REQUEST FOR PROPOSALS

FOOD CONCESSION

LAKE ANZA, TILDEN REGIONAL PARK

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 January 19, 2023, digital proposals for the maintenance, management, and operation of a food concession at Lake Anza in Tilden Regional Park, Berkeley, California. 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. The system comprises 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 offering a term of two (2) years with the opportunity for one additional three (3) year extension 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 Food Concession, at Lake Anza in Tilden Park”.

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 January 19, 2023. Should you have any questions regarding this Request For Proposals (RFP), please contact the Business Services Manager at opsbsm@ebparks.org.

It is expected that the 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 rental 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 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.
REQUEST FOR PROPOSALS TIMELINE

The following schedule has been established for the Request for Proposals for the operation of the Food Concession at Lake Anza in Tilden Regional Park which is located in Berkeley, California.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Announcement Open Proposal</td>
<td>December 15, 2022 by 4 pm</td>
</tr>
<tr>
<td>Questions from Bidders</td>
<td>By December 29, 2022 by 4 pm</td>
</tr>
<tr>
<td>Questions and Answers posted to website</td>
<td>By January 4, 2023 by 4 pm</td>
</tr>
<tr>
<td>Mandatory Site visit</td>
<td>Thursday, January 12, 2023, 10 am – 11 am</td>
</tr>
<tr>
<td>Questions from Bidders</td>
<td>January 13, 2023 by 4 pm</td>
</tr>
<tr>
<td>Questions and Answers posted to website</td>
<td>January 17, 2023 by 4 pm</td>
</tr>
<tr>
<td>Proposals Due</td>
<td>By January 19, 2023, 4 pm</td>
</tr>
<tr>
<td>Bidders Notified of interview</td>
<td>By January 23, 2023, 4 pm</td>
</tr>
<tr>
<td>Interview with Bidders – one hour intervals</td>
<td>Wednesday, February 8, 2023, 1:00 – 4 pm</td>
</tr>
<tr>
<td>Bidders Notified of Staff Recommendations</td>
<td>By February 9, 2023, 4 pm</td>
</tr>
<tr>
<td>Board Operations Committee – review</td>
<td>Tuesday March 14, 2023, 12:30 pm</td>
</tr>
<tr>
<td>Board of Directors review / Notification of Award</td>
<td>April 18, 2023, 1 pm</td>
</tr>
</tbody>
</table>

**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 AND OPEN DISCUSSION

The site visit is mandatory. If you are planning to attend the mandatory site visit you must RSVP the District by e-mail at opsbsm@ebparks.org at least 72-hours in advance of Thursday, January 12, 2023, 10 am – 11 am. Those that do not attend are not eligible to submit a proposal. The site visit will begin outside the concession building at the entrance to the lake as shown in the satellite picture on the previous page.

SECTION 1. INTRODUCTION

The Food Concession at Lake Anza is located at Tilden Regional Park, which is a favorite getaway in the Berkeley area. Lake Anza’s sandy beach is open to the sun and sheltered from the wind, with lifeguards posted during the swim season. On days when lifeguards are on duty, Lake Anza swim complex is closed from 9am-11am for maintenance and training purposes. Patrons who enter earlier than 9am must leave during this period and re-enter after 11am. During the swim season when lifeguards are not on duty, swimming at your own risk is allowed within the roped-off area only unless otherwise posted. Swimming is prohibited from November through the beginning of swim season. Picnic grounds are located nearby.

The average attendance at the Tilden park can be up to 1.6 million visitors per year and about 37,000 people pay to swim at the lake each year. The lake has been closed due to blue-green algae for the last three (3) years but is expected to be fully operational soon.

