

## CONCESSION AGREEMENT

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

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, District hereby grants to Concessionaire, pursuant to its powers under Section 5540 of the Public Resources Code of the State of California and approval by the District Board of Directors resolution #202\_ - \_\_\_\_\_, the exclusive license to operate the food and boat rental concession facility at Lake Chabot Regional Park, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. **PREMISES.** Subject to terms and conditions contained in the Master Lease, the controlling document, between the East Bay Regional Park District and East Bay Municipal Utility District (EBMUD), in consideration of the payment of concession fees hereinafter specified to be paid by Concessionaire and of the covenants and agreements herein contained to be performed and observed by Concessionaire, District grants to Concessionaire for the purposes hereinafter specified that certain property ("the Premises"), located in the food and boat rental concession in Lake Chabot Regional Park, at 17930 Lake Chabot Road, Castro Valley, California 94546, and as more particularly shown in Exhibit "A".
2. **TERM.** This License is granted for a term of five years beginning \_\_\_\_\_ and terminating \_\_\_\_\_. In District's sole discretion, District may grant Concessionaire the option to extend the term of the Agreement for one five-year option period. Concessionaire shall give notice to District sixty days prior to expiration of initial term to request entering into the option periods. District shall respond within thirty (30) days to such request.

This Agreement shall be subject to early termination as follows:

- a. Upon at least 180 days prior written notice to such effect by Concessionaire to District.
  - b. By District upon determination by its Board of Directors sole discretion that a food and boat rental concession is an incompatible use or constitutes a nuisance or public safety hazard to other park users, of the Park. Upon such a determination, Concessionaire shall be given 180 days to remove all its property and repair any damage Concessionaire has caused.
3. **USE OF THE PREMISES.** Concessionaire shall use the Premises to operate, manage and maintain the service operations for the public described below in this Section upon the terms and conditions of this Agreement and for no other purposes:
    - a. **Boat Rentals.** District grants Concessionaire the exclusive right, privilege and License within the Park to operate the public rental of electric motorboats, patio boats, pedal boats, rowboats, kayaks, and canoes. Concessionaire shall conduct adequate patrol of the lake at Lake Chabot to ensure the safe, reasonable and proper use of rented boats.

- b. Food Concession. Concessionaire shall operate the existing food concession at the Marina complex. Concessionaire shall operate food service at a level consistent with the required Alameda County Health Department license. Refer to Exhibit A map for site locations.
- c. Other. Other or additional activities by Concessionaire shall require the prior written consent of District, which consent may be granted or withheld in District's sole discretion. Concessionaire shall comply with any and all present laws, general rules or regulations of District and any governmental authority now in force relating to sanitation or public health, safety or welfare and environmental matters relating to the condition, use or occupancy of the Premises during the Term. Such rules, regulations and policies of District may include, without limitation, containers for trash removal to aid in the control of yellow jackets and other insects. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions within Concessionaire's responsibility. Concessionaire shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance to the public.
- d. All of Concessionaire's operations permitted hereunder shall be conducted during the required 373 days and hours of operation specified herein at a minimum.  
Food Concession: 8:00 am to 4:00 pm (adjusted seasonally)  
Boat Rentals: 7:00 am to 5:00 pm (adjusted seasonally)

Concessionaire to post hours of operation subject to District review and approval. Concessionaire may close the Premises because of adverse weather or other adverse operating conditions with the prior consent of District, which consent shall not be unreasonably withheld. Concessionaire may close the Premises for Thanksgiving Day & Christmas Day.

#### **4. RESTRICTED SALES AND USES**

- a. Sales and Rentals. District reserves the right to prohibit the sale, rental, or use by Concessionaire of any article or item which District regards as objectionable or beyond the scope of merchandise or equipment deemed necessary for proper services to the public or of inferior quality.
- b. Concessionaire shall not sell bait contained or transported in water. Concessionaire will not sell weights or lures made with lead.
- c. Waste Reduction. Within 120 days of entry into this Agreement, Concessionaire shall develop a waste management/recycling plan to reduce solid waste. The waste management/recycling plan shall be submitted to the Park District for review and comment. Concessionaire's plan shall:
  1. Include a goal to reduce or eliminate the use of single-use plastics in food and beverage service, including plastic beverage bottles for water, Gatorade, etc.
  2. Prohibit the use of Styrofoam products.
  3. Provide for clearly marked containers for all recyclables, and compostable (if available), in visible areas next to trash cans.
  4. Address education of employees and attendees on the where, what, and whys of recycling.

