



**REQUEST FOR PROPOSALS**  
**FOOD CONCESSION**  
**ARDENWOOD HISTORIC FARM**



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

## **NOTICE REQUESTING PROPOSALS**

NOTICE IS HEREBY GIVEN THAT THE EAST BAY REGIONAL PARK DISTRICT will receive at or before the hour of 4:00 p.m. on February 4, 2025 digital proposals for the maintenance, management, and operation of a Food Concession (“Concession”) in Ardenwood Historic Farm in Fremont, north of Highway 84 near Ardenwood/Newark Boulevard. The East Bay Regional Park District (“District”) operates the park for the City of Fremont. The District is offering a term of three (3) years with the opportunity for one additional seven (7) year term at District’s option for this Concession. This Concession will be operated pursuant to a Concession Agreement issued by District; no leasehold or other proprietary right is offered. Description of the Concession and the requirements of the concessionaire are contained here in “Request for Proposals for a Food Concession Ardenwood Historic Farm.”

In order to be considered for this Concession, proposers must have a minimum of three (3) years of experience managing or operating a food business, demonstrated knowledge of basic facilities maintenance skills and knowledge, ability to work with District staff, willingness and ability to meet minimum insurance requirements for operating on 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 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 February 4, 2025**. Should you have any questions regarding this Request For Proposals (“RFP”), please contact the Business Services Manager at [opsbsm@ebparks.org](mailto: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 District. The Concession Agreement the District expects to award shall in no event become effective until an award is approved by Resolution of the Board of Directors. The District's policy in awarding this Agreement will be based primarily on the most qualified proposer overall and not simply on the concession fee payments proposed. The District will carefully investigate each proposer's background and experience in the operation of like facilities.

Parties interested in competing for the Food Concession (“Concession”) must submit proposals in accordance with the instructions contained herein. Proposers are responsible for making all appropriate investigations affecting this 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 concessionaire are contained in this RFP. You can download the RFP documentation package from the District website at [www.ebparks.org/about/bids](http://www.ebparks.org/about/bids).

## REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the operation of the food concession in Ardenwood Historic Farm in Fremont, California.

### ARDENWOOD CAFÉ RFP TIMELINE

Announcement Open Proposal	November 22, 2024 by 4 pm
Questions from Bidders	January 29, 2025 by 4 pm
Mandatory Site visit	Thursday, January 30, 2025 10:30 to 11:30 am
Questions and Answers posted to website	January 31, 2025 by 4 pm
<b>Proposals Due</b>	<b>February 4, 2025 by 4 pm</b>
Bidders Notified of interviews	February 5, 2025 by 4 pm
Interview with Bidders – 40 minute intervals	February 6, 2025, 9:30 am thru 1:00 pm
Bidders Notified of Staff Recommendations	February 6, 2025 by 4 pm
Board Committee – Operations review	March 19, 2025
Board of Director review / Approved Award	May 6, 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 District website. Please check the website for the most current information before sending in your proposal.*

### MANDATORY SITE VISIT

There will be a mandatory site visit on Thursday, January 30, 2025 from 10:30 to 11:30 am. Failure to attend the mandatory site visit will disqualify any proposer from being considered. If you are planning to attend the site visit please RSVP to the Business Services Manager by e-mail at [opsbsm@ebparks.org](mailto:opsbsm@ebparks.org) at least 24 hours in advance (before 10:30 am on Wednesday, January 29, 2025.) Those that do not attend the entire site visit are not eligible to submit a proposal. **The site visit will start in front of the Ardenwood Entry Kiosk and will begin on time.**

### SECTION I. INTRODUCTION

The East Bay Regional Park District (“District”) is a system of beautiful parklands and trails in Alameda and Contra Costa counties to the east of San Francisco comprised of over 125,000 acres in 73 parks, including over 1,250 miles of trails and 55 miles of shoreline. We acquire, manage, and preserve natural and cultural resources for all to enjoy now and into the future. Our parks are ideal for healthful recreation and environmental education.