SECTION 2. BACKGROUND

The concession is a small snack facility, renovated in 2009, with a limited amount of equipment offering snacks such as hot dogs, nachos, chili, sodas, slush drinks, sports drinks, ice cream, chips and candy.
SALES HISTORY

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
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<tr>
<td>NET REVENUE</td>
<td>$73,864</td>
<td>$57,902</td>
<td>$74,317</td>
<td>$67,274</td>
<td>$80,934</td>
</tr>
</tbody>
</table>

PREVIOUS CONCESSIONAIRE'S MENU (2018)

Snacks
- HOT DOG: 4.99
- CHEESE DOG: 5.99
  - Add Onion and/or Sauerkraut: +29¢
- NACHOS: 5.99
  - Tortilla chips covered in nacho cheese and salsa: add +29¢
- CARROT & CELERY STICKS: 3.99
  - With Peanut Butter, Hummus or Ranch
- CHIPS: 1.99
- CANDY: 1.99

Sandwiches
- LAKESIDE TURKEY: 9.99
  - Sliced turkey, tomato, lettuce, and cheddar cheese on toasted wheat with mayo and dijon mustard.
- TUNA SANDWICH: 8.99
  - Tuna mixed with sliced celery, sliced onions, mayo, and lemon juice. Served with lettuce on toasted wheat bread.
- TILDEN HUMMUS: 7.99
  - Rich and creamy hummus with fresh sliced tomatoes, red onion, lettuce, and cucumbers. Served on toasted wheat.

Bagels
- VEGGIE BAGEL: 5.99
  - Sliced tomato, red onion, cream cheese and cucumber.
- TOASTED BAGEL
  - w/ Peanut Butter: 4.99
  - w/ Cream Cheese: 4.99
  - w/ Hummus: 4.99

Lakeside Beach Club

Cold Drinks
- 20oz SODA POP: 2.99
- ICED TEA: 2.99
- ICED COFFEE: 2.99
- FRESH LEMONADE: 2.99
- ARNOLD PALMER: 2.99
- ICE WATER: 99¢
- CUP OF ICE: 99¢
- ROCKET WATER: 1.99
- MINERAL WATER: 2.99
- 20oz Milk: 2.99

Hot Drinks
- COFFEE: 2.99
- HOT TEA: 2.99
- HOT CHOCOLATE: 2.99

Miss Moo's Frozen Desserts
- Vanilla Soft-Serve: 4.99
- CHOCOLATE DIPPED + 98¢
- Floats: 5.99
- ROOTBEER, COKE or ORANGE SODA: Topped with Vanilla Soft Serve

ICEE
- Cake or Cherry: 4.99

Milkshake
- Chocolate, Coffee, Vanilla or Strawberry: 5.99

Picnic Supplies
- Knife/Spoon/Fork: 29¢
- Empty Cup: 49¢
- Paper Plate: 79¢
- BAG of ICE: 4.99
- Sunscreen: 7.99
- Charcoal: 9.99

LOCATION

The Park is located just over the hill from Berkeley and Lake Anza is on Lake Anza Road near the intersection of Wildcat Canyon and Shasta roads.

A. RECREATIONAL & ENVIRONMENTAL OBJECTIVES

Proposals will be evaluated based on the Proposer’s proven ability to offer a variety of food offerings appropriate to a picnic and swim area. Previous menu items were drinks, hot dogs, sandwiches, bagels, chips, ice cream and candy. The District will review the primary Proposer, and all their partners, experience related to the following list of requirements:
1. Promote use of the Concession and provide a quality experience with a reasonable fee structure for a culturally diverse public.

2. 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.

3. Preserve and maintain the condition of the Concession.

*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 District's Climate Smart Initiative and Policy please visit: https://www.ebparks.org/natural-resources/climate-adaptation/policy

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. Hours of Operation - The concession shall be operated, at the minimum, from 11:00 a.m. to 6:00 p.m. weekends in May and daily beginning in June through the end of August. Concession may be operated weekends in April and September at the concessionaire’s option. Concessionaire may close the premises on account of adverse weather or other adverse operating conditions.

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. Concessionaire must collect and account for all revenues in a separate bank account, follow Generally Accepted Accounting Principles and maintain proper financial records of the business that meet District standards and would be 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 operation programs, 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 this 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
- Performing janitorial services, regular graffiti removal and cleaning of the exterior
- Replacing damaged glass, broken windows and doors
- Fixing leaks
- 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 the public and District staff

14. Utilities and Equipment:

- District will pay for gas and electric, garbage pickup, water service, 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 shall be responsible for telephone service/internet and for all costs related to any burglar alarm systems on its portion of the Premises.

15. Agreement

- Appendix “A” is the Park District’s standard Concession agreement. Please review the agreement. As a condition for acceptance of your proposal, you must be willing to sign the agreement “as-is” or with minimal changes that the Park District may/may not 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 Park District’s standard form concession agreement, the exception(s) and reason(s) shall be stated in the Proposal.

