

REQUEST FOR PROPOSALS

FOR

FOLSOM LAKE MARINA

AT

Folsom Lake State Recreation Area



Opening Date – June 16, 2015

Closing Date - September 29, 2015

STATE OF CALIFORNIA – RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
CONCESSIONS AND RESERVATIONS DIVISION
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814

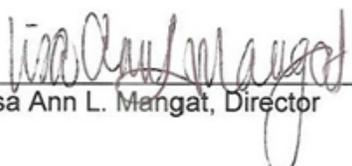


NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that the California Department of Parks and Recreation now is accepting proposals for the concession operation described below.

Concession Name:	Folsom Lake Marina
Park Unit:	Folsom Lake State Recreation Area
Proposal Closing Time & Date:	2:00 p.m. September 29, 2015
Proposal Submission Location:	Marketing and Business Development Division Concession Program 1416 9 th Street, Room 1442-7 Sacramento, California 95814
Concession Type:	Marina
Contract Term:	21 years, Optional 9 year extension
Annual Minimum Rent Bid:	Guaranteed Annual Rent of one hundred fifteen thousand dollars (\$115,000) or seven and one half percent (7.5%) of the first five hundred thousand dollars (\$500,000) of gross receipts, whichever is greater; plus ten percent (10%) of gross receipts greater than five hundred thousand dollars (\$500,000); plus two percent (2%) of fuel sales
Concessionaire Capital Outlay:	Minimum of two million five hundred thousand dollars (\$2,500,000)
Maintenance Fund to State:	Two percent (2%) of gross receipts
Proposal Bond (due at time of proposal submission):	Five thousand dollars (\$5,000)
Performance Bond (due at time of Contract execution):	One years' Minimum Annual Rent, as bid
Proposer's Minimum Years of Relevant Experience:	Five (5) years
Optional Pre-Proposal Meeting:	July 2, 2015 at 1:00 PM

For more information or to purchase a copy of the complete RFP, contact Teresa Montijo at (916) 653-7733 or teresa.montijo@parks.ca.gov.



 Lisa Ann L. Mangat, Director

TABLE OF CONTENTS

NOTICE OF REQUEST FOR PROPOSALS..... 1

1.1 GOAL & OBJECTIVES 1

Department Mission 1

Folsom Lake State Recreation Area Declaration of Purpose 1

Goal of this Request for Proposals (RFP) 1

Objectives of this RFP 1

1.2 GENERAL INFORMATION 2

Site Description 2

Historical Significance 2

Current Concession Operation 2

Future Site Plans 3

1.3 CONTRACT SUMMARY 3

SECTION 2 - THE RFP PROCESS 6

2.1 PROPOSAL PROCESS 6

Tentative Proposal Dates 6

Optional Pre-Proposal Meeting 6

RFP Content Questions 6

Proposal Bond 7

Proposal Submission 7

Proposal Format & Content 7

Confidentiality of Proposals 7

Withdrawal of Proposals 8

2.2 EVALUATION PROCESS 8

Verification of Proposal Information 8

State’s Right to Reject Proposals, Waive Defects and Requirements 8

Supplemental Information 9

Proposal Evaluation 9

Contract Award Board 9

Contract Award 9

Protest of Award 9

2.3 CONTRACT EXECUTION 10

Preparation of Contract 10

Performance Bond and Insurance 10

Failure to Sign/Deliver Contract 11

SECTION 3 - THE PROPOSAL 12

3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL 12

 I. PROPOSER INFORMATION 12

 II. PROPOSAL INFORMATION 16

 III. PROPOSAL SUMMARY 19

 IV. CERTIFICATION OF PROPOSER INFORMATION 19

 V. PRIVACY NOTICE 20

3.2 PROPOSAL EVALUATION CRITERIA 21

3.3 PROPOSAL EVALUATION SHEET 23

3.2 PROPOSAL EVALUATION CRITERIA 25

3.3 PROPOSAL EVALUATION SHEET 27

3.4 CONCESSION PROPOSAL, DPR 398 29

SAMPLE CONCESSION CONTRACT 31

SECTION 1 - PROJECT SUMMARY

1.1 GOAL & OBJECTIVES

Department Mission

The mission of California State Parks is to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation.