The District is seeking an experienced concessionaire to operate a Food Concession in Ardenwood Historic Farm. Parties interested in operating this Concession must submit proposals in accordance with the instructions contained herein.

This RFP consists of an invitation to submit proposals that provide the best strategies for the maintenance, management, and operation of the Concession. This RFP describes the opportunity, the requirements, the selection process and the minimum information that must be included in the proposals.

It is expected that a Concession Agreement will be awarded following receipt of competitive proposals, evaluation of those proposals, selection of the best proposal and approval by the Board of Directors of the District. The selected organization (“Concessionaire”) will provide maintenance, management, and operation of the Concession. The District reserves the right to cancel or modify the RFP process at any time and to reject any or all responses to the RFP.

**SECTION 2. BACKGROUND**

The Concession is located at 34600 Ardenwood Blvd. Fremont, CA 94555 and the available concession license is part of Ardenwood operated by the District in partnership with the City of Fremont. Ardenwood boasts a fully functioning turn-of-the-last-century farm. Visitors to Ardenwood experience farm life as it was near the turn of the 20th century. Ardenwood is open to the public and can be accessed by paying a small fee at the entrance gate.

The Concession premises include the kitchen building called the Farmyard Café with office space, the surrounding picnic area, and the yard behind the building with a storage shed. The Concession has a food prep area with a commercial stove and oven, dishwasher, refrigerator, freezer, and ice machine. The concessionaire may offer any type of food items as well as additional items useful to the public in a picnic setting such as condiments, plates and cups and other assorted retail. Food can be sold on pre-order for other areas in the park. The office space may also be used for retail activity, please make proposals for this area as well.



**Past Food sales**

SALES	2018	2019	2020	2021	2022	2023
FOOD, BEVERAGES, MERCHANDISE	\$101,101	\$116,113	\$ -	\$ 62,680	\$129,938	\$144,700





## **CAFÉ – POSSIBLE DAYS AND HOURS OF OPERATION**

YEAR-ROUND

SATURDAYS & SUNDAYS 10:00 am to 4:00 pm

And Memorial Day, Labor Day and Independence Day

From the 1<sup>st</sup> weekend in June to the 2<sup>nd</sup> weekend in September

THURSDAY & FRIDAY 11:00 am to 2:00 pm

Other days & hours available by agreement with Supervisor

## **ADDITIONAL INFORMATION FOR ARDENWOOD HISTORIC FARM**

Ardenwood has a **Golden Eagle nesting site** and must follow the U.S. Fish and Wildlife Service California Recommended Buffer Zones for Ground-based Human Activities around Nesting Sites of Golden Eagles in California and Nevada. For most ground-based human activities, a one-mile no-disturbance buffer surrounding golden eagle nesting sites is mandated for California and Nevada – for high intensity or long duration activities including, but not limited to: walking and running. Recommended buffers may increase or decrease, depending on specific site or activity circumstances. Buffers may be reduced in consultation with the U.S. Fish and Wildlife Service (Service) when the nest is not in use or activities are not in line-of-sight of the nests. The location of the nesting site may vary each year. Nesting season is from approximately late January through August This may effect scheduled events and require that all activity in the buffer zone cease as long as eagles are nesting.

## **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 food service business. The District will review the primary proposer and all partners and their experience related to the following list of requirements:

1. Organizational mission congruent with District's mission of offering a vibrant, regional center of social and cultural celebrations and event opportunities to Bay Area residents.
2. Provide an event services concession and a snack bar in a park setting.
3. Promote use of the Concession and provide a quality experience with a reasonable pricing structure for a culturally diverse public.
4. Maintain an environmentally and economically viable operation with revenues sufficient to cover operating expenses while providing the Concessionaire and the District an adequate return on investment.
5. Provide a waste reduction and sustainability plan. The 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 District's Climate Smart Initiative and Policy: <https://www.ebparks.org/natural-resources/climate-adaptation/policy>.
6. Proven fiscal solvency and financial ability to successfully run the concession.
7. Preserve the facility and enhance the condition of the facility.
8. Ability to foster and maintain positive relationships with members of the public and District staff.
9. Generate revenue for the District.

