

REQUEST FOR PROPOSALS

Camp Arroyo Residence Camp Concession



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



NOTICE REQUESTING PROPOSALS

NOTICE IS HEREBY GIVEN THAT THE EAST BAY REGIONAL PARK DISTRICT (“Park District”) will receive at or before the hour of 4:00 p.m. on April 28, 2025, digital proposals for the maintenance, management, and operation of a resident camp facility, Camp Arroyo. **The site is located at 5535 Arroyo Road in Livermore, California**, south of the City of Livermore and west of Del Valle Reservoir. The Park District is offering a term of three (3) years with the opportunity for one additional seven (7)-year term at Park District’s option through a Concession Agreement; no leasehold or other proprietary right is offered. Description of Camp Arroyo and the requirements of the Concession Agreement are contained here in “Request for Proposals for Camp Arroyo, a Residence Camp Concession.”

In order to be considered for Camp Arroyo, a Residence Camp Concession (“Concession”), proposers must have a minimum of three (3) years of experience managing or operating a residential camp, demonstrated knowledge of basic facilities maintenance skills and knowledge, ability to work with Park District staff, willingness and ability to meet minimum insurance requirements for operating on Park District property, and a firm financial condition.

All proposals received are public records subject to public disclosure under the California Public Records Act (Gov. Code section 6250 et seq.). The Board of Directors reserves the right to reject any and all proposals, to modify the terms of this Request for Proposals (“RFP”) either before or after the deadline for submission of proposals, negotiate with one or more of the proposers, to call for additional proposals, or to refrain from accepting any proposal. Please be certain that your proposal is complete. Under no circumstances will proposals be accepted after 4:00 p.m. on April 28, 2025. Should you have any questions regarding this RFP, please contact the Park District’s Business Services Manager at opsbsm@ebparks.org.

It is expected that a Concession Agreement will be awarded following public advertisement for competitive proposals, evaluation of those proposals, selection of the best proposal and approval by the Board of Directors of the Park District. The Concession Agreement the Park District expects to award shall in no event become effective until an award is approved by Resolution of the Board of Directors. The Park District's policy in awarding this Agreement will be based primarily on the most qualified proposer overall and not simply on the fee payments proposed. The Park District will carefully investigate each proposer's background and experience in the operation of like facilities.

Parties interested in competing for the Concession must submit proposals in accordance with the instructions contained herein. Proposers are responsible for making all appropriate investigations affecting their proposal. Information provided is for general background only and is not to be relied upon for decision-making purposes. Failure of the proposer to make all appropriate investigations shall not discharge or constitute a waiver of any term or condition of the Concession Agreement. Submission of a proposal shall be interpreted as conclusive evidence that the proposer has made all such investigation. Description of the facility and the requirements of the Concession are contained in this RFP. You can download the RFP documentation package from the Park District website at www.ebparks.org/about/bids.

REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the Residence Camp Concession at Camp Arroyo, 5535 Arroyo Road in Livermore, California.

CAMP ARROYO RFP TIMELINE	
Announcement Open Proposal	March 14, 2025
Questions from Bidders	Friday, March 21, 2025 by 4 pm
Questions and Answers posted to website	Monday, March 24, 2025 by 4 pm
Site visit	Wednesday, March 26, 2025, 10 am to noon
Site Visit followup, if any, posted to website	Wednesday, April 1, 2025 by 4 pm
Proposals Due	Monday, April 28, 2025 by 4 pm
Bidders Notified of interviews	Tuesday, April 29, 2025 by 4 pm
Interview with Bidders – 30 minute intervals	Friday, May 2, 2025, between 10 am and 4 pm
Bidders Notified of Staff Recommendations	Tuesday, May 6, 2025 by 4 pm
Board Committee – Operations review	June 18, 2025 at 11 am
Board of Director review / Approved Award	September 2, 2025

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

SITE VISIT

There will ONLY be one site visit on Wednesday, March 26, 2025 10 am to noon. No other arrangements can be made to visit the site if you cannot attend. If you are planning to attend the site visit please RSVP to the Business Services Manager by e-mail at opsbsm@ebparks.org at least 24 hours in advance. The site visit will start at the main gate to Camp Arroyo and will begin on time. Questions about this RFP before the site visit must submitted by Friday, March 21, 2025 by 4 pm.



SECTION 1. INTRODUCTION

Camp Arroyo is located at the west end of Lake Del Valle on 138 acres of land owned by the East Bay Regional Park District. As a year-round facility, each of the buildings has been constructed in an energy efficient manner to provide comfort for residents in all seasons. The Park District was assisted in the development of this project through a partnership with The Taylor Family Foundation (TTF), a non-profit family foundation dedicated to providing residential camping experiences for children with life-threatening diseases.

SECTION 2. CAMP ARROYO CONCESSIONAIRE RESPONSIBILITIES

The Concessionaire will be responsible for providing the following services and goods as related to the Concession.

FACILITY MAINTENANCE/OPERATIONS

- ◆ Food service
- ◆ Housekeeping
- ◆ Janitorial services
- ◆ Kitchen equipment – (extended warranties)
- ◆ Plumbing/grease traps
- ◆ Lifeguards/aquatic safety
- ◆ Ropes course training (summer use, possible year-round)
- ◆ Environmental education
- ◆ Recreational equipment (purchase, maintain and repairs)
- ◆ Vehicles and equipment owned by concession
- ◆ The Concessionaire may be responsible for additional maintenance tasks as included in the Concession Agreement

MARKETING

- ◆ Environmental education (Outdoor Education) for public schools
- ◆ Non-profit organizations
- ◆ Corporate events (staff teambuilding, picnics)
- ◆ Conferences and retreats
- ◆ Special events
- ◆ Private schools
- ◆ Weekend facility rentals

RESERVATIONS/SCHEDULING

The scheduling of the Concession's calendar is an important aspect of managing the camp. The Concessionaire will be the only entity that will be booking reservations for the camp and will be required to provide Park District staff current updates on all bookings.