5. Concessionaire and District shall from time to time review items sold and containers or utensils used or dispensed by Concessionaire.
- d. Chemicals. No pesticides, herbicides or fungicides may be used or sold by Concessionaire on the Premises that are not approved in writing by District's IPM Manager in advance of proposed use.
- e. Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage. District shall provide Concessionaire continued use of storage sheds located behind the public restrooms.
- f. Private Vehicles. Concessionaire's personnel may drive private vehicles into areas of the Park restricted to non-District vehicles only as required for loading and unloading items used to operate the Premises. Operation of such vehicles shall be subject to regulations established by District from time to time.
- g. Noise. Concessionaire shall not install, use, or permit to be operated or used on the Premises any public address equipment, television equipment, juke box, radios, loudspeaker, or other equipment producing noises that can be heard outside the Premises, except as approved in writing by District in advance of such operation and use. Systems to announce readiness of food orders or to facilitate boat rentals are permissible as long as noise level is restricted to that necessary for public convenience.

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

District shall provide hookup for electrical, telephone, sewer and potable water service at the existing locations at no cost to Concessionaire. Electrical service at these locations shall be 200 amp. Any future utility hookups deemed necessary by District in its sole discretion will be provided by the District. District will pay for gas and electric, garbage pickup, and water service.

**6. FACILITIES AND EQUIPMENT PROVIDED BY CONCESSIONAIRE.** Concessionaire at its own cost and expense shall provide the following:

- One chase boat. This boat shall be equipped with a fire extinguisher, throw ring, spare life jackets, first aid kit, bail bucket and rope.
- Communication system (two-way radio).
- Maintenance capabilities for existing fleet.

All equipment listed above shall remain the property of the Concessionaire.

Concessionaire shall provide, at its own expense, other equipment, as needed, which equipment is not provided by District. This equipment will remain the property and responsibility of Concessionaire who shall obtain written approval of District prior to providing any other equipment that Concessionaire deems to be necessary for the good and proper operation of the recreation area. Concessionaire shall be responsible for pest control service, telephone service, and for all costs related to the burglar alarm systems on its portion of the Premises.

## 7. CONCESSION FEES.

- a. Concession Fee. Concessionaire shall pay to District [REDACTED] % as the Concession Fee, without deduction, set off, or demand, the sum equal to the following percentage of Concessionaire's Gross Receipts, as defined in Section 3.c., for the prior calendar month for the initial term of this Agreement:
- b. Following the first whole or partial month of the term hereof, Concessionaire shall furnish to the District by the 25th day of each month, a verified statement of its total gross receipts for the preceding month along with the Concession Fee for that period. The monthly statement and the Concession Fee shall be mailed to the Finance Department, P.O. Box 5381, Oakland, California 94605-0381.
- c. Late Charge. If any installment of Concession Fee due from Concessionaire is not received by District when due, Concessionaire may owe to District an additional sum of 10% of the overdue concession fee as a late charge. Acceptance of any late charge shall not constitute a waiver of Concessionaire's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District.
- d. Gross Receipts. The term "gross receipts" herein shall include the total aggregate amount of the business done, sales made, rentals, commissions received, and services performed by Concessionaire in, on, or from the Premises for cash and on credit (it being understood that sales on credit are to be included in gross receipts whether or not payment is actually made to Concessionaire). In addition, gross receipts shall also include the total aggregate amount received by Concessionaire from the operating of vending machines. Any transaction on an installment basis involving the extending of credit shall be treated as a sale for the full price at the time such transaction was entered into irrespective of the time of payment or when title passes. Gross receipts shall not include the amount of any tax on sales from the Premises where such taxes are added to the selling price, stated separately, and paid by Concessionaire's customers, and remitted directly to the taxing authorities by Concessionaire.
- e. Concessionaire's Maintenance Fund. In addition to the percentage Concession Fee paid during the term pursuant to Section 3.a. and the ongoing maintenance required by this Agreement, Concessionaire agrees to expend for major maintenance, replacement, or addition of District-owned facilities, [REDACTED] % of Concessionaire's Gross Receipts.