## **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. This Concession will be operated pursuant to a concession agreement issued by District. In the event that this agreement is terminated for reasons other than concessionaire's breach of the agreement, District will not consider proposals for reimbursement of the concessionaire's unamortized capital improvement costs as of the date of termination.
2. The Concessionaire shall provide food service at the Farmyard Café. 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. The Concessionaire will be required to carry at least \$2,000,000.00 in general liability insurance coverage and property damage liability insurance coverage, and replacement value in fire and casualty coverage with the District named as Additional Insured.
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 District standards and subject to audit at District's discretion.
5. Preparation of monthly and annual fiscal sales reports in a format approved by District, submitting by the due date.
6. Payment and accounting of all expenses in a timely manner.
7. Formulation and implementation of business plans and budgets.

8. Formulation and implementation of a waste reduction and sustainability plan.
9. Handling of all personnel matters including employment, training, and terminations.
10. Responsible for obtaining any and all necessary approvals, permits and licenses for lawful operation of the concession.
11. Responsible for maintaining total security within the licensed premises.
12. Concessionaire must cooperate with District during special events, park closures, or other unanticipated eventualities.
13. Maintenance - The Concessionaire will be responsible for the ongoing maintenance and other day-to-day operational aspects of the facility's interior and exterior areas as well as the following operation and maintenance activities:
  - Conducting assessments of building and facility condition
  - Cleaning the licensed premises and the area within 100 feet of the licensed premises, including weed removal
  - Performing janitorial services and cleaning of the exterior
  - Replacing damaged glass, broken windows and doors
  - Fixing leaks
  - Interior painting
  - Performing routine maintenance of operational systems and equipment
  - Conducting pest control in compliance with the District's Integrated Pest Management program
  - Providing repair and maintenance supplies and small equipment
  - Reporting significant maintenance or repair needs to the District
  - Communicating effectively with District staff
14. Utilities
  - Concessionaire will pay the District \$750 per year for normal garbage, electric, water, and sewer service
  - Garbage - District will be responsible for normal garbage use but not any excessive garbage such as large amounts of packing materials or old/broken equipment
  - Concessionaire will provide telephone and WiFi service

### **C. TERM OF AGREEMENT**

The Concession Agreement is offered for a term of three (3) years (the "Original Term"). The concessionaire may request an extension of the Original Term for an additional seven (7) years. The District may approve or disapprove the extension in its sole discretion.

### **SECTION 3. SUBMITTAL REQUIREMENTS**

This RFP provides all potential concessionaires with relevant information, the necessary requirements to submit a proposal for the concession, and a proposed concessionaire 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](mailto:opsbsm@ebparks.org), no later than 4:00 p.m. on February 4, 2025.**

- Late proposals are not acceptable and will not be considered.
- There will not be a public opening of proposals.
- The District reserves the right to request, receive, and evaluate supplemental information and clarifications during its evaluation of proposals and the District will conduct this

process in a fair and impartial manner.

- The District reserves the right to waive any immaterial irregularities in any proposal.
- The 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 commit the District to award an agreement or to pay any costs incurred in preparation of a proposal or any response to this RFP.
- The District reserves the right to reject any or all proposals.
- All documents received by the District are subject to disclosure in response to requests made pursuant to the California Public Records Act.

### **Format And Content**

The proposal should be clear, concise, complete, well-organized, and demonstrate the proposer's vision for the Concession. All proposers are required to follow the following format. Please prepare your proposal such that it is scaled at 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 14 in the Proposal Elements section 3.B. to aid in information retrieval and review by the District's Selection Committee.

### **B. Proposal Elements**

#### Cover Page:

Addressed to District Business Services Manager and providing the following information, 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.

Include:

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

#### Table of Contents:

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

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

1. Describe your (this means you and/or your organization) financial condition.
2. Provide a detailed 3-year budget for the operation and maintenance of the concession.
3. 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.
4. Describe your most recent experience in performing similar operating, management, and/or maintenance activities, with details of specific activities and management.