STAFFING/OFFICE ADMINISTRATION

- ◆ Staffing/training/supervision
- ◆ Payroll/salary/benefits
- ◆ Accounting
- ◆ Human resources and public relations

- ◆ Regulatory compliance, ACA accreditation
- ◆ Equipment and building warranties

HOSPITALITY/CUSTOMER SERVICE

- ◆ Pre-use contact with group leader
- ◆ Preparing for group arrival
- ◆ Ensuring buildings and grounds are ready for occupancy
- ◆ Orientations of campers to the facility
- ◆ On-going contact with group leaders to facilitate requests/complaints/feedback
- ◆ Maintain positive working relationships with Park District staff

FOOD SERVICE

The Concessionaire may choose to operate its own food service or contract a local food vendor. Additional components of food service include:

- ◆ Kitchen maintenance
- ◆ Food purchase, storage, preparation
- ◆ Food production and garden maintenance
- ◆ Environmental health

HEALTH AND SAFETY

- ◆ Obtaining and maintaining health forms and medical releases from all guests
- ◆ Keep adequate amount of supplies and medication onsite and have standing orders to resupply on a regular basis
- ◆ Providing appropriate health care onsite
- ◆ Medications logged, stored, dispensed, returned and documented
- ◆ Maintaining a medical log

AQUATIC SAFETY

- ◆ Certification, training and scheduling of lifeguards
- ◆ Removal and replacing of pool cover, pool toys, chairs, etc.

CARETAKER

- ◆ General maintenance and stocking supplies
- ◆ Emergency response to camp visitors
- ◆ Opening/closing entrance gates
- ◆ Group orientation and assist to arriving groups
- ◆ Availability to assist groups during evening hours as needed

EDUCATIONAL SERVICES

- ◆ Hire, train, and supervise a curriculum director
- ◆ Recruit and train instructional staff
- ◆ Oversee and manage the delivery of curriculum services and activities
- ◆ Oversee planting and maintenance of organic garden for its integrated use as part of curriculum
- ◆ Market, schedule, and administer all reservations facets for filling available time slots for school services to 4-6th grade classes based on defined curriculum

ADDITIONAL REQUIREMENTS DURING THE TERM OF THE CONCESSION AGREEMENT

- ◆ The Concessionaire will be responsible for obtaining any and all necessary approvals, permits and licenses for any construction and lawful operation of this Concession.
- ◆ The Concessionaire will be required to carry at least the following insurance coverages:
 - ◆ General liability insurance coverage and property damage liability insurance coverage in the amount of \$2,000,000.00 per occurrence, and replacement value in fire and casualty coverage. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit.
 - ◆ Automobile liability covering any automobile or if Concessionaire has no owned automobiles, covering hired, non-owned automobiles, with limit no less than \$1,000,000 per accident for bodily injury and property damage.
 - ◆ Workers' compensation as required by the State of California, with statutory limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers' compensation coverage shall include a waiver of subrogation endorsement.
 - ◆ The Park District must be named as Additional Insured on the commercial general liability, auto, and property insurance policies and must be primary & non-contributory. For property coverage, the Park District named as a Loss Payee will be adequate in lieu of the named Additional Insured endorsement.
 - ◆ For camp operations involving contact with minors, Sexual Abuse or Molestation (SAM) liability is required. If the CGL policy does not include affirmative coverage for sexual abuse or molestation that can be provided to the District, Concessionaire shall procure and maintain a separate policy for SAM coverage with a limit no less than \$1,000,000 per occurrence or claim.
- ◆ The Concessionaire will be responsible for securing any equipment every evening. Storage will be permitted at the site.
- ◆ The Concessionaire will be responsible for any and all utility costs, except water, connected with the operation of this Concession.
- ◆ The Concessionaire will submit monthly reports of gross receipts, in a format approved by Park District. At the end of each operating year, the Concessionaire will be required to submit a detailed income and expense statement for the past year's operations.
- ◆ All rates, fees, and increases for any and all proposed services offered at the Concession must be approved by Park District.
- ◆ The Concessionaire will remove all rubbish generated by this Concession. The Concessionaire will be responsible for cleaning the licensed premises and the area within 50 feet of the licensed premises. The Concessionaire must comply with all city, state, and federal regulations regarding recycling, composting and/or waste management.
- ◆ The Concessionaire will be responsible for maintaining total security within the licensed premises.
- ◆ The Concessionaire must cooperate with Park District during special events or other unanticipated eventualities.
- ◆ The Concessionaire must pay all taxes applicable to the Concession; no such applicable taxes may be deducted from gross receipts.
- ◆ The Concessionaire will also be required to obtain all necessary city, state and federal permits necessary for the outfitting of this Concession.
- ◆ Park District staff may visit the Concession site unannounced to inspect and determine whether or not the Concessionaire is complying with the terms of the agreement. The

Concessionaire must also comply with all directives originating from inspections by any other city, state or federal agency having jurisdiction over the Concession (e.g. State of California).

- ◆ Provide a presence (by either Concessionaire, an employee or person acting on behalf of Concessionaire) on the site to operate the facility and respond to emergencies on a daily basis.
- ◆ The Concessionaire will comply with all city, state and federal laws relating to access for persons with disabilities.