District will account for these funds in a separate account designated as "Little Hills Maintenance Fund" and maintain adequate records thereof. These funds are solely for use for maintenance and improvements to the facility. Concessionaire acknowledges that they possess no right, title or interest in these funds other than to help administrate pursuant to this Section. Expenditures from this maintenance fund will be at the District's discretion and will require prior written approval from the District. Up to \$50,000 of the Concession Maintenance Fund fees will be retained in the Fund.

Concessionaire will prepare a CMF plan with District staff by January 1, each year and obtain the necessary District approvals and prioritization. CMF categories are listed in Exhibit C. The minimum dollar amount for a project to be approved for this fund is \$300. No maintenance fund activities shall begin without District's prior written approval. Work

requiring design approval, specific plans and/or specifications, as appropriate, must be submitted to District and approved by District's Chief of Design or designee. Such review will be completed by District within (60) sixty working days of receipt, with Concessionaire responsible to meet all reasonable requests for revision or amendment.

Upon completion of an approved maintenance project, the Concessionaire will submit to the District a summary of project costs, original invoices, and copies of front and back of canceled checks to vendors or copy of credit card statement. If the Concessionaire uses its own labor for these projects, a time record must be submitted. Payment for such labor, hours and rate, for the purpose of this Section must be preapproved by the District. No credit for management or supervision will be allowed. Credit for management or supervision staff will only be allowed for reimbursement when: there are no other employees that regularly do the work and the reimbursement rate is the regular rate of pay for the work, not the supervisor or manager rate; or not more than twice the minimum wage, whichever is less. Reimbursement may include up to 16% of wages for payroll taxes.

Any unexpended major maintenance and/or replacement of funds at the end of the term remain the property of District and shall be used to improve the Premises.

- f. **Records - Inspection.** Concessionaire shall keep true and accurate books and records showing all of its income and expenses and business transactions in connection with the Concession in separate records of account in a manner reasonably acceptable to District, and District shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including State of California sales tax return records, Federal and State income tax returns and Federal and State payroll tax reports.
- g. **User Rates.** District shall have access to and the right to inspect the schedule of prices and rates for goods sold and services rendered on the Premises and any lists and schedules of prices for food-serving activities operated by Concessionaire. If District shall determine any price or prices to be unreasonable, such price shall be modified as directed by District. Concessionaire shall post rates and prices for all goods and services in such places as may be designated by District. The current rates and charges to users of the Concession are listed in Exhibit "D" which is attached hereto and made a part hereof.

**Rate Increases.** Concessionaire shall not increase the user rates in Exhibit D and/or institute any additional services and charges without the prior written consent of the District, which consent shall not be withheld unreasonably. Concessionaire will attempt to keep boat rental prices below competitors' pricing. District agrees to approve any price changes that are below immediate competitor prices.

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

- 9. **CONDITION OF PREMISES AND EQUIPMENT.** Concessionaire acknowledges and agrees

that the Premises are in good and tenantable condition. Concessionaire further acknowledges that the equipment to be provided by District is in good operating condition. Concessionaire shall accept the Premises and equipment to be provided by District in their presently existing "as is" condition and agrees that District shall not be obligated to make any alterations, additions or improvements thereto, except for capital improvements for purposes of health and safety code compliance or major infrastructure failures.

**10. PROTECTION OF PARK AND GENERAL PUBLIC USE.** It is recognized by Concessionaire that the lake at the Premises is owned by EBMUD and that the primary purpose of the lake is a stand-by drinking water supply. It is also recognized by Concessionaire that the lake and the Premises is within a Regional Park, operated and maintained by the District, as an essential part of its system for furnishing park and recreation opportunities for the inhabitants of the District. Concessionaire acknowledges that District has not warranted that lake water will be available in any particular amount or of any particular quality.

Concessionaire agrees to cooperate with the District to protect lands of the District from destruction by erosion, fire or improper use, and to protect the flora and fauna within the Park, as well as the area assigned to Concessionaire and to protect the public at all times from hazards.

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

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

Concessionaire shall comply with all federal, state and local laws and regulations applicable to the performance of the work contemplated under this Agreement. Concessionaire's failure to comply with such law(s) or regulation(s) shall constitute a breach of this agreement.