5. Provide up to three (3) references for your experience in which you performed the same work, must include names, titles, email addresses, and telephone numbers.
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 2%) and Maintenance Fee (minimum 3%.) The concession maintenance fund fees will be held by the District for pre-approved major capital improvements and projects.
12. Agreement – can you meet the requirements of the Agreement?
  - Appendix “A” is the District’s standard concession agreement. Please review the agreement. You must be willing to sign the agreement “as-is” or with minimal changes that the District may agree to. If you will have significant issues with the agreement terms and conditions, please re-consider submitting a proposal.
  - If organization submitting a proposal takes exception to any of the terms and conditions in the 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 agreement, including inventory investment, and the building and improvement requirements of the District and any regulatory agencies.

### **C. Amendments**

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 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 District’s website.

Questions must be submitted **no later than January 31, 2025 by 4:00 p.m.** Questions received after this deadline may be answered at the discretion of the District. Any amendments to the RFP will be posted on the District’s website (<http://www.ebparks.org/about/bids>) and emailed to all the organizations that sent representatives to the mandatory pre-submittal site visit.

## **SECTION 4. SELECTION PROCESS**

The District intends to negotiate an agreement with the selected organization as determined by

the District to be in the best interest of the District.

Step 1 – Response to District’s RFP

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

Step 2 – Interviews with Organizations 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 organization’s approach to concession scheduling, methodology for managing concession costs, how the organization’s team brings 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 District will rank the proposals and select the top-ranking proposer with whom to attempt to negotiate an agreement as determined by the District to be in the best interest of the District. If negotiations are not successful with the top-ranked proposer, the 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 District will use the selection process outlined herein. An Interview and Selection Committee composed of key District staff and possibly staff from other related agencies will review and evaluate responses to the RFP and will conduct interviews.

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

<b>SECTION 3B PROPOSAL ELEMENTS</b>	<b>FACTORS</b>	<b>POINTS</b>
1 & 2	The details of financial resources and the stability of the organization Sufficient demonstration of the ability to develop revenue and expense budgets and timelines.	15
3	Customer service and marketing plan to maximize public use and benefit of the concession to diverse audiences and use groups.	10
4, 5 & 6	Demonstration of successful history and knowledge of service offerings, as well as management, operation, quality customer service and marketing of this type of concession.	20
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**

## SAMPLE 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 \_\_\_\_\_ . 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 per District Resolution # \_\_\_\_\_, the exclusive license to operate the Food Concession at Ardenwood Historic Farm, 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 the City of Fremont, 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 ("Premises"), located in Ardenwood Historic Park, and as more particularly described in Exhibit "A".
- 2. TERM.** This Agreement shall have a term of three (3) years beginning \_\_\_\_\_ and terminating \_\_\_\_\_. In District's sole discretion, District may grant Concessionaire an extension of the term of the Agreement for one seven-year term. Concessionaire shall give notice to District sixty days prior to expiration of initial term to request entering into the second term. District shall respond within thirty (30) days to such request.

This Agreement shall be subject to early termination as follows:

- a.** Upon at least 90 days prior written notice to such effect by Concessionaire to District.
  - b.** Upon the failure of Concessionaire or its employees or agents to observe any of the requirements of this Agreement, after at least thirty (30) days' notice from District to correct such default. Upon such a failure, Concessionaire shall be given 60 days to remove all its property and repair any damage Concessionaire has caused.
- 3. FEES AND CHARGES.**
  - a.** Concession Fee. Concessionaire shall pay to 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 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 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 District from exercising any of the other rights and remedies available to District.