The Park District will be responsible for providing the following services as related to the Concession:

- ◆ HVAC
- ◆ Water and sewage systems
- ◆ Pool maintenance
- ◆ Landscaping/irrigation and grounds maintenance
- ◆ Pest control maintenance (except kitchen)
- ◆ Building maintenance (minor repairs and routine maintenance)
- ◆ Maintenance of vehicles and equipment owned by Park District

REQUEST FOR PROPOSALS

A. OBJECTIVES

Proposals will be evaluated based on the proposer's proven ability to offer a variety of specific services, and the capability to improve, maintain, and manage a residential concession. The Park District will review proposals related to the following list of requirements:

1. Provide a safe and welcoming residential camp experience in a park setting.
2. Promote use of the Concession and provide a quality experience with a reasonable pricing structure for a culturally diverse public.
3. Maintain an environmentally and economically viable Concession with revenues sufficient to cover operating expenses while providing the Concessionaire and the Park District an adequate return on investment.
4. The Park District's top priority is keeping our parks, shorelines, lakes and trails safe and well-maintained. A big part of that responsibility is preparing for the future and taking steps now to adapt to a changing climate. For more information on the Park District's Climate Smart Initiative and Policy: <https://www.ebparks.org/natural-resources/climate-adaptation/policy>
5. Proven fiscal solvency and financial ability to successfully run the concession.
6. Preserve the facility and enhance the condition of the facility.
7. Ability to foster and maintain positive relationships with members of the public and Park District staff.

B. REQUIRED SERVICES

The general services required of the Concessionaire under the terms of the Concession Agreement include, but are not necessarily limited to:

1. The performance of all services listed in Section 2 of this RFP.
2. The Concessionaire shall provide residential camp services and maintenance. Service should be flexible and have costs at medium to low prices. Details concerning ideas and the proposer's ability to promote and meet these objectives should be included in the proposal.
3. Formulation and implementation of business plans and budgets.

4. Collection and accounting of all revenues in a separate bank account and following Generally Accepted Accounting Principles and maintaining proper financial records of the business that meet Park District standards and subject to audit at Park District's discretion.
5. Preparation of monthly sales reports and concession fees paid to the Park District, in a format approved by Park District, submitted each month by the due date.
6. Payment and accounting of all expenses in a timely manner.
7. Formulation and implementation of a waste reduction and sustainability plan.
8. Handling of all personnel matters including employment, training, and terminations.
9. Responsible for obtaining any and all necessary approvals, permits and licenses for lawful Concession of the concession.
10. Responsible for maintaining total security within the licensed premises.
11. Concessionaire must cooperate with Park District during park closures or other unanticipated eventualities.
12. Utilities and Equipment

Utilities except for water and sewage service shall be provided and paid for by Concessionaire. Concessionaire shall maintain Concessional phone lines including phone lines for entrance gates.

Park District responsibilities include, but are not necessarily limited to:

1. The Park District shall pay for water. And will continue to pump the sewage holding tanks at the Meadow and Entrance Restrooms, the Concessionaire's Staff Residence (aka "Bunk House"), and the office trailers.
2. Monitoring revenue and service fees, standards, specifications, and operating policies.
3. Approval in advance of any capital improvements or alterations to existing facilities.

SECTION 3. SUBMITTAL REQUIREMENTS

This RFP provides all proposers with relevant information, the necessary requirements to submit a proposal for the Concession, and a proposed Concession Agreement.

A. Submit a digital proposal in Adobe Acrobat pdf format via email to the attention of the Business Services Manager at opsbsm@ebparks.org no later than 4:00 pm on

- Late proposals are not acceptable and will be returned to the proposer
- There will not be a public opening of proposals
- The Park District reserves the right to request, receive, and evaluate supplemental information and clarifications during its evaluation of proposals and the Park District will conduct this process in a fair and impartial manner
- The Park District reserves the right to waive any immaterial irregularities in any response
- The Park District reserves the right to cancel or amend this RFP or to extend the date responses are due
- Incomplete proposals or inaccurate information may be cause for disqualification
- Issuance of this RFP does not obligate the Park District to award an agreement or to pay any costs incurred in preparation of a proposal or any response to this RFP
- The Park District reserves the right to reject any or all proposals

Format And Content

The proposal should be clear, concise, complete, well-organized, and demonstrate the proposer's vision for the Concession. All proposals are required to use the following format. Please prepare your proposal such that it is scaled like 8.5" x 11" pages with font size 12 point. Each section of the proposal must be labeled according to the numbered titles 1 through 12 in the Proposal Elements section 3.B., to aid in information retrieval and review by the Park District's Selection Committee.

B. Proposal Elements

Cover Page:

Addressed to Park District Business Services Manager and signed by an individual authorized to bind the proposer (the owner, the president, managing member). If the proposer is a joint venture, an individual authorized to bind each entity shall sign. Provide the following information:

- Address of office providing the services
- Telephone number
- Summary description of organization
- Areas of expertise
- Size of organization
- Years in business

Table of Contents:

Include a complete and clear listing of headings and pages, and list attached documents.

PROPOSAL

The proposal must contain the responses **in the numbered format below**.

1. Financial Condition - Describe your (this means you and/or your organization's) financial condition and provide the last three (3) years of annual year-end bank statements; **or** the last three (3) years of tax returns may be submitted in lieu of bank statements.
2. Provide a detailed 3-year budget for the Concession and maintenance of the Concession.
3. Provide proposed fees to be charged for services.
4. Describe your most recent experience in performing similar operating, management, and/or maintenance activities, with details of specific activities and management.
5. Describe the services, capabilities, and advantages that you offer, for example: ability to market a business, current workload, resources, capacity and flexibility to manage a concession.
6. Outline your approach to provide a viable concession.
7. Outline your approach for maintenance of the facility preferably for same-sized facility with details of specific building maintenance.
8. Outline your approach to sustainability and waste reduction for the Concession including, but not limited to, the food services aspect of the Concession.
9. Describe your ability to collaborate, facilitate, and resolve issues (customer complaints, budget and cash flow challenges) in a timely and professional manner.
10. Provide a description of any pending legal issues you are facing.

