately to the District's Public Safety Department.

OPERATOR is granted authority to develop, administer and regulate the activities of CAMP ARROYO participants, employees, and others using the premises pursuant to posted rules and regulations governing use of the premises. All such rules and regulations must be approved in advance in writing by the District's General Manager and shall not conflict with District Board policy and other rules and regulations established by District. District ordinances and rules and regulations shall take precedence.

In the case of abuse of the facility or unsafe actions on the part of any person(s), OPERATOR 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 CAMP ARROYO manager or, in case of present danger, to a District Public Safety 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, OPERATOR shall be responsible for having adequately trained personnel on the premises when camp is in operation as required to perform foreseeable needs for maintaining an orderly operation, protecting visitors, and providing emergency response in the event of accident or fire, including first-aid assistance. OPERATOR 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. OPERATOR and all regular employees of OPERATOR shall obtain and maintain Basic First



Aid and CPR certification from the American Red Cross and/or the American Heart Association.

**11. EMPLOYEES-PERSONNEL.** OPERATOR shall insure all employees meet the provisions of the Public Resources Code, Section 5164 for all employees who supervise minors. OPERATOR shall require employees that have direct supervision over or conduct programs with minors, be fingerprinted and cleared as required by State law. OPERATOR shall be responsible for the conduct of the services to be rendered on and from the demised premises to the extent reasonably required to ensure such standards of operation called for in this Agreement.

OPERATOR 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 OPERATOR in the operation of the facility under this Agreement. OPERATOR shall be solely responsible for all matters, and shall be solely responsible for OPERATOR's own acts and those of subordinates and employees.

All persons employed or utilized in connection with the operation of the premises shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees of OPERATOR, 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, shall be either be reassigned by OPERATOR to a non-District facility or discharged by OPERATOR, upon receipt of written notice from y District's General Manager.

**12. NON-DISCRIMINATION.** OPERATOR staff 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 OPERATOR or OPERATOR'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 OPERATOR will not discriminate against any applicant because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

**13. CONDITION OF PREMISES.** The signing of this agreement by the OPERATOR shall constitute acknowledgement that the subject Premises are in good and tenantable condition. The OPERATOR agrees to accept said Premises in their presently existing condition "as is" and the District shall not be obligated to make any alterations, additions, improvements or repairs.

**14. DISTRICT'S ROUTINE MAINTENANCE OBLIGATION.** District agrees to maintain any and all CAMP ARROYO structures, facilities, improvements, and equipment on the

premises in good order and repair, at District's cost and expense, during the entire term, except as otherwise provided in this agreement. OPERATOR shall make weekly inspection rounds of the facility and each structure and shall promptly report in writing to District any deficiencies that require maintenance. OPERATOR hereby expressly waives the right to make repairs at the expense of District.

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

The District shall have the obligation to repair or replace improvements and property licensed to OPERATOR to the extent the damage or destruction is not caused by the negligence or willful intentional act of the OPERATOR.

OPERATOR 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. OPERATOR shall remedy without delay any defective, dangerous, or unsanitary conditions.

**15. OPERATOR'S ALTERATIONS AND IMPROVEMENTS.** At any time during the term hereof, OPERATOR shall have the right, subject to prior written approval by District as hereinafter provided, to construct alterations, additions and/or improvements ("alterations") to the premises, at OPERATOR's sole cost and expense and without reimbursement from the District. Whenever OPERATOR desires to construct alterations, it shall prepare specifications and working drawings therefore and submit same to District's Design Department for approval, which approval District shall not unreasonably withhold, 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, including fixtures, shall remain upon the premises and be surrendered to and become the property of the District, except that OPERATOR shall ascertain from the District 25 days before the expiration or termination of this Agreement whether the District desires to have any such alterations removed from the Premises or have the Premises or any portion thereof restored to their condition as of the date of this Agreement. If District so desires, OPERATOR shall remove or restore same before the end of the term at no cost to the District.

**16. REPAIR AND REPLACEMENT BY OPERATOR.** OPERATOR shall have the obligation to repair or replace improvements and property to the extent the damage or destruction is

caused by the negligence of OPERATOR, or to the extent insurance proceeds are received by OPERATOR (which shall be held in trust for such purposes), or to the extent of the proceeds that would have been obtained by OPERATOR, if OPERATOR had been carrying the insurance required by this Agreement.