- c. **Gross Receipts.** Concessionaire is required to recognize its revenue with a 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. Gross receipts shall not include the amount of any tax on sales from the Premises where such taxes are added to the selling price, stated separately, and paid by Concessionaire's customers, and remitted directly to the taxing authorities by Concessionaire.
  - d. **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, the sum equal to \_\_\_\_ % of Concessionaire's Gross Receipts. District will account for these funds in a separate account designated as " Ardenwood Café 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 District's discretion and will require prior written approval from the District. Concession maintenance and/or replacement categories are listed in Exhibit "B".
  - 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 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. Concessionaire shall keep gross receipt deposits and cash disbursements related to the operation of the Concession in a **separate bank account**.
  - f. **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 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. Concessionaire will attempt to keep prices below competitors' pricing.
- 4. 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 "Ardenwood Historic Farm, an East Bay Regional



Park District facility”, and include the District’s leaf logo. 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 District possession of the concession facility and the park on all social media and concessionaire’s website with the location reference “Ardenwood Historic Farm, an East Bay Regional Park District facility.”

**5. CONDITION OF PREMISES.** Concessionaire acknowledges and agrees that the Premises are in good and tenantable condition. Concessionaire shall accept the Premises 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.

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

a. Concession. Concessionaire shall operate the existing concession in the park. Refer to Exhibit A for site location. The premises shall be used by Concessionaire mainly for the purposes of a Food Concession in Ardenwood Historic Farm.

b. Concessionaire shall provide any additional equipment necessary to operate the concession at the premises.

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.

**7. RESTRICTED SALES AND USES**

a. Sales and Rentals. District reserves the right to prohibit the sale, rental, or use by Concessionaire of any article or item which District regards as objectionable or beyond the scope of merchandise or equipment deemed necessary for proper services to the public or of inferior quality.

b. Waste Reduction. Concessionaire will be required to submit a sustainability and waste reduction 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. 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 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 District in advance of proposed use or sale.
- d. Storage. Concessionaire shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage.
- e. Private Vehicles. Concessionaire's personnel may drive private vehicles into areas of the Park restricted to non-District vehicles only as required for loading and unloading items used to operate the Premises. Vehicles may not be left unattended or parked for longer than it takes to unload. Vehicles must be labeled as concession vehicle with a placard placed in windshield. Excessive violation of this privilege will result in no access.
- f. Up to 4 employee vehicles per day do not have to pay for parking when the parking lot kiosk is operating. Any more than that will have to pay for parking.
- 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.

**8. FACILITIES AND EQUIPMENT PROVIDED BY DISTRICT.** Upon commencement of the Term, District shall provide to Concessionaire the equipment listed on Exhibit “D”. 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 100 or 200 amp. Any future utility hookups deemed necessary by District in its sole discretion will be provided by the District. District will pay for normal garbage, electric, water, and sewer service and bill Concessionaire accordingly.

**9. FACILITIES AND EQUIPMENT PROVIDED BY 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 telephone service and Wi-Fi.

**10. PROTECTION OF PARK AND GENERAL PUBLIC USE.** It is recognized by Concessionaire that the Premises are owned by the District and that the Premises are within a Regional Park, operated and maintained by the District, as an essential part of its system for furnishing park and recreation opportunities for the public. 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.

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. 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.

**12. 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.

**13. 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 "F". 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 (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.

**14. 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.

**15. 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.

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

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

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

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

In the event a claim is made against the District and Concessionaire for the joint and several liabilities of District and Concessionaire, the determination as to the apportionment of liability between District and Concessionaire shall be made by the judge in a court of competent jurisdiction. Notwithstanding the apportionment of liability between District and Concessionaire, Concessionaire shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District its officers, directors, agents, or employees.

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

**18. 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.

**19. 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.

**20. NON-DISCRIMINATION.** The Concessionaire 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.

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

**22. 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.

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

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

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

**26. SAFETY.** No special events will be conducted by Concessionaire without prior approval by the District. In order to insure the safety of the public, these safety precautions will be followed at all times; (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 firefighting practices and equipment as may be specified or required by Alameda County or any other agency having jurisdiction to regulate fire prevention measures at the Premises.
- b. Hazardous Substances. No goods, merchandise or material shall be kept, stored, or sold in or on said Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, other than as is provided for in this contract, and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Concessionaire as required by present or future regulations and laws.
- c. Concessionaire represents and warrants to District that Concessionaire will not generate, store, release or dispose of any hazardous materials on, under or about the Premises in violation of any hazardous substance laws (as defined below). Concessionaire shall hold District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Concessionaire's generation, storage, release, or disposal of any hazardous materials on or about the Premises. The provisions of this section will survive the expiration or termination of this Agreement.
- d. For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et

seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

**27. 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 Agreement or in the Premises, without District's prior written consent which may be granted or denied in District's sole discretion.