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

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

**11. FORCE MAJEURE.** Neither District nor Concessionaire shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control. In the event Concessionaire's use of the Premises is materially limited by virtue of events of force majeure or as a result of the exercise of the rights held under the Master Lease by East Bay Municipal Utility District, Concessionaire's concession fee obligation shall not be abated for the period of time use of the Premises are not available for normal use, including without limitation, flooding or drought. Nor will the District provide any compensation for force majeure.

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

Concessionaire shall insure all employees who supervise minors meet the provisions of the Public Resources Code, Section 5163 & 5164, Exhibit "E" which is attached hereto and made a part hereof, that Concessionaire will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted.

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

**14. CONCESSIONAIRE'S MAINTENANCE OBLIGATION.** Concessionaire agrees to maintain in good order and repair any and all concession structures, facilities, improvements, and equipment on the Premises, at Concessionaire's cost and expense, during the entire term. Concessionaire shall perform any required maintenance. Should Concessionaire fail, neglect or refuse to do so, the District shall have the right, but not the obligation, to perform such maintenance or repairs for the Concessionaire's account, and the Concessionaire agrees to promptly reimburse the District for the cost thereof, provided, however, that the District shall first give Concessionaire ten days' written notice of its intention to perform such maintenance. District shall not be obligated to make any repairs to or maintain any improvements on the subject Premises unless otherwise required by this Agreement.

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

Concessionaire expressly agrees, at its own cost and expense, to maintain and operate all of the Premises in a clean, safe, wholesome, and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any applicable laws, rules or regulations of any governmental authority having jurisdiction over the Premises. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions. In addition to the general maintenance required above, Concessionaire shall make and observe the following in a prompt manner:

- Post hours of operations
  - Clean concession and other buildings used by Concessionaire.
  - Replace burned out bulbs promptly
  - Monitor plumbing and irrigation system (report leaks or breaks etc.)
- a. Repair and Replacement by District. District shall have the obligation to repair or replace to the extent the damage or destruction is caused by the sole negligence of District.
  - b. Repair and Replacement by Concessionaire. Concessionaire shall have the obligation to repair or replace to the extent damage or destruction is caused by Concessionaire, or to the extent insurance proceeds are received by Concessionaire (which shall be held in trust for such purposes), or to the extent that proceeds would have been obtained by Concessionaire if Concessionaire had been carrying the insurance required by this Agreement.

**15. CONCESSIONAIRE'S ALTERATIONS AND IMPROVEMENTS.** At any time during the term hereof, Concessionaire shall have the right, subject to prior written approval by District as hereinafter provided, to construct alterations, additions and/or improvements to the Premises, at Concessionaire's sole cost and expense and without reimbursement from the District. Whenever Concessionaire desires to construct alterations, it shall prepare specifications and working drawings and submit them to District's Design Department for approval, which approval shall not be unreasonably withheld, provided that the proposed work will be of high quality, compatible with the purposes described and compatible in finish, color, and design with the existing structures on the Premises and the Park environment.

Upon expiration or termination of this Agreement, any alterations to the Premises or to any structures located thereon, and all fixtures, shall remain upon the Premises and be surrendered to and become the property of the District.

**16. TITLE TO IMPROVEMENTS.** Concessionaire hereby acknowledges the title of District in and to the Premises described in this Agreement, including real property improvements existing or erected thereon, and hereby covenants and agrees never to assail, contest, or resist said title.

**17. INDEMNITY.** Concessionaire hereby waives all claims and recourse against the District and EBMUD, including the right to contribution for loss of damage by reason of death or injury to persons or damages to property, whether the person or property of Concessionaire, its agents or employees, or third persons arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the sole negligence or sole willful misconduct of District and/or EBMUD, its officers, directors, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

Concessionaire shall indemnify, hold harmless, and defend the District and EBMUD, and its officers,



directors, agents and employees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including attorneys' fees, penalties, judgments or obligations whatsoever for or in connection with injury (including death) or damage to any person or property or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Concessionaire, including, but not limited to, Concessionaire's development, construction, occupation, use, operation, or maintenance of the concession, Premises, or any facilities, including events occurring on or of the Premises or facilities, regardless of how the injury or damage was caused or suffered unless the injury or damage resulted from the sole negligence or the intentional and willful misconduct of District, its officers, directors, agents, or employees.

District and EBMUD shall have no responsibility to safeguard the equipment and property of Concessionaire or any of its invitees. District and EBMUD shall have no responsibility to safeguard or protect the Concessionaire, or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death) or personal injury.