- Concessionaire must meet the requirements of the agreement, including inventory investment, and the building and improvement requirements of the Park District and any regulatory agencies.

District responsibilities include, but are not necessarily limited to:

1. Administration of all terms and conditions of the agreement.
2. Monitoring revenue and service fees, standards, specifications, and operating policies.
3. Approval in advance of any capital improvements or alterations to existing facilities.

C. TERM OF AGREEMENT
The Concession Agreement is offered for a term of two (2) years (the “Original Term”). The concessionaire may request an extension of the Original Term for an additional three (3) 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, no later than 4:00 p.m. on January 19, 2023.

- Late Proposals are not acceptable and will be returned to the proposer
- 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 response
- 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 information submitted in response to the RFP will be considered official information acquired in confidence and the District will maintain its confidentiality to the extent permitted by law

Format and Content

The proposal should be clear, concise, complete, well-organized, and demonstrate the Organization’s vision for the concession. All organizations 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.

Transmittal Letter:

Addressed to Park District Business Services Manager and signed by an officer of the organization. In the case of a joint relationship, an officer of each partner organization 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.

B. Proposal Elements
The proposal must contain the responses in the numbered format below.

1. Financial Condition - Describe your (this means you and/or your organization) financial condition and provide the last five (5) years of bank statements. may be substituted with the last five (5) years of tax returns. Significant weight will be given to such financial information in the selection process. The Park District may request a bond for $10,000 as a security deposit when awarding the agreement.

2. Provide a detailed 5-year budget for the operation and maintenance of the concession.

3. Provide a list of possible rates that customers would have to pay for proposed services.

4. Describe the services, capabilities, and advantages that you offer, for example: Current workload, Available staff, Resources, Capacity and flexibility to manage a boat & food concession, Cost control procedures, Track record in meeting budgets.

5. Submit resumes of any other professional staff that would perform the work, including relevant qualifications and degree of understanding the inner working of the management process. Provide detailed qualifications of the proposed concession manager(s), Clearly identify experience and qualifications relevant to the services described in this proposal.

6. Describe your experience in performing similar operating, management and/or maintenance activities, preferably for same-sized facility to a culturally diverse public with details of specific activities and concession management, building maintenance, and time frames in which the experience occurred.

7. Outline your approach to the concession. Describe how you will provide management of the concession. Describe how you will provide efficient and effective services while incorporating environmentally friendly principals in all aspects of the management. Indicate your understanding of typical critical concession elements, and what special approaches you will utilize to control these elements.

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 in a timely and professional manner. Issues may include customer complaints, budget and cash flow challenges.

10. Provide three (3) references for agreements which you performed the same work, must include names, titles, email addresses, and telephone numbers.
11. Employee Rate of Pay - Provide a complete list of all staff hourly rates by category, i.e., Concession Manager, Clerical, etc. Hourly rates shall be all-inclusive, and include base salary, fringe benefits, overhead, etc.

12. Concession fee and Maintenance fee. Propose fees paid to the Park District. You will be required to pay monthly, at a minimum, a concession fee of 5% and a concession maintenance fund fee of 2%. The concession maintenance fund fees will be held by the Park District for pre-approved major capital improvements and projects.

13. Provide a description of any pending legal issues you are facing.

C. Amendments

If Amendments to this RFP are issued, Respondents 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 Respondent'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 opbsm@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 ____________, 2023 by 4:00 p.m. Questions received after this deadline may be answered at the discretion of the District. Amendments will be posted on the District’s website (http://www.ebparks.org/about/bids) and emailed to all the companies that sent representatives to the mandatory pre-submittal site visit.

SECTION 4. SELECTION PROCESS

The District intends to execute 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

Organizations will submit their proposals to provide the District with services described in this RFP.