**28. 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, 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 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 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 District provide any compensation for force majeure.

**29. 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.

**30. DEFAULT.** The occurrence of any one or more of the following events shall constitute a material default of this Agreement 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.
- 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 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 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 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 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.

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

- a. Terminate this Agreement 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 Agreement and retain any fees received and apply the same in payment on account of Concessionaire. The performance of any or all of said acts by District shall not release Concessionaire from the full and strict compliance with all of the terms, conditions and covenants of this Agreement on Concessionaire's part and Concessionaire shall pay any deficiency that may exist after deducting any fees received, if any.
- c. It is understood that the remedies herein provided for District in case of a violation of the terms of this Agreement by 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.

**32. HOLD OVER.** Any holding over after the expiration of the term of this Agreement, 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.

**33. 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.

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

**35. ADVICE OF COUNSEL.** Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

**36. 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.

**37. 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 \_\_\_\_\_

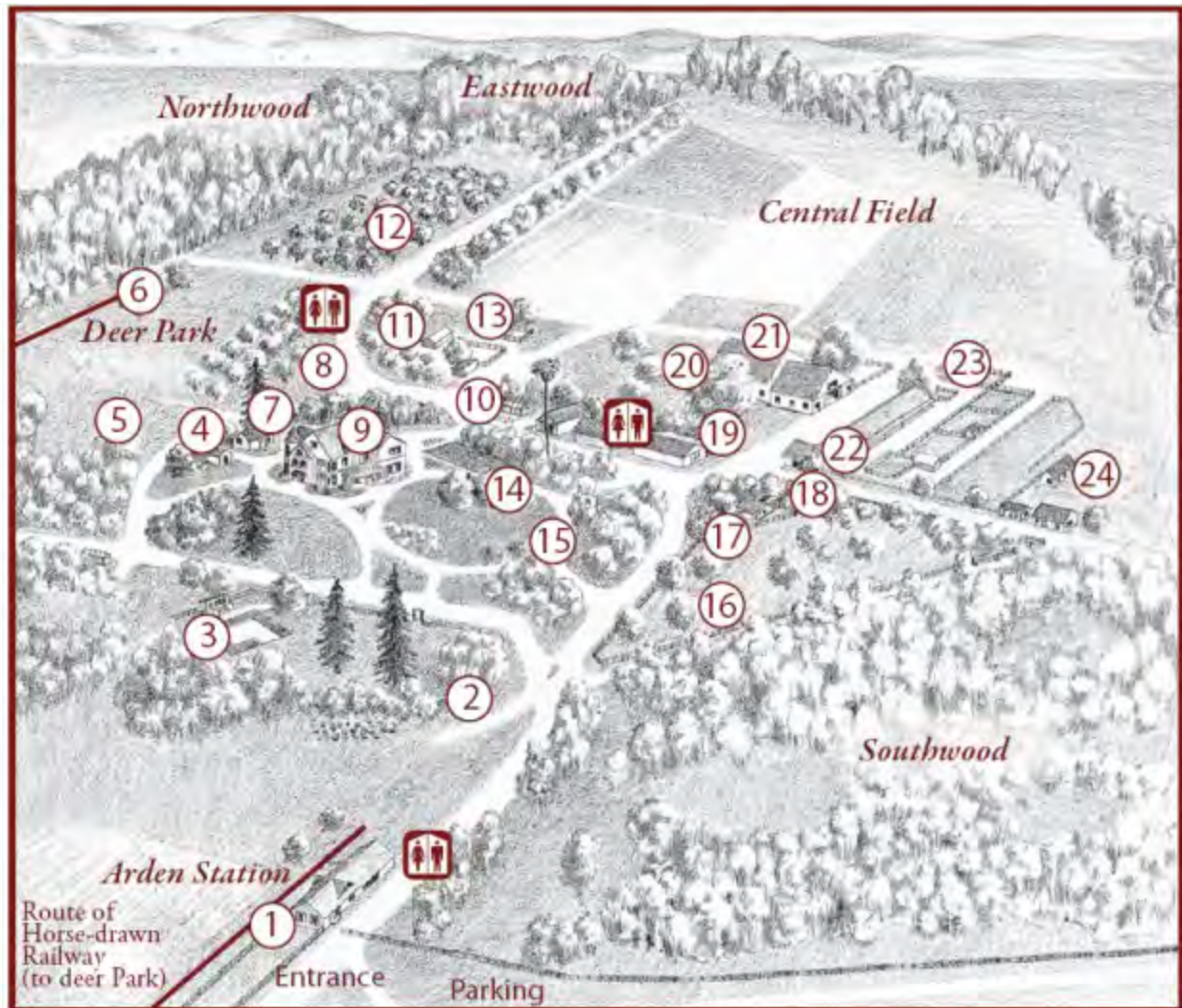
By \_\_\_\_\_  
Sabrina B. Landreth, General Manager