In the event a claim is made against District and/or EBMUD or District and/or EBMUD is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Concessionaire, Concessionaire shall immediately notify District of such fact, and shall either retain legal counsel to represent District and/or EBMUD in such action at Concessionaire's sole expense, or if Concessionaire shall fail to do so, Concessionaire shall reimburse District and/or EBMUD's litigation expenses, including attorney's fees, incurred in representing themselves.

In the event a claim is made against the District, EBMUD, and Concessionaire for the joint and several liabilities of District, EBMUD, and Concessionaire, the determination as to the apportionment of liability between District, EBMUD, and Concessionaire shall be made by the judge in a court of competent jurisdiction. Neither District nor EBMUD nor Concessionaire shall request that the apportionment of liability be determined by a jury.

Notwithstanding the apportionment of liability between District, EBMUD, and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless District and/or EBMUD 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 and/or EBMUD, its officers, directors, agents, or employees.

**18. INSURANCE.** Concessionaire shall maintain, at Concessionaire's sole expense, the insurance coverage as listed in Attachment A.

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

**20. WAIVER OF CONTRACT TERMS.** No waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of District to re-enter the Premises or to exercise any right, power, privilege, or option or be accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence

therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the District of any default. No option, right, power, remedy, or privilege of District shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the District by this Agreement shall be deemed cumulative.

**21. PANDEMIC VIRUS ACKNOWLEDGMENT, WAIVER AND ASSUMPTION OF RISK.**

The Concessionaire acknowledges that the pandemic viruses are extremely contagious and may spread from person-to-person contact. As a result, federal, state, and local governments and health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people. The Concessionaire acknowledges and agrees that the District is directing all individuals that participate in permitted activities to conduct the activities in compliance with the applicable Federal, State, County and local health orders. Further, any volunteer recognizes that it is their own responsibility to ensure compliance with all applicable orders. Further, the Concessionaire acknowledges and understands that District does not and cannot guarantee that any participants will not become infected with pandemic viruses while participating in the permitted activities. The Concessionaire hereby releases, covenants not to sue, discharges, and hold harmless the District, its Board of Directors, officers, employees, agents, and representatives from any claims, including all liabilities, actions, damages, costs or expenses of any kind arising out of or relating to the permitted activities including but not limited to any illness, death, and loss of any kind by volunteers related to a pandemic virus. The Concessionaire understands and agrees that this waiver, release and assumption of risk includes any claims based on the actions, omissions, or negligence of District, its Board of Directors, officers, employees, agents, and representatives, whether a pandemic virus infection occurs before, during, or after participation in any activity.

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

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

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

therein, upon Concessionaire's business or activity conducted hereunder or Concessionaire's right to conduct same, or based upon the proceeds of such business or activity.

**25. ASSIGNMENT AND SUBLETTING.** Concessionaire shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Concessionaire's interest in the License or in the Premises, without District's prior written consent which may be granted or denied in District's sole discretion.

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

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

**28. CONCESSIONAIRE AS INDEPENDENT CONTRACTOR.** It is expressly agreed that under the license to operate the facility granted by this Agreement, Concessionaire shall be, and is, an independent contractor, and is not an agent or employee of District. Except as otherwise expressly limited by other provisions of this Agreement, Concessionaire has and shall retain the right to exercise full control and supervision of the operation of the facility, and full control over the employment, direction, compensation and discharge of all persons assisting Concessionaire in the operation of the facility under this Agreement. Concessionaire shall be solely responsible for all matters, and shall be solely responsible for Concessionaire's own acts and those of subordinates and employees.

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

- a. **Fire Protection.** Concessionaire shall take all necessary precautions to prevent fire in or about the Premises, and Concessionaire shall carefully observe all rules of District relative to fire prevention. District shall, at its expense, install and maintain such fire prevention and fire fighting practices and equipment as may be specified or required by Alameda County or any other agency having jurisdiction to regulate fire prevention measures at the Premises.
- b. **Hazardous Substances.** No goods, merchandise or material shall be kept, stored, or sold in or on said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, other than as is provided for in this contract, including rental boats requiring electric deep cell batteries and charging equipment, and no machinery or

apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.

Concessionaire represents and warrants to District that Concessionaire will not generate, store, release or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below). Concessionaire shall hold District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.