Folsom Lake State Recreation Area Declaration of Purpose

To preserve and make available to the people for their enjoyment and inspiration, the outstanding recreational opportunities provided by Folsom Lake and Lake Natoma on the American River system, including aquatic and upland recreational activities and facilities ranging from high-use areas in developed settings to low-use areas in primitive settings, and to provide for the protection, restoration and interpretation of natural and cultural resource values. These resource values include the oak woodlands and savanna, riparian woodlands, chaparral, vernal pool and other characteristic habitats of the foothills and plateaus surrounding these reservoirs and the rich number and diversity of pre-historic archaeological and historic gold mining and settlement sites and resources along the American River system. The reservoirs, river canyons and surrounding rolling foothills, bluffs and uplands all form an important open space and scenic resource for the region.

Goal of this Request for Proposals (RFP)

The goal of this RFP is to award a 21 year contract, with an optional 9 year extension, to a qualified entity to provide a high-quality marina operation, promoting safe and enjoyable recreational services and goods at reasonable prices for a variety of park users at Folsom Lake State Recreation Area.

Objectives of this RFP

The successful proposer must demonstrate the ability and clear commitment to implement a concession operation that will meet the following objectives:

- Develop, construct, equip, operate and maintain high-quality marina facilities to ensure full compliance with the Americans with Disabilities Act (ADA) and all State and Local Government accessibility regulations;
- Provide a variety of goods and services at reasonable prices;
- Maintain concession facilities and premises in good condition in accordance with DPR standards as set forth in the contract;
- Be responsive to the needs of the local community as well as the needs of statewide constituencies;
- Provide reasonable financial compensation to support the State and park operations; and
- Provide boat towing services.

1.2 GENERAL INFORMATION

Site Description

Folsom Lake State Recreation Area is located at the base of the Sierra foothills. The Marina is located at the south end of the lake and has an earth filled breakwater protecting it from the main part of the lake. The Snack Bar and Gas dock is located next to the Marina's main launching ramp. The main ramp has four lanes and two courtesy docks to assist boaters in the launching and retrieval of their boats. The Hobie Cove ramp is a low water ramp that goes into operation when the lake elevation drops to elevation 435'. It also is a four lane paved ramp with two courtesy docks. Picnic tables and barbeques are located throughout the Browns Ravine area.

The lake and recreation area offers opportunities for hiking, biking, running, camping, picnicking, horseback riding, swimming, water-skiing and boating. Fishing offers trout, catfish, big and small mouth bass or perch.

Folsom Lake State Recreation Area has 14 concession operations consisting of the marina, snack bars, mobile food service, equestrian stables and services, watercraft rentals, canoe and kayaking classes and tours, fitness classes, boat towing services, and boat repair services.

Historical Significance

Over 200 archaeological sites are located within the park, some dating back over 4,000 years. Long before gold lured settlers to the area, the land was treasured by the Nisenan, the southern linguistic group the Maidu tribe. The resourceful Nisenan learned how to make the local acorns palatable and became known for their woven baskets made from natural materials including milkweed, redbud, willow, grape vines and sedge grass.

In the 1950s, what remained of several small communities dating back to the Gold Rush were sacrificed for Folsom Dam and the lake it created. Mormon Island, at its peak, had 2,500 residents, most of whom were Mormons. During extreme drought conditions, stone foundations and the original Lake Natoma irrigation ditch/canal are visible. Mormon Island Wetlands Natural Preserve is a treasured part of the recreation area and home to beaver, muskrat and a large variety of birds and waterfowl.

Folsom Lake was created in 1955 by the construction of Folsom Dam, a concrete dam flanked by earth wing dams and dikes, with a total length of about nine miles. The shoreline extends about 15 miles up the forks of the American River. Lake level normally varies from 460 feet in early spring to less than 400 feet by summer. Downstream, behind Nimbus Dam, smaller Lake Natoma has about 500 surface acres of water. Built by the Bureau of Reclamation as part of California's Central Valley Project, Nimbus and Folsom Dams control the waters of the American River and provide flood protection, household water supply, power and irrigation.

Current Concession Operation

The gross sales and rent for the last five years as reported by the current concessionaire for the marina-related operations are as follows:

<u>Fiscal Year</u>	<u>Visitation</u>	<u>Gross Receipts*</u>	<u>Rent to State</u>
2013/14	Unavailable	\$ 717,754	\$ 79,497
2012/13	Unavailable	\$1,065,821	\$118,090
2011/12	1,491,025	\$ 888,826	\$ 98,816
2010/11	1,258,840	\$1,580,970	\$173,551
2009/10	1,232,656	\$ 903,637	\$173,080

NOTE: The preceding is for general information only and relates to the marina services, including retail sales and food services. The State does not guarantee its accuracy. It is recommended that proposers personally investigate the premises and park environs. *Gross receipts do not include gasoline sales.