11. Propose fees that you will pay to the District for Concession Fee (minimum 5%) and Maintenance Fee (minimum 2%.) The concession maintenance fund fees will be held by the Park District for pre-approved major capital improvements and projects.
12. Agreement – can you meet the requirements of the Concession Agreement?
 - Appendix “A” is the Park District’s standard Concession Agreement. Please review the agreement. You must be willing to sign the Concession Agreement “as-is” or with minimal changes that the Park District may agree to. If you will have significant issues with the Concession Agreement’s terms and conditions, please re-consider submitting a proposal.
 - If you take exception to any of the terms and conditions in the Park District’s standard form Concession Agreement, the exception(s) and reason(s) shall be stated in the proposal.
 - You must have the ability to meet the requirements of the Concession Agreement, including inventory investment, and the building and improvement requirements of the Park District and any regulatory agencies.

C. Amendments

Amendments to the RFP will be posted on the Park District’s website (<http://www.ebparks.org/about/bids>) and emailed to all the proposers that sent representatives to the mandatory pre-submittal site visit. If amendments to this RFP are issued, proposers must acknowledge receipt of amendments in the cover letter of their RFP responses. Failure to acknowledge and respond to any amendments issued by the Park District may cause the proposer’s proposal to be deemed non-responsive.

D. Questions

Any questions or requests for clarifications to this RFP must be submitted in writing by email to the Park District, Business Services, Attn: Business Services Manager at opsbsm@ebparks.org. Answers to questions or requests requiring clarification to this RFP will ONLY be posted on the Park District’s website. Questions after the site visit must be submitted no later than **April, 1, 2025 by 4:00 p.m.** Questions received after this deadline may be answered at the discretion of the Park District.

SECTION 4. SELECTION PROCESS

The Park District intends to negotiate an agreement with the selected proposer as determined by the Park District to be in the best interest of the Park District.

Step 1 – Response to Park District’s RFP

Based on the requirements of the RFP, proposers will submit their proposals to provide the Park District with services described in this RFP.

Step 2 – Interviews with Proposers Selected in Step 1

Virtual interviews will be held with each selected proposer to discuss their approach and methods for operating the Concession, budgetary range of costs, the proposer’s approach to concession scheduling, methodology for managing concession costs, how the proposer’s team would bring value to the Concession, and other subjects chosen by the Selection Committee.

Step 3 - Evaluation of RFP Responses and Ranking of Proposals

Based on the evaluation of the RFP responses and interview results, the Park District will rank the proposers and select the top-ranking proposer with whom it would attempt to negotiate an

agreement as determined by the Park District to be in the best interest of the Park District. If negotiations are not successful with the top-ranked proposer, the Park District will attempt to negotiate a contract with the second-ranked proposer and so on; or may pursue other methods of negotiation.

SECTION 5. EVALUATION FACTORS

The Park District will use the selection process outlined herein. An Interview and Selection Committee composed of key Park District staff and possibly staff from other related agencies will review and evaluate responses to the RFP and will conduct the interviews. Proposers selected for interviews will be notified by email. The Park District will specify the date, time, and location of their interviews and outline of the interview process.

The points that have been assigned to each topic below are shown to the right of the title. The Park District will compare and evaluate all qualifying proposals and select the proposer that, in the sole and absolute discretion of the Park District, can fully meet the requirements of the Park District, based upon the factors listed in the outline below. The table is on the following page.

SECTION 3B PROPOSAL ELEMENTS	FACTORS	POINTS
1 & 2	The details of financial resources and the stability of the organization with sufficient demonstration of the ability to develop revenue and expense budgets and timelines.	20
3 & 4	Demonstration of successful history and knowledge of service offerings, as well as management of a concession, quality customer service and marketing of this type of concession.	15
5 & 6	Customer service and marketing plan to maximize public use and benefit of the concession to diverse audiences and use groups.	10
7	Demonstration of sufficient knowledge of and experience with the types of building maintenance and services required along with the complexity of the site using an environmentally friendly approach.	10
8	Demonstration of knowledge and experience successfully implementing sustainability and waste reduction plans in all aspects of the business.	10
9 & 10	The details of willingness to work collaboratively and cooperatively with District staff at all levels. Details of any pending legal issues.	5
11	Willingness and ability to pay appropriate Concession Fees & Concession Maintenance Fees.	10
12	Willingness and ability to meet the terms of the concession agreement.	10
	INTERVIEW	10
TOTAL		100

ATTACHMENT A (on next page)

CONCESSION AGREEMENT TEMPLATE

CONCESSION AGREEMENT TEMPLATE

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

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, Park District hereby grants to Concessionaire, pursuant to its powers under Section 5540 of the Public Resources Code of the State of California and per Park District Resolution # _____, the exclusive license to operate the _____ concession facility at _____, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. **PREMISES.** Subject to 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, Park District grants to Concessionaire for the purposes hereinafter specified that certain property ("Premises"), located in _____ ("Park"), and as more particularly described in Exhibit "A".
2. **TERM.** This License is granted for a term of _____ years beginning _____ and terminating _____. Concessionaire shall give notice to Park District 90 days prior to expiration of initial term to request entering into a second term. Park District may grant Concessionaire an extension of the term of the Agreement for one _____-year period. Park District shall respond within 30 days to such request.
3. **TERMINATION.** This Agreement shall be subject to early termination as follows:
 - a. Upon the failure of Concessionaire to observe any of the requirements of this Agreement, after at least 30-days' written notice from Park District to correct such default or if any such default is not curable within the 30-day period, the failure to commence to cure the default(s) within the 30-day period and diligently pursue such cure to completion.
 - b. Either party may terminate this Agreement with 90 days' written notice.
4. **FEES AND CHARGES.**
 - a. **Concession Fee.** Concessionaire shall pay to Park District without demand, ___% of Concessionaire's gross receipts as defined in Section 3.c. made from sales, rentals, and services at the concession upon the Premises during each year of the Term.