- 17. SIGNS.** All promotional materials and signs to be placed at the premises must be submitted to District for its prior written approval. The District reserves the right to remove any such signs in its sole discretion. All promotional materials shall contain the reference "CAMP ARROYO" an East Bay Regional Park District facility.

OPERATOR shall maintain one or more bulletin boards for posting notices, safety regulations, and information about activities on the premises, and for distributing pamphlets or brochures describing the services and activities available on the premises.

- 18. SECURITY RESIDENCE/STAFF HOUSING.** During the term of this Agreement, only employees of OPERATOR and their family unit shall reside in the security residence provided by the District. Other staff housing is provided at the convenience of District /OPERATOR. Such residence shall terminate upon termination of the term of this Agreement. No person shall reside elsewhere on the premises without District's written permission.

- 19. FIRE PROTECTION.** OPERATOR shall take all necessary precautions to prevent fire in or about the premises, and OPERATOR shall carefully observe all rules of District relative to fire prevention. District shall, at its expense, install and maintain such fire prevention and firefighting practices and equipment as may be specified or required by Alameda County or any other agency having jurisdiction to regulate fire prevention measures at the premises.

- 20. 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 will in any way injure said premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by OPERATOR as required by present or future regulations and laws.

- 21. INDEMNITY.** OPERATOR 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 OPERATOR, 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.

OPERATOR 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 OPERATOR, including, but not limited to, OPERATOR'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 OPERATOR or any of its invitees. District shall have no responsibility to safeguard or protect the OPERATOR, 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 OPERATOR, OPERATOR shall immediately notify District of such fact, and at District's option shall either retain legal counsel to represent District in such action at OPERATOR'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 OPERATOR for the joint and several liabilities of District and OPERATOR, the determination as to the apportionment of liability between District and OPERATOR shall be made by the judge in a court of competent jurisdiction. Neither District nor OPERATOR shall request that the apportionment of liability be determined by a jury.

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

**22. INSURANCE.** OPERATOR shall procure and keep in force during the term of the Agreement, at OPERATOR'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. OPERATOR 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. Worker's Compensation as required by law and Employer's Liability with limits of \$500,000 per occurrence (if employees are to be hired).
- b. General Liability (Bodily Injury and Property Damage) including Premises and Operations in an amount not less than \$5,000,000 per occurrence and

\$10,000,000 in the aggregate. The policy will include all special event functions approved, authorized, or sponsored by the OPERATOR.

- c. Automobile Liability (Bodily Injury and Property Damage) extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under the Agreement in an amount not less than \$1,000,000 per occurrence.
- 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 OPERATOR 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 and Automobile policies 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 OPERATOR, such types of insurance in the name of the OPERATOR 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 OPERATOR under this Agreement or may demand OPERATOR to promptly reimburse the District.

**23. WAIVER OF CLAIMS.** The OPERATOR and the District hereby waive claims against each other for damage or loss caused in connection with or as a result of any third-party 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.

**24. 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 OPERATOR 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 OPERATOR for any purpose or for the performance of any obligation of OPERATOR hereunder.

**25. ASSIGNMENT AND SUBLETTING.** OPERATOR shall neither assign, sublease nor otherwise convey any interest in this Agreement or arising hereunder to any person or persons, entity or entities, whatsoever without the prior written consent of District, and any attempt to assign or sublet without such prior written consent shall be void. Consent of District shall not be unreasonably withheld. Consent to any such single assignment or subletting shall not constitute consent to any further assignment or subletting. The OPERATOR's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law. Any document by which any such interest hereunder is conveyed with such consent shall provide that the person acquiring such interest acknowledges familiarity with the terms of this Agreement and takes interest subject to the terms and conditions hereof and recognizes that upon expiration or termination of the interest of the OPERATOR, such interest shall also be expired or terminated. However, in the event of expiration or termination of this Agreement, District at its sole option may elect to treat any assignee, subtenant or holder of an interest conveyed by OPERATOR as District's tenant.

**26. RIGHT OF ENTRY.** OPERATOR 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 or responsibilities 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 OPERATOR nor shall OPERATOR be entitled to any abatement or reduction of license fee herein by reason of the exercise by District of any such right herein reserved.