Future Site Plans

Folsom Lake SRA will continue to be a premier place for aquatic recreation and for upland recreation benefiting from the proximity to water, offering visitors of all ages and abilities access to a wide spectrum of outdoor recreational pursuits. Opportunities and settings will range from the easy access and social atmosphere of developed areas to the solitude and wildness of primitive areas. Visitors will experience the open waters and expansive views of Folsom Lake, the quiet and tranquil waters of Lake Natoma, and the intimacy of the canyons along both forks of the American River. Natural resources will be restored and managed to preserve the native plants, animals and habitats of the unit including the characteristic oak woodlands and savanna of the rolling foothills and bluffs surrounding the two reservoirs. The extensive and diverse archaeological and historic cultural sites and resources will be documented and protected to preserve the artifacts and information they contain. Public education and interpretation of the natural and cultural resources of Folsom Lake SRA will occur in a variety of ways and venues giving visitors a natural and historic context of the park and build a stewardship ethic.

1.3 CONTRACT SUMMARY

This twenty-one year contract will provide for the development, operation, and maintenance of a marina at Brown's Ravine within Folsom Lake SRA. The marina operation shall include boat slip and mooring rentals, dry boat storage, sewer pump-out facility, floating fueling dock, camper and boater supply store, and fuel and oil sales. The intent of the contract is to provide the public with high-quality, reasonably priced goods and services in a manner and atmosphere that enhances the visitor's experience and the interpretive, natural, and cultural resources of the park.

The following is a summary of important contract provisions. **It is critical for proposers to understand all the terms and conditions of the Sample Concession Contract included herein.** If a proposer is awarded a contract, the successful proposer has 30 days to review and sign the awarded contract. The successful proposer shall be expected to accept the provisions of the Sample Concession Contract, as written. If necessary, minor clarifications, approved by staff counsel, the Department of General Services, and the Attorney General, may be made prior to contract execution.

At a minimum, the successful proposer will be required to:

1. Operate and maintain a marina concession offering high-quality boating and recreational goods and services, including but not limited to boat slip and mooring rentals, fuel and oil sales, sewage pump-out facility, boat and watercraft equipment (PWC) rentals, and retail space for groceries and boating supplies.
2. Invest a minimum of two million five hundred thousand dollars (\$2,500,000) in the development and rehabilitation of a marina concession complex that includes slips for a minimum of 674 and up to a maximum of 940 boats, and facilities for boating-related services and retail sales.

NOTE: All marina floating facilities including docks, floating fueling dock, courtesy dock, necessary connector floats and ramps, and marina cabling and anchoring systems shall be considered personal property and will vest with the concessionaire at the end of the contract.

4. Provide steel storage buildings for dry boat storage and up to 255 additional boat slips, including optional covered berths. Improve and/or replace the sewage pump-out system for vessels at the marina, improve vessel fueling station, repair and/or replace docks, slips, ramp and associated structures, marina lighting, signage, wildlife proof trash containers and security systems, and install and maintain regulatory and/or informational buoys within the concessionaire's area of control.
5. Pay as annual rent the amount presented in the proposal, which, at a minimum, shall be the greater of one hundred fifteen thousand dollars (\$115,000) or seven and one half percent (7.5%) of the first five hundred thousand dollars (\$500,000) of gross receipts, plus ten percent (10%) of gross receipts greater than five hundred thousand dollars (\$500,000), plus a minimum of two percent (2%) of fuel and oil sales; plus an additional two percent (2%) of gross receipts for maintenance of marina facilities.
6. Implement the Operation Plan and Facility Improvement Plan as described in Proposal Instructions that clearly demonstrates the proposer's plan to provide accessible services and facilities that comply with Federal, State, and Local accessibility guidelines. The plans will become exhibits of the final contract subject to State review and approval.
7. Maintain the premises, facilities, furnishings, and equipment in good condition in accordance with Department standards and contract provisions.
8. Provide a continuing Performance Bond in the amount of one year's minimum annual rent as bid, with CPI adjustments.
9. Pay for all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the contract.
10. Provide liability and property insurance as required by the contract.

11. Obtain all necessary licenses, permits, and approvals as set forth in the contract and abide by all applicable health, safety, and environmental codes and regulations.
12. Comply with the letter and spirit of current and subsequent guidelines or plans, including General Plan amendments or updates, management and interpretive plans, historic structure reports, and others.
13. Demonstrate compliance with labor laws as specified in the RFP.