Step 2 – Interviews with Organizations Selected in Step 1

Interviews will be held with each selected respondent 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 Respondents

Based on the evaluation of the RFP responses and interview results, the District will rank the respondents and select the top-ranking organization 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 organization, the District will attempt to negotiate a contract with the second-ranked organization 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 following factors:

<table>
<thead>
<tr>
<th>SECTION</th>
<th>FACTORS</th>
<th>POINTS</th>
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<tbody>
<tr>
<td>3B-1</td>
<td>The details of financial resources and the stability of the organization.</td>
<td>15</td>
</tr>
<tr>
<td>3B-2, 3</td>
<td>Sufficient demonstration of the ability to develop revenue and expense budgets and timelines.</td>
<td>10</td>
</tr>
<tr>
<td>3B-4 &amp; 5</td>
<td>Demonstration of successful history and knowledge of management, operation, and marketing of this type of concession.</td>
<td>25</td>
</tr>
<tr>
<td>3B-6 &amp; 7</td>
<td>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.</td>
<td>15</td>
</tr>
<tr>
<td>3B-8</td>
<td>Demonstration of knowledge and experience successfully implementing sustainability and waste reduction plans in all aspects of the business, including, but not limited to, food service.</td>
<td>10</td>
</tr>
<tr>
<td>3B-9 &amp; 10</td>
<td>The details of willingness to work collaboratively and cooperatively with concession employees, District staff and other related agencies.</td>
<td>10</td>
</tr>
<tr>
<td>3B-11 &amp; 12</td>
<td>Appropriate details of staff capacity and current workload. Must comply with California Labor Code requirements including prevailing wages.</td>
<td>10</td>
</tr>
<tr>
<td>3B-13</td>
<td>Good Legal standing.</td>
<td>5</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
<td>100</td>
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</tbody>
</table>
SAMPLE DRAFT 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 a_________________________ (“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 facility (Concession) at Lake Anza in Tilden Regional Park, 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, District grants to Concessionaire for the purposes hereinafter specified that certain property (“Premises”), located in the concession in Tilden Regional Park (“Park”), at Lake Anza Road off of Central Park Drive, Berkeley, CA 94708, and as shown in Exhibit “A”.

2. TERM. This License is granted for a term of five (5) years beginning ____________ and terminating _______________. In District’s sole discretion, District may grant Concessionaire an extension of the term of the Agreement for one five-year option period. Concessionaire shall give notice to District sixty days prior to expiration of initial term to request entering into the 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 sixty (60) days prior written notice to such effect by Concessionaire to District.

b. By District upon sole determination by its Board of Directors that this concession is an incompatible use in the Park or constitutes a nuisance or public safety hazard to other park users. Upon such a determination, Concessionaire shall be given sixty (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, Concessionaire may be required to pay to District an additional sum of 10% of the overdue concession fee as a late charge. Acceptance of any late charge shall not constitute a waiver of Concessionaire's default with respect to the overdue amount or prevent District from exercising any of the other rights and remedies available to District.

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, 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 "Lake Anza Food 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. If Concessionaire uses its own labor for these projects, no payment for such labor will be paid by the District.

Concessionaire will prepare a maintenance fund plan each year with Park staff and the District's Business Services Manager and obtain the necessary 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 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 Business Services staff via email a summary of project costs, scans of original invoices, and copies of front and back of canceled checks to vendors for reimbursement to the Concessionaire.

Any unexpended major maintenance and/or replacement of funds at the end of the term shall remain the property of 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 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 at the location in such places as may be designated by 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 District, which consent shall not be withheld unreasonably.

ii. Concessionaire will attempt to keep prices below competitors’ pricing. District agrees to approve any price changes that are below immediate competitor prices.

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 “Tilden Regional Park, 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 “Tilden Regional Park, 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 boardsailing concession at the beach area. Refer to Exhibit A map for site location. The premises shall be used by Concessionaire mainly for the purposes of providing watersports such as boardsailing and kite sailing rentals, lessons, and retail sale of equipment to the general public.

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

   c. Concessionaire shall mark all rental and lesson equipment by some means to help differentiate rented equipment from privately owned equipment.

   d. 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 must maintain a recycling program or make arrangement with park staff to utilize the park’s recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.

c. Chemicals. No pesticides, herbicides or fungicides may be used 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. Operation of such vehicles shall be subject to regulations established by District from time to time.

f. Noise. Concessionaire shall not install, use, or permit to be operated or used on the Premises any public address equipment, television equipment, juke box, radios, loudspeaker, or other equipment producing noises that can be heard outside the Premises, except as approved in writing by District in advance of such operation and use. Systems to announce lessons schedules or to facilitate equipment rentals are permissible as long as noise level is restricted to that necessary for public convenience.