Following the first whole or partial month of the term hereof, Concessionaire shall furnish to the Park District by the 15th day of each month, a verified statement of its total gross receipts for the preceding month along with the Concession Fee for that period. The monthly statement and the Concession Fee shall be mailed to the East Bay Regional Park District, Finance Department, P.O. Box 5381, Oakland, California 94605-0381.

- b. **Late Charge.** If any installment of Concession Fee due from Concessionaire is not received by Park District when due, an additional sum of 10% of the overdue concession fee may be due 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 Park District from exercising any of the other rights and remedies available to Park District.
- c. **Gross Receipts.** Concessionaire is required to recognize its revenue on cash basis accounting method. The term "gross receipts" herein shall include the total aggregate amount of the business done, sales made, rentals, commissions received, and services performed by Concessionaire in, on, or from the Premises for cash and on credit (it being understood that sales on credit are to be included in gross receipts when cash (or a check) is actually received by Concessionaire). In addition, gross receipts shall also include the total aggregate amount received by Concessionaire from the operating of vending machines, and equipment-repair referrals to third party service providers. 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.
 - i. Concessionaire will maintain detailed records regarding lessons, training and commissions earned by retaining independently verifiable written reports that show date, name of participants, amount collected, and keep a comprehensive all-inclusive calendar of events and class rosters at least for three (3) years, to substantiate accuracy of Concessionaire's reported gross receipts.
- d. **Concessionaire's Maintenance Fund.** In addition to the percentage Concession Fee paid during the term pursuant to Section 3.a. and the ongoing maintenance required by this Agreement, Concessionaire agrees to expend for major maintenance, replacement, or addition of Park District-owned facilities, the sum equal to ___% of Concessionaire's Gross Receipts. Park District will account for these funds in a separate account designated as "Crown Beach Boardsailing Concession Maintenance Fund" and maintain adequate records thereof. These funds are solely for maintenance and improvements to the facility. Concessionaire acknowledges that they possess no right, title or interest in these funds other than to help administrate pursuant to this Section. Expenditures from this maintenance fund will be at the Park District's discretion and will require prior written approval from the Park District.

Concessionaire will prepare a maintenance fund plan by January 1, each year and forward a copy to Park District's Business Services Manager to obtain the necessary Park District approvals and prioritization. Concession maintenance and/or replacement categories are listed in Exhibit "B". The minimum dollar amount for a project to be approved for this fund is \$300. No maintenance fund activities shall begin without Park District's prior written approval. Work requiring design approval, specific plans and/or specifications, as appropriate, must be submitted to Park District and approved by Park District's Chief of Design or designee. Such review will be completed by Park District within thirty (30) 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 Park District a summary of project costs, original invoices, and copies of front and back of redeemed checks to vendors or proof of credit card payment.

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

- e. **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 Park District, and Park District shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including State of California sales tax return records, Federal and State income tax returns and Federal and State payroll tax reports. Concessionaire shall keep gross receipt deposits and cash disbursements related to the operation of the Concession in a **separate bank account**. Concessionaire shall deliver all of the concession's accounting records, including original bank statements, to the Park District office for inspection within 21 business days of request date.
- f. **Charges/User Rates.** Park 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 activities operated by Concessionaire. If Park District shall determine any price or prices to be unreasonable, such price shall be modified as directed by Park District. Concessionaire shall post rates and prices for all goods and services in such places as may be designated by Park District.
 - i. **Rate Increases.** Concessionaire shall not increase the user rates and/or institute any additional services and charges as listed in Exhibit "**C**" without the prior written consent of the Park District, which consent shall not be withheld unreasonably.
 - ii. Concessionaire will attempt to keep prices below competitors' pricing. Park District agrees to approve any price changes that are below immediate competitor prices.

5. PROMOTION; SIGNS. Concessionaire shall not distribute promotional materials and display any signs whatsoever within the park or on the Premises without the prior written consent of the Park Supervisor. Application for such consent shall show in reasonable detail the type, character and size, of any materials distributed or any such sign Concessionaire desires to display, contain the reference " _____, an East Bay Regional Park District facility", and include the Park District's leaf logo. Park District agrees not to withhold nor delay approval of reasonable requests for signs.

Concessionaire shall maintain one or more bulletin boards for posting notices, hours of operation, fees, safety regulations, information about activities on the Premises, etc., and may distribute pamphlets or brochures describing the services and activities available on the Premises.

Concessionaire shall identify Park District possession of the concession facility and the park on all social media and concessionaire's website with the location reference

“ _____, an East Bay Regional Park District facility”.

6. CONDITION OF PREMISES. Concessionaire acknowledges and agrees that the Premises are in good and tenantable condition. Concessionaire shall accept the Premises provided by Park District in their presently existing "as is" condition and agrees that Park District shall not be obligated to make any alterations, additions or improvements thereto.

7. USE OF THE PREMISES. Concessionaire shall use the Premises to operate, manage and maintain the service operations for the public described below Exhibit “C” upon the terms and conditions of this Agreement and for no other purposes.