The successful proposer will not:

1. Provide sales or services considered inappropriate, deemed objectionable, or denied by the State.
2. Charge prices in excess of those approved by the State.
3. Promote or participate in activities that are incompatible with the rules, regulations, guidelines, or the mission of the Department.
4. Sell alcoholic beverages.

Note: This contract summary is for general information only. Terms and conditions are set forth in detail in the Sample Concession Contract.

SECTION 2 - THE RFP PROCESS

2.1 PROPOSAL PROCESS

Tentative Proposal Dates

June 16, 2015	Opening Date - Publication of the RFP
July 2, 2015.....	Optional Pre-Proposal Meeting
July 10, 2015.....	Questions - Last date for proposers to submit written questions
July 17, 2015.....	Answers - DPR written responses to questions
September 29, 2015.....	Closing Date – Deadline for proposal submission
October 2015	Investigation and evaluation of Proposals
November 2015.....	Notification of “Intent to Award Contract”
December 2015.....	Award, preparation, and execution of contract
February 1, 2016.....	21 year contract begins

Note: This schedule does not consider unforeseen factors that could impact the timing of the project. It is the intent of the State to keep proposers apprised of changes in the schedule as they occur. Should the award of the contract be protested, additional time will be required to resolve the matter.

Optional Pre-Proposal Meeting

It is strongly recommended that the proposer or designated representative attend the optional pre-proposal meeting at 1:00 p.m. on July 2, 2015 at the Granite Bay Activity Center at the end of Douglas Blvd., Granite Bay, California. The meeting provides an equitable forum for all proposers to:

- Meet local Department staff;
- Learn about the RFP process, including procedures for questions and answers, proposal submission, and contract award;
- Inspect the concession site and receive information on the park and facility history and Department plans for the park and the concession;
- Review the RFP document.

RFP Content Questions

Questions regarding this RFP must be submitted in writing and received no later than 5 p.m. on July 10, 2015. To ensure fair competition, all proposers will receive the same information and materials; no telephone or personal inquiries about this RFP will be answered. Questions will be submitted in writing to the Department by email or fax at the address and phone numbers listed below. A written compilation of all questions and answers, and any RFP addenda, will be posted at www.parks.ca.gov/concessions and sent by first-class mail to all identified potential proposers. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the proposals.

Proposers should send their questions addressed to:

California Department of Parks and Recreation
Marketing and Business Development Division
Concessions Program, Room 1442-7
P.O. Box 942896
Sacramento, California 94296-0001
Attn: Teresa Montijo
Fax: (916) 657-1856
teresa.montijo@parks.ca.gov

Proposal Bond

Proposals must be accompanied by a Proposal Bond or cashier's check payable to the State of California, Department of Parks and Recreation, in the amount of five thousand dollars (\$5,000). By submitting a proposal bond the proposer agrees that the bond may be cashed and retained by the State. If a cashier's check is submitted it will be cashed by the State. In the event the proposer fails to execute the contract, the bond or cashier's check will be retained by the State. Further, by submitting a proposal, proposer agrees that the State will suffer costs and damages not contemplated otherwise should proposer be awarded the contract but fail to execute and proceed with the contract, the exact amount of which will be difficult to ascertain. Accordingly, it is agreed that such retained sums shall not be deemed a penalty, but, in lieu of actual damages, shall represent a fair and reasonable estimate of damages to the State for failure of the proposer to execute and proceed with the contract upon notification of award by the State. Bonds will be returned to all proposers once a contract is signed by the best responsible bidder.

Proposal Submission

The proposal, including the Proposal Bond, must be received by **2:00 PM on September 29, 2015** at:

California State Parks
Marketing and Business Development Division
Concessions Program
1416 9th Street, Room 1442-7
Sacramento, California 95814

Proposal Format & Content

The proposal package must be sealed and clearly marked on the outside with "Proposal for Folsom Lake Marina at Folsom Lake State Recreation Area". Please submit an original plus **seven (7)** copies of the proposal in 8.5" x 11" three-ring binders. All material should be presented in an 8.5" x 11" portrait format with tabs for each section. Larger formatted graphic exhibits are acceptable if folded to fit within the 8.5" x 11" three-ring binder.