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").

**30. NOTICES.** Any notices required or permitted to be given under this Agreement shall be USPS mail or by email and addressed to respective parties at their addresses indicated below. 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.

For District:  
East Bay Regional Park District  
2950 Peralta Oaks Court  
P.O. Box 5381  
Oakland CA 94605  
Attention: Business Services Manager

For Concessionaire:

For day to day operations, the contact at Park District shall be the Park Supervisor, 510-690-6690 or the Business Services Manager, [opsbsm@ebparks.org](mailto:opsbsm@ebparks.org); 510-544-2513; and the contact for Concessionaire is [REDACTED]

**31. DEFAULT.** District may terminate this Agreement for default by Concessionaire of any of the provisions hereof, if, after written notice of violation of the Agreement, Concessionaire has not taken positive action to correct such violation or default within thirty (30) days. The occurrence of any one or more of the following events shall constitute a material default of this License by Concessionaire:

- a. The abandonment, vacation, or discontinuance of operations on the concession premises for more than thirty days.

- b.** The failure of Concessionaire to make any payment of license fees or any other payment required to be made by Concessionaire hereunder, upon ten days written notice from District of non-payment.
- c.** The interest of Concessionaire in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation without the written consent of the District.
- d.** The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than thirty (30) days after written notice from the District to correct the condition specified, or to initiate measures within thirty (30) days to correct the condition if such condition cannot be reasonably resolved within thirty (30) days and if diligently pursued to an acceptable solution.
- e.** The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than thirty days after written notice from the District for correction thereof, or to initiate measures within thirty (30) days to correct the condition if such condition cannot be reasonably resolved within thirty (30) days and if diligently pursued to an acceptable solution.
- f.** Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Concessionaire under the Agreement which is not corrected within thirty days after written notice from the District for correction thereof, or to initiate measures within thirty (30) days to correct the condition if such condition cannot be reasonably resolved within thirty (30) days and if diligently pursued to an acceptable solution; and the failure to maintain service standards thereafter.
- g.** The failure of Concessionaire to keep, observe and perform all other promises, covenants, conditions and agreements set forth in this Agreement including compliance with local, state and federal law, where such failure continues for more than thirty days, or to initiate measures within thirty (30) days to correct the condition if such condition cannot be reasonably resolved within thirty (30) days and if diligently pursued to an acceptable solution after written notice from the District for correction thereof.
- h.** The filing of a voluntary petition in bankruptcy by Concessionaire, the adjudication of Concessionaire as a bankrupt, the appointment of any receiver of Concessionaire's assets, the making of a general assignment for the benefit of creditors, and or a petition or answer seeking a reorganization of Concessionaire under the federal bankruptcy laws or any other federal or state laws.
- i.** Concessionaire's material misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of Concessionaire to perform the services under this Agreement.
- j.** The filing of any lien or stop notice on account of Concessionaire where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten days.

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

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

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

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

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

**36. 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.

**37. 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. District and Concessionaire have a good faith understanding that economically adverse changes in the Concessionaire's cost of operations and/or revenue could prompt the District to change the terms of the agreement to ameliorate the adverse impacts.

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

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

CONCESSIONAIRE

EAST BAY REGIONAL PARK DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Sabrina B. Landreth, General Manager

APPROVED AS TO FORM:

By \_\_\_\_\_  
Jason Rosenberg, Assistant General Counsel

SAMPLE

**EXHIBIT A - MAP OF PREMISES**

SAMPLE



**EXHIBIT B**  
CONCESSION INVENTORY

ITEMS BELONGING TO CONCESSIONAIRE are not part of the concession. All tables and chairs, Pizza oven, Blender (Vitamix), Meat slicer, soft serve machine, espresso machine,. All patio boats and Crestliners, life jackets & seat pads.

## EXHIBIT C

### CONCESSIONAIRE MAINTENANCE FUND CATEGORIES

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

1. Repair, replacement and/or expansion of dock.
2. Repair, replacement and/or additions to interior equipment in the snack bar and boat rental facility as well as the boat fleet: Fixed asset repairs such as freezers, ice machines, cooking equipment, major electrical work, holes in boats, etc.
3. Repair, maintenance and/or additions to fleet motors.
4. All fixed assets (especially newly acquired that will become property of the District) must be placed on an inventory and a District identification number affixed. This will be the responsibility of the Park Supervisor. The Concessionaire will notify the Park Supervisor upon receipt of such items and will forward the appropriate invoices, warranties, etc., to the Park Supervisor.