8. RESTRICTED SALES AND USES

a. Sales and Rentals. Park District reserves the right to prohibit the sale, rental, or use by Concessionaire of any article or item which Park 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. Waste Reduction. Concessionaire will be required to submit a waste management plan within 90 days of signing the agreement. Concessionaire must maintain a recycling program or plan with park staff to utilize the park’s recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste. Park District will be responsible for removal of normal garbage use but not any excessive garbage such as large amounts of packing materials or old/broken equipment. No more than 20 lbs. of cardboard - must be cut into 3’ x 3’ pieces and bundled - can be placed in Park District waste receptacle/recycle bin.

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

d. Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by Park District in advance of such storage.

e. Private Vehicles. Concessionaire's personnel may drive private vehicles into areas of the Park restricted to non-Park District vehicles

f. _____ is _____ allowed

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 Park District in advance of such operation and use. Systems to announce lessons schedules or to facilitate equipment rentals are permissible as long as noise level is restricted to that necessary for public convenience.

9. FACILITIES AND EQUIPMENT PROVIDED BY CONCESSIONAIRE. Concessionaire shall provide, at its own expense, all equipment, as needed, that Concessionaire deems to be necessary for the good and proper operation of the concession while meeting the recreation needs of the public. This equipment will remain the property

and responsibility of Concessionaire who shall obtain written approval of Park District prior to providing any other equipment not listed in this agreement that Concessionaire deems to be necessary.

Concessionaire shall be responsible for _____ on its portion of the Premises.

10. FACILITIES AND EQUIPMENT PROVIDED BY PARK DISTRICT. _____.

11. PROTECTION OF PARK AND GENERAL PUBLIC USE. It is recognized by Concessionaire that the Premises are leased by the Park District and that the Premises are within a Regional Park, operated and maintained by the Park District, as an essential part of its system for furnishing park and recreation opportunities for the public. Concessionaire agrees to cooperate with the Park District to protect lands of the Park 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 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 Park District's General Manager and shall not conflict with Park District Board policy and other rules and regulations established by Park District. Park 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.

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 Park District Police Officer.

While Park District shall provide the normal level of public safety services to the Premises that it supplies to the adjacent and other Park 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 Park District's Public Safety Department in the event of emergencies or other significant disturbances.

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 Park District, any such person is incompetent, disorderly, discourteous, or otherwise

objectionable, such person, including relatives, shall be discharged or reassigned to a non-Park District facility upon Concessionaire's receipt of written notice from Park 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 "D" which is attached hereto and made a part hereof, that Concessionaire will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted.

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, at Concessionaire's own expense, any required maintenance and repairs, including small structural maintenance as outlined in Exhibit E. Should Concessionaire fail, neglect or refuse to do so, the Park 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 Park District for the cost thereof, provided, however, that the Park District shall first give Concessionaire ten days' written notice of its intention to perform such maintenance. Park District shall not be obligated to make any repairs to or maintain any improvements on the subject Premises unless otherwise required by this Agreement.

Park District reserves the right of entry for its employees and agents to inspect the Premises as deemed necessary by Park 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 Park 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 (report leaks or breaks etc.)
- a. Repair and Replacement by Park District. Park District shall have the obligation to repair or replace to the extent the damage or destruction is caused by the sole

negligence of Park 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 Park 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 Park District. Whenever Concessionaire desires to construct alterations, it shall prepare specifications and working drawings and submit them to Park 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 Park District.

16. TITLE TO IMPROVEMENTS. Concessionaire hereby acknowledges the title of Park 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 Park District including the right to contribution for loss of damage by reason of death or injury to persons or damages to property, whether the person or property of Concessionaire, its agents or employees, or third persons arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the sole negligence or sole willful misconduct of Park District, its officers, directors, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

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

Park District shall have no responsibility to safeguard the equipment and property of Concessionaire or any of its invitees. Park District shall have no responsibility to safeguard or protect the Concessionaire, or its employees, agents, officers, directors, or any of its

invitees from bodily injury (including death) or personal injury.

In the event a claim is made against Park District and Park District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Concessionaire, Concessionaire shall immediately notify Park District of such fact, and at Park District's option shall either retain legal counsel chosen by Park District to represent Park District in such action at Concessionaire's sole expense or reimburse Park District for Park District's litigation costs, expenses and attorney's fees in undertaking to represent itself.

In the event a claim is made against the Park District and Concessionaire for the joint and several liabilities of Park District and Concessionaire, the determination as to the apportionment of liability between Park District and Concessionaire shall be made by the judge in a court of competent jurisdiction. Notwithstanding the apportionment of liability between Park District and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless Park 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 Park District its officers, directors, agents, or employees.

18. INSURANCE. Concessionaire shall maintain, at Concessionaire's sole expense, the insurance coverage as listed in Exhibit F.

19. WAIVER OF CLAIMS. The Concessionaire hereby waives any claim against the Park 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 Park 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 Park District of any default. No option, right, power, remedy, or privilege of Park 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 Park District by this Agreement shall be deemed cumulative.

21. NON-DISCRIMINATION. The Concessionaire and its employees 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. The Concessionaire and its employees shall not 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.

22. 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 Park District harmless from all taxes whatsoever arising out of or in any way connected to the operations conducted by Concessionaire upon the Premises.

23. 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.

24. RIGHT OF ENTRY. Concessionaire agrees that Park 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 Park District under the terms of this Agreement, or otherwise to protect any of the rights of Park District and there shall be no liability against Park 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 Park District of any such right herein reserved.