Confidentiality of Proposals

All proposals submitted to an RFP become the property of the State and are subject to the requirements of the California Public Records Act (California Government Code Section 6250 et. seq.) The proposer must clearly identify in writing, within the body of the proposal, all copyrighted material, trade secrets, or other proprietary information the proposer claims are exempt from disclosure under the Public Records Act, this includes

denoting where the confidential material begins, ends, and the specific reason(s) for the exemption. Proposers claiming exemption must include the following statement in their proposal:

The proposer agrees to indemnify and hold harmless the State, its officers, employees, and agents from any claims, liability or damages against the State, and to defend any action brought against the State for proposer's refusal to disclose such material, trade secrets, or other proprietary information to any party. Proposer acknowledges and understands that State may release information in the proposal claimed by proposer to be exempt from disclosure under the Public Records Act, and that proposer waives any claims against the State for this release.

Failure of a proposer to include this statement and/or identify in writing the claimed exempt material, as set forth above, shall be deemed a waiver of any exemption from disclosure under the Public Records Act. In the event of a protest to State Parks' intent to award a concession contract, State Parks may, in its sole discretion, release any or all of the contents of the proposals to the proposers for purposes of hearing the protest. Otherwise, proposer requests to review proposal submissions will not be allowed until after a fully executed contract is signed and approved by the State.

Withdrawal of Proposals

Proposals may be withdrawn at any time prior to the proposal closing date and time provided that a written request executed by the proposer or his/her duly authorized representative for the withdrawal of such proposal is filed with the Department. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal prior to the proposal closing date and time. However, once the proposal closing date and time has passed, proposals shall be irrevocable.

2.2 EVALUATION PROCESS

Verification of Proposal Information

The State may obtain credit reports and verify tax form information to further establish the qualifications of any proposer. All proposers may be subject to a personal interview and inspection of his/her business premises prior to award. Proposers should notify bank and business references in writing that a representative from the state will be contacting them concerning the financial and credit information furnished to the Department with the proposal.

State's Right to Reject Proposals, Waive Defects and Requirements

The State reserves the right to accept or reject any or all proposals, and waive any or all immaterial defects, irregularities, or requirements in the RFP for the benefit of the State, so long as such waiver does not give any proposer a material advantage over other proposers. A proposer shall not be relieved of his/her proposal nor shall any change be made in his/her proposal due to a proposer error.

Supplemental Information

At its sole discretion, the State reserves the right, but does not have the obligation, to seek supplementary information or clarification from any proposer at any time between the dates of proposal submission/acceptance and the contract award. The State may obtain credit reports and/or make background inquiries to further establish the qualifications of any proposer. Proposers may be required to make a presentation to the Concession Contract Award Board.

Proposal Evaluation

All proposals received shall be evaluated for form and content in accordance with the requirements of this RFP. Upon receipt of more than one proposal for this concession contract, a Contract Award Board will evaluate and score each eligible proposal pursuant to the point system and selection criteria as described in the Proposal Instructions and Proposal Evaluation Form. **Proposals not containing all of the items in the Concession Proposal form (DPR 398) may be rejected.**

Contract Award Board

Upon receipt of multiple proposals, Concession Contract Award Boards are appointed by the Director of the Department, or his or her representative, and convened to review, evaluate, and rate each proposal received and make a recommendation to the Director regarding the selection of the "Best Responsible Proposer". The Award Board for this contract may include park staff with related expertise, such as Field Division Chief, Deputy Director, Park Design and Construction staff, or District Superintendent, and representatives from other public agencies or the private sector.

Contract Award

If an award is made, the award for a concession contract will be to the "Best Responsible Proposer" in accordance with Section 5080.23 of the Public Resources Code. The "Best Responsible Proposer" will be the bidder whose proposal passes each of the required elements and receives the highest total score as determined by the Contract Award Board and approved by the Director. In the event of only one proposal for this contract, the State may award contract upon determination the one proposal passes each of the required RFP elements. Execution of the awarded concession contract is subject to approval by controlling agencies of the State, which include the Department of General Services and the Attorney General, and will not be binding on the State or the successful proposer until such approval is obtained. In the event the State does not identify a "Best Responsible Proposer" through the bid process, the State may negotiate a concession contract under the provisions of Public Resources Code Section 5080.16.

Protest of Award

Based on California Code of Regulations, Title 14, Division 3, Chapter 3, Section 4400 and Department of Parks and Recreation policy, within ten (10) days after the Department has issued a notice of intent to award a concession contract for a term in excess of two (2) years following a request for proposals or invitation to bid, any proposer/bidder may file a written statement of protest against awarding of the contract with the Director of the Department. The statement shall be signed by the protestor, shall specify the grounds for the protest and may include a demand for a hearing.