Approved as to form:

\_\_\_\_\_  
Elizabeth Mackenzie, Asst. General Counsel



**EXHIBIT A**  
**MAP OF PREMISES**



*34600 Ardenwood Blvd., Fremont, CA 94555*

The Concession premises include the cafe (the kitchen building with office space and storage sheds) called the Farmyard Café, located at #17.

## **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 structures and facilities.
2. Repair, replacement and/or additions to the concession equipment (large equipment only such as, freezers, ice machines).
3. Other items as the parties may mutually agree upon in writing.

Concessionaire and District staff will prepare a maintenance fund plan each year.

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 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 Supervisor a summary of project costs, original invoices, and copies of front and back of canceled checks to vendors. If the Concessionaire uses its own labor for these projects, time cards must be submitted. The Park Supervisor will approve the expenditures and forward them to the Business Services Manager for reimbursement to the Concessionaire.

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

## **EXHIBIT C**

### **CAFÉ - DAYS AND HOURS OF OPERATION**

Year-round – arranged with Supervising Naturalist  
Park is closed on Mondays

## EXHIBIT D

Item	Loc.
Air Compressor - No Fly Zone (at back door)	Café - kitchen
2 Compartment Sink	Café - kitchen
3 Compartment Sink	Café - kitchen
Hand Wash Sink	Café - kitchen
Gaylord Vent With Fire Hood System	Café - kitchen
Montague Stove/Oven	Café - kitchen
Kitchen Oven With 2 Burners/Griddle - American Range	Café - kitchen
Hoshizaki Ice Maker	Café - kitchen
Dishwasher (CMA L-1X16)	Café - kitchen
1 shelf rack (blue) - in pantry	Café - kitchen
Stainless Steel 4 Shelf Wire Rack - Rolling (closet)	Café - kitchen
Stainless Steel 2 Shelf Prep Table (4)	Café - kitchen
Stainless Steel 3-4-5 Shelf Wire Racks (5)	Café - kitchen
Stainless Steel Microwave Stand	Café - kitchen
True 2-Door Refrigerator	Café - kitchen
Star Commercial Popcorn Maker	Café -Sales area
Credenza	Café -Sales area
True Sandwich Refrigerator	Café -Sales area
Mop Sink	Café - outdoors
Shed (3)	Café - outdoors
BBQ 60" propane (Crown Verity)	Café - outdoors
Propane Tank Storage Cabinet	Café - outdoors
HVAC unit (new in 2021)	Café - outdoors
Water Heater - 100 Gal.	Café - outdoors
Electric Utility vehicle (Taylor-Dunn)	Café - outdoors
Steel Troughs - for flower beds (10)	Café - outdoors

**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

## **EXHIBIT F**

### **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 District's Design Department.
3. All park sites should also use only 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.

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

### **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.

## **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 the City of Fremont, 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 the City of Fremont 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.