25. CONFLICT OF INTEREST. Concessionaire warrants and covenants that no official or employee of Park District nor any business entity in which an official or employee of Park 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 Park District. In the event Park 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 Park District, Concessionaire, upon request of Park District, shall terminate such employment immediately.

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

27. SAFETY. No special events will be conducted by Concessionaire without prior approval by the Park 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 Park District relative to fire prevention. Park 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, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.
- c. Concessionaire represents and warrants to Park 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 Park District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.
- d. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

28. 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 Park District's prior written consent which may be granted or denied in Park District's sole discretion.

29. FORCE MAJEURE. Neither Park 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, pandemic viruses, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control. The Concessionaire hereby releases, covenants not to sue, discharges, and hold harmless the Park 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 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 Park District, its Board of Directors, officers, employees, agents, and representatives, whether a pandemic virus infection occurs before, during, or after participation in any activity related to the concession. In the event Concessionaire's use of the Premises is materially limited by virtue of events of force majeure, Concessionaire's concession fee obligation shall 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 Park District provide any compensation for force majeure.

30. 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.

31. DEFAULT. 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 Park 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.
- d. The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than thirty days after written notice from the Park District to correct the condition specified.
- e. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than thirty days after written notice from the Park District for correction thereof.
- f. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Concessionaire under the Agreement which is not corrected within thirty days after written notice from the Park District for correction thereof; 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 after written notice from the Park 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, Park District may:

- a. Terminate this License in which case Concessionaire shall immediately surrender possession of the Premises to Park District.
- b. Take possession of the Premises as the agent and on account of Concessionaire, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this License and retain any license fees received and apply the same in payment on account of Concessionaire. The performance of any or all of said acts by Park District shall not release Concessionaire from the full and strict compliance with all of the terms, conditions and covenants of this License on Concessionaire's part and Concessionaire shall pay any deficiency that may exist after deducting any license fees received, if any.
- c. It is understood that the remedies herein provided for Park 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 Park 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 Park District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable. Park 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. Park 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. 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.

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.

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 _____

By _____
Sabrina B. Landreth, General Manager

Approved as to form:

Elizabeth Mackenzie, Assistant General Counsel

EXHIBIT A
MAP OF PREMISES

EXHIBIT B

CONCESSIONAIRE MAINTENANCE FUND CATEGORIES

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

1. Repair, replacement and/or additions to the concession structure.
2. Other items as the parties may mutually agree upon in writing.

EXHIBIT C

- a. Concession. Concessionaire shall operate the existing concession. Refer to Exhibit A map for site location. The premises shall be used by Concessionaire mainly _____ for _____ the _____ purposes _____ of _____ to the general public.
- b. Concessionaire shall provide _____ to operate the concession at the premises.
- c. Other. Other or additional activities by Concessionaire shall require the prior written consent of Park District, which consent may be granted or withheld in Park District's sole discretion. Concessionaire shall comply with any and all present laws, general rules or regulations of Park 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 Park 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.

DAYS AND HOURS OF OPERATION

The concession shall be operated:

EXHIBIT D
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 Park District shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special Park 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 Park 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 Park 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 Park 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 Park 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

EXHIBIT E

PARK OPERATIONS FACILITY MAINTENANCE GUIDELINES

Concessionaire will place a high priority on keeping the structures and public facilities well maintained and available to serve its many parkland visitors.

Concessionaire will also view the park infrastructure as a significant part of the public trust that must be properly maintained and operated to ensure a long and useful service.

BUILDING EXTERIORS

GENERAL GUIDELINES

1. Siding is not cracked, broken, loose, rotted or missing sections.
2. Siding or other wood is not in direct contact with soil and no vines or plant material will be allowed to grow near thus discouraging rot, loosening damage, and infestation by insects.
3. Stucco and masonry walls is free of chips, cracks, and efflorescence.
4. Paint does not exhibit signs of peeling, flaking, or blistering.

ROOF GUIDELINES

1. Surface is free from debris and overhanging tree branches and will remain structurally sound with no sagging beams or decks.
2. Decking is free of water intrusion, especially around roof vents and skylights.
3. Eaves are kept straight and rafter tails free of rot.
4. Roof is free from displacement, warping and moss.
5. Deteriorating or curling composition shingles will be replaced as well as loose, damaged, or missing wood shingles.
6. Flat surfaces are free of ponding, blistering or splitting.
7. Flashings are kept fastened, caulked and free of corrosion.
8. Gutters and downspouts are kept fastened and free of debris and corrosion.

FOUNDATION GUIDELINES

1. Structurally sound with no excessive cracking or bowing.
2. Walls are free of termite shelter tubes.
3. Sill plates are anchored to foundation for earthquake safety and are free of rot or insect infestation.
4. Area is clear of debris that would attract wood-destroying insects and pathogens.
5. Foundation is free of differential settlement or displacement.
6. Concrete pads are level, well drained and free of excessive cracks.
7. Crawl space entrances are operable and screened.
8. Foundation is adequately vented for proper air circulation.

FRAMING GUIDELINES

1. Wood is plumb and free of termites, insect damage and rot.
2. Steel beams and columns are free of rust and corrosion
3. Joists and girders are free of rot, deterioration and sagging.

DESIGN COLOR CONTROL GUIDELINES

1. Color control of all structures should be consistent with the original design concept.
2. The colors applied in the construction of new facilities, and in their maintenance, thereafter, are approved by the Park District's Design Department.
3. All park sites should also use only Park District-approved standard colors on furniture and structures.

BUILDING INTERIORS

GENERAL GUIDELINES

1. Free of damage attributable to accumulated moisture.
2. Clean and free of evidence of vandalism, unnecessary markings, excessive dirt, etc.