Failure to file a verified petition within the ten-day period shall constitute a waiver of the right to protest. Protests must be sent to:

Director
California Department of Parks and Recreation
1416 Ninth Street, 14th Floor
P. O. Box 942896
Sacramento, California 94296-0001
Fax: 916-657-3903

A copy of the protest must be served on the Attorney General within the ten-day period by the proposer/bidder. Serve the Attorney General at:

State of California
Department of Justice
Office of the Attorney General
Land Law Section
1300 I Street
Sacramento, California 95814
Facsimile: 916-322-5609

If a protest is timely served and a hearing is demanded, or if the Director on his or her own motion orders a hearing, proceedings shall be conducted according to the Administrative Procedure Act, and the protest statement shall be treated as a Statement of Issues (Govt. Code 110504). Issues not raised in the protest statement are deemed waived. The filing of a protest does not prevent the Department from awarding the contract.

Any recommendation or decision of the hearing officer shall be submitted to the Director for approval, adoption, modification, disapproval, or other interlocutory or final action. If a hearing is not so demanded or ordered, the action of the Director shall be final.

2.3 CONTRACT EXECUTION

Preparation of Contract

Subsequent to the award of a contract, if an award is made, the State will prepare a final contract for execution. The contract will contain "exhibits" developed from the selected proposal including the proposal's Operation, Facility Improvement, and Interpretation Plans, as required. Minor changes or modifications to the contract, proposal plans, and contract exhibits may be made prior to execution based on agreement between the State and concessionaire. However, no material change to the contract or its exhibits as presented in the RFP and in the selected proposal may be made.

Performance Bond and Insurance

The successful proposer will be required to submit a Performance Bond and evidence of insurance required under the contract. Failure to submit the bond and/or insurance verification within the time limit presented may be treated as a refusal to execute, if the State so elects. The State may take the Proposer Bond and select the next Best Responsible Proposal.

Failure to Sign/Deliver Contract

A failure of the successful proposer to sign and deliver the contract within thirty (30) days of receipt may be treated as a refusal to execute, if the State so elects. The State may retain the Proposer Bond and select the next Best Responsible Proposal.

SECTION 3 - THE PROPOSAL

3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL

A completed Concession Proposal form (also known as DPR 398) and a Proposal Bond will constitute the proposal. Proposer must complete all sections, respond to all questions, and fill in all blanks of the form. Inapplicable questions or blanks should be marked "N/A" or "Not Applicable". Failure to properly complete the form may disqualify the proposal. If the proposal receives a "disqualify" under Level I or Level II requirements listed within RFP Section 3.3 Proposal Evaluation Sheet, the proposal will be disqualified from further consideration.

The proposal must be clear and unambiguous. It should clearly commit the proposer to enter into a contract with the State to provide the services and other concession improvements as required by this RFP and offered in the proposal. Financial commitments must be made and conditional only on contract execution.

The submission of a proposal shall be deemed evidence that the proposer is aware of the responsibilities of being a concessionaire and have carefully examined State laws relating to California State Park concessions; possessory interest tax as related to concessions; the site(s) selected for said concession; obligations and responsibilities related to local control agencies and permitting requirements; and the proposal instructions, proposal form, and the sample concession contract included herein.

I. PROPOSER INFORMATION

A. Proposer Identification

Incumbent Factor

The incumbent concessionaire is defined as the individual, partnership, limited liability company or corporation that currently operates the concession advertised in this RFP. Such concession operation must be at the same site, comprise the same type of operation(s), and provide substantially the same types of products and services as those specified in the RFP. Incumbent proposals are awarded points based on periodic Performance Evaluations (DPR 531) performed by the State. Poor Performance Evaluations may result in negative point scores.

Small Business Status

Preference will be granted to proposers properly certified as Small Businesses as defined in Title 2, Section 1896, et seq., California Code of Regulations. To claim this preference, proposals must include a copy of the Small Business Certification and Office of Small Business (OSB) identification number. To ensure a certifiable document, applications should be submitted to OSB well before the proposal closing day and properly identify a business type consistent with this RFP. It is the proposer's responsibility to contact OSB to verify the completeness of the application. Incomplete documents are not certifiable. Proposers may obtain an application for Small Business Certification from:

Office of Small Business and DVBE Certification