In any case in which provision is made herein for the termination of this Agreement by District or in the case of abandonment or vacating of the premises by OPERATOR, District, in lieu of declaring forfeiture, may enter upon the premises. To such end, OPERATOR hereby irrevocably appoints District its agent to remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of OPERATOR. In such case, District may elect the premises upon such terms as it may deem proper, and if a sufficient sum shall not be realized thereby, after paying expenses of

such re-licensing, to satisfy the fee due and other sums here agreed to be paid by OPERATOR, OPERATOR agrees to save District harmless from any loss damage or claim arising out of the action of District in pursuance of this paragraph.

**27. CONFLICT OF INTEREST.** OPERATOR 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, OPERATOR, 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.

**28. OPERATOR AS INDEPENDENT CONTRACTOR.** It is expressly agreed that under the license to operate the facility granted by this Agreement, OPERATOR 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, OPERATOR 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 OPERATOR in the operation of the facility under this Agreement. OPERATOR shall be solely responsible for all matters, and shall be solely responsible for OPERATOR's own acts and those of subordinates and employees.

**29. DEFAULT.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by OPERATOR:

- a. Failure to pay fees when due and the failure to correct or cure within ten (10) days written notice.
- b. Failure to abide by the terms of this Agreement if the failure is not cured within ten (10) days after written notice thereof has been given to OPERATOR by the District.
- c. Failure to occupy the Premises for more than ninety (90) consecutive days without notice to the District shall be deemed an abandonment and vacation of the Premises.

Notices given under this paragraph shall specify the alleged default and shall demand that OPERATOR perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the District so elects in the notice.

If OPERATOR commits a default under this Agreement and has not cured or commenced the cure after notice by the District, District may, at its option, terminate OPERATOR's right to possession of the Premises upon thirty (30) days' written notice. In the event of

such termination, District has the right to recover from OPERATOR any expenses and costs, including but not limited to court costs and attorney's fees necessary to compensate the District for the eviction of OPERATOR and all detriment and damages proximately caused by OPERATOR's default. These remedies are not exclusive, but are cumulative and in addition to any remedies now or hereafter allowed by law.

- 30. 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 OPERATOR for any purpose or for the performance of any obligation of OPERATOR hereunder.
- 31. AGENT FOR SERVICE OF PROCESS.** It is expressly agreed and understood that if the OPERATOR is not a resident of this State or is an association or partnership without a member or partner resident of this State, or is a foreign corporation, then in any such event, the OPERATOR shall file with the State a designation of a natural person residing in the State of California, giving its name, residence and business address, as its agent for the purpose of service of process in any court action between it and District arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such OPERATOR; and it is further expressly agreed that OPERATOR is amenable to the process so served, submits to the jurisdiction of the Court so acquired, and waives any and all objection and protest thereto.
- 32. 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.
- 33. TERMINATION.** Either party may terminate this Agreement at any time by giving the other written notice no fewer than six (6) months in advance of such termination and in accordance with the provisions for giving notice as set forth in Section 32.
- 34. ATTORNEYS' FEES.** Should either party bring any legal action or proceeding for the breach of any term, covenant or condition of this Agreement, the Court shall award reasonable attorneys' fees to one or more of the parties therein based upon the degree to which each party prevails in such action or proceeding, as determined by the Court.
- 35. ADVICE OF COUNSEL.** Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
- 36. CONTRACT IN COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original.



**37. INTERPRETATION OF CONTRACT.** This Agreement is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

**38. 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.

**39. SEVERABILITY.** The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

**ENTIRE AGREEMENT.** This license 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 signature the day herein above written.

EAST BAY REGIONAL PARK DISTRICT

\_\_\_\_\_

By \_\_\_\_\_  
General Manager  
Robert E. Doyle

By \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **EXHIBITS**

- A. A map of the Camp Arroyo area (PROPERTY) to be managed by OPERATOR, as contained within the 138 acre area owned by DISTRICT.
- B. A map of Camp buildings and land uses (the facility) to be operated by the OPERATOR.
- C. The Alameda County Conditional Use Permit for Camp Arroyo.
- D. The list of Camp property that will be used by the OPERATOR but will remain as Camp assets.
- E. The Camp Arroyo Business Plan.
- F. (a) The OPERATOR fee schedule, and (b) the OPERATOR annual budget to be amended by agreement annually.
- G. A copy of the Partnership Agreement between the East Bay Regional Park District and The Taylor Family Foundation.
- H. Public Resources Code 5164.
- I. The Environmental Education Curriculum.
- J. Ordinance 38