**EXHIBIT D**  
**RATES AND CHARGES**  
 (Current Concessionaire)

<b>LAKE CHABOT MARINA</b>		☎ (510) 247-2526			
Boat Rental Fees * (plus deposit)		first hour	up to 2 hours	up to 4 hours	day (over 4 hours)
Rowboat/Canoe/Single Kayak/Pedal Boat		\$28	\$40	\$46	\$61
Double Kayak		\$37	\$47	\$58	\$73
Electric Boat		\$37	\$58	\$69	\$88
16' Electric Boat		<b>\$55</b>	\$73	\$94	\$121
Electric Pontoon Patio Boat (4 hr max)		\$99	\$189	<b>\$265/3 hrs or \$325/4 hrs</b>	
Refundable Deposits	Non-electric Boat/Canoe/Kayak	\$50			
	Electric Boat	\$60			
	16' Electric Boat	\$75			
	Electric Pontoon Patio Boat	\$250			
Capsized Boat Charge		\$50			
Lake Tours	Adults (13+)	\$10/hour			
	Children (12 and under)	\$6/hour			
Guided Kayak Tour	Adults (13+)	<b>\$55/2.5 hours</b>			
	Children (12 and under)	\$25/2.5 hours			
Charter Boat - call (510) 582-2198 to reserve		\$120/hour			
Volleyball & Horseshoe sets		\$5 rental plus \$30 refundable deposit			
Daily Fishing Access Permit (required for ages 16+)		\$5/day (also available at park entrance kiosk)			

\* 50% discount to seniors (62+) on weekdays, and 50% discount to military any day of the week

**EXHIBIT E**  
**Fingerprinting & TB Test Compliance**  
**Public Resources Code – PRC S B 5163 & 5164**

**5163.**

(a) No person shall initially be employed in connection with a park, playground, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within thirty days of the examination to the local health officer to determine the need for follow-up care. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

**5164.**

(a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, 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 a minor, if that person has been convicted of an offense specified in paragraph (2).

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

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

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, an offense specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that a record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The

county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

(Amended by Stats. 2010, Ch. 719, Sec. 54. (SB 856) Effective October 19, 2010.)

# ATTACHMENT A

## INSURANCE REQUIREMENTS

Concessionaire will procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Concessionaire, his/her agents, representatives, employees or sub-contractors.

### I. MINIMUM SCOPE OF INSURANCE

Coverage will be at least as broad as:

**A. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit will be twice the required occurrence limit.

**B. Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Concessionaire has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

**C. Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$500,000** per accident for bodily injury or disease.

If the Concessionaire maintains broader coverage and/or higher limits than the minimums shown above, the District requires and will be entitled to the broader coverage and/or higher limits maintained by the Concessionaire.

### II. OTHER INSURANCE REQUIREMENTS

**A. The insurance policies are to contain, or be endorsed to contain, the following provisions:**

#### I. Additional Insured Status

**The District, its officers, directors, officials, agents, employees, and volunteers are to be covered as additional insureds and EBMUD, its officers, directors, officials, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Concessionaire including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Concessionaire’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).**

#### 2. Primary Coverage

For any claims related to this contract, the **Concessionaire's insurance coverage will be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, directors, officials, agents, employees, or volunteers will be excess of the Concessionaire's insurance and will not contribute with it.

### **3. Notice of Cancellation**

Each of the above policies must contain a provision that the policy will not be cancelled or the terms or conditions thereof materially changed without **thirty (30) days' prior written notice to District**. No cancellation provision in any insurance policy will be construed in derogation of the continuous duty of Concessionaire to furnish the required insurance during the term of this Agreement.

### **4. Waiver of Subrogation**

Concessionaire hereby grants to District and EBMUD a waiver of any right to subrogation which any insurer of said Concessionaire may acquire against the District by virtue of the payment of any loss under such insurance. Concessionaire agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

#### **B. Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the District. The District may require the Concessionaire to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### **C. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

#### **D. Verification of Coverage**

Concessionaire will furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning will not waive the Concessionaire's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

#### **E. Special Risks or Circumstances**

District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.