WALLS AND WALL COVERINGS GUIDELINES

1. Clean, dry and free from moisture damage.
2. Free from graffiti or markings and paint is free of cracking or peeling.

DOOR AND WINDOW GUIDELINES

1. Hung correctly and operable.
2. Equipped with necessary locking devices for security.
3. Caulked and free film cracks, chips, or missing sections.

FLOOR GUIDELINES

1. Structurally sound with no signs of displacement or sagging
2. Free from surface deterioration, excessive wear or safety hazards.

FURNISHING GUIDELINES

1. Safe, serviceable, and usable.
2. Clean and compatible and appropriate to their surroundings.

ELECTRICAL SYSTEM GUIDELINES

Concessionaire shall promptly notify Park Supervisor of emergencies.

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

PLUMBING SYSTEM GUIDELINES

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

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

HVAC SYSTEM GUIDELINES

Maintained by Concessionaire.

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

FOOD AND BEVERAGE STANDS

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

EXHIBIT F

East Bay Regional Park District Insurance Requirements

Licensee will procure and maintain insurance for the duration of the contract 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 Licensee, their agents, representatives, employees or subcontractors. All other terms and conditions of the service agreement and/or amendment remain in full effect.

The Park District maintains the discretion to require additional insurance coverage based on the scope and nature of the Licensee's services and if any additional coverages are applicable, shall be included as a written addendum to this Insurance Requirements attachment.

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 automobile (Code 1), or if Licensee has no owned automobiles, covering hired, (Code 8) and non-owned automobiles (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 **\$1,000,000** per accident for bodily injury or disease.

If the Licensee 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 Licensee.

II. SPECIAL INSURANCE REQUIREMENTS

The Park 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 and may require the additional insurance indicated below. If the insurance coverage is checked below, the Licensee is required to hold the special insurance requirement in addition to the minimum

requirements set above.

Additional Insured Parties: The following agencies shall be required to be included as additional insured and whenever the Park District is named, so shall these agencies be named:

Licensees' Pollution Legal Liability Insurance. The Licensee shall provide Pollution, Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions applicable to the work being performed, with limits no less than \$_,000,000 per occurrence or claim, and \$_,000,000 aggregate per policy period of one year.

Builder's Risk and Installation Construction Coverage. The Licensee will procure at no additional cost to the Park District, a Builder's Risk and Installation coverage insurance policy for the work of this contract and for which Licensee shall be responsible for deductible payment as applicable. Coverage must name the Park District as insured and shall include all perils coverage and a face value equal to the contracted amount for such work. Such policy must be approved by the Park District and on file prior to execution of the agreement. Installation Floater may be accepted in lieu of Builder's Risk for non-real property construction projects.

Surety Bonds: Performance Bond in the amount of the Contract Price (required only if progress payments are to be requested); Labor and Materials Payment Bond in the amount of the Contract Price.

Cyber and Technology Professional Liability Errors & Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by the Licensee in this agreement and shall include, but not limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

Sexual Abuse or Molestation (SAM) Liability: If the work will include contact with minors, and the CGL policy referenced above is not enforced to include affirmative coverage for sexual abuse or molestation, Contractor/Operator/Licensee shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.

Professional Liability Insurance/Errors & Omissions including contractual liability, in an

amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Such coverage may be written on a claims-made basis. If any of the required policies provide claims-made coverage, the retroactive date must be shown and must be before the date of the contract or the beginning of contract work; insurance must be maintained and evidence of insurance must be provided *for at least five (5) years* after completion of the contract work; and if coverage is cancelled or non-renewed, and not replaced with another claims-made policy with a retroactive date prior to the contract effective date or date work commenced, the Licensee must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work.

III. OTHER INSURANCE PROVISIONS

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

I. Additional Insured Status

The Park District, its officers, directors, officials, agents, employees, and volunteers are to be covered as additional insureds on the CGL, automobile, and/or SAM policies as applicable with respect to liability arising out of work or operations performed by or on behalf of the Licensee 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 Licensee’s insurance in a standard and acceptable format.

2. Primary and Non-Contributory Coverage

For any claims related to this contract, the **Licensee’s insurance coverage will be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the Park District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Park District, its officers, directors, officials, agents, employees, or volunteers will be excess of the Licensee’s insurance and will not contribute with it. The requirement shall also apply to any Excess or Umbrella policies.

3. Umbrella or Excess Policy

The Licensee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be accepted provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions, indemnity and defense requirements. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Licensee’s primary and excess liability policies are exhausted.

4. Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be cancelled, except with thirty (30) day notice to the Park District.

5. Waiver of Subrogation

Licensee hereby grants to the Park District a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Park District by virtue of the payment of any loss under such insurance. Licensee 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 Park 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 Park District. The Park District may require the Licensee 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 authorized to conduct business in the state with a current A.M. Best's rating of no less than A, unless otherwise acceptable to the Park District.

D. Verification of Coverage

1. Licensee 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 Licensee'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.
2. Upon written request by the Park District, the insurer or his/her agent will furnish a copy of any policy cited above, certified to be a true and complete copy of the original. Upon written request of the Park District, annual loss reports will be supplied to the Park District. The loss report will include a list of all incidents/claims submitted against the insurance company and the estimated reserved and paid value of the claims.
3. The Park District reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Agreement.
4. Licensee shall require and verify that all subcontractors/subconsultants maintain insurance meeting all the insurance requirements stated herein.

5. In case of the breach of any provision of this section, Park District may, in addition to any other remedies it may have, at Park District's option, take out and maintain, at the expense of Licensee, such types of insurance in the name of the Licensee as Park 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 Licensee under this Agreement or may demand Licensee to promptly reimburse the Park District.