8. FACILITIES AND EQUIPMENT PROVIDED BY DISTRICT. Upon commencement of the Term, District will be responsible for removing normal garbage but not any excessive garbage such as large amounts of packing materials or old/broken equipment.

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 District prior to providing any other equipment not listed in this agreement that Concessionaire deems to be necessary.

Concessionaire shall be responsible for any utilities including any burglar alarm systems on its portion of the Premises.

Concessionaire shall some means of quickly getting to their customers in the water for rescue and equipment retrieval.

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.

**II. 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 “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.

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, and improvements, on the Premises 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 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 from the sole negligence or sole 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 from the sole negligence or the intentional and willful misconduct of District, its officers, directors, agents, or employees.

District shall have no responsibility to safeguard the equipment and property of 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, Concessionaire shall immediately notify District of such fact, and at District's option shall either retain legal counsel chosen by District to represent District in such action at Concessionaire's sole expense or reimburse District for District's litigation costs, expenses and attorney's fees in undertaking to represent itself.

In the event a claim is made against 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 Licenses and Concessionaire's members shall not discriminate because of sex, sexual orientation, race, religion, age, color, disability, or national origin, against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall the Concessionaire or Concessionaire's employees or members publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

In the performance of this contract, the Concessionaire will not discriminate against any
applicant because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

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

**28. FORCE MAJEUR.** 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 License by Concessionaire.

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

   b. The failure of Concessionaire to make any payment of license fees or any other payment required to be made by Concessionaire hereunder, upon ten days written notice from District of non-payment.

   c. The interest of Concessionaire in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation.

   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 License in which case Concessionaire shall immediately surrender possession of the Premises to District.

**b.** Take possession of the Premises as the agent and on account of Concessionaire, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this License and retain any license fees received and apply the same in payment on account of Concessionaire. The performance of any or all 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 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 District in case of a violation of the terms of this License by Concessionaire are not exclusive, but are in addition to the remedies provided by law or at equity, and any of which remedies District shall have the right to use at its option.

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

By ________________________________
Sabrina B. Landreth, General Manager

EAST BAY REGIONAL PARK DISTRICT

By ________________________________

APPROVED AS TO FORM:

________________________________
Jason Rosenberg, Assistant District Counsel
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 for repair, replacement and/or additions to interior equipment in the snack bar for items over $500 each. Concession equipment repairs such as freezers, ice machines, major electrical work, etc.
EXHIBIT C

DAYS AND HOURS OF OPERATION

All of Concessionaire’s operations permitted hereunder shall be conducted during the days and hours of operation specified herein (minimum required).

Food Concession: From 11:00 a.m. to 6:00 p.m. weekends from Saturday, May 13 through the second Sunday in June
Daily - Beginning the second Monday in June as long as the lake is open for swimming

Concessionaire may close the Premises because of adverse weather or other adverse operating conditions with the prior consent of District (via Park staff), which consent shall not be withheld unreasonably.
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 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 are 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.
<table>
<thead>
<tr>
<th>SYSTEM</th>
<th>GUIDELINES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wiring</td>
<td>1. Electrical code compliant, insulation not frayed or damaged, and no open splices.</td>
</tr>
<tr>
<td></td>
<td>2. Panel box has ample service, correctly sized fuses, or circuit breakers, and is properly grounded.</td>
</tr>
<tr>
<td></td>
<td>3. Panels are accessible, obstruction free, and properly labeled.</td>
</tr>
<tr>
<td>Fixtures, Lamps, and Appliances</td>
<td>1. Contain the proper size elements (wattage) and operate properly.</td>
</tr>
<tr>
<td></td>
<td>2. Fixtures are appropriate for use and secure.</td>
</tr>
<tr>
<td>Outlets</td>
<td>1. Not overloaded for rated carrying capacity.</td>
</tr>
<tr>
<td></td>
<td>2. Have cover plates.</td>
</tr>
<tr>
<td></td>
<td>3. Outlets in bathroom areas or areas directly adjacent to sinks should have ground-fault circuit protection.</td>
</tr>
<tr>
<td>Motors and Electrical Equipment</td>
<td>1. Clean and operating within designed temperature and pressure settings.</td>
</tr>
</tbody>
</table>

**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 $1,000,000 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. Additional Insured Status

The District, 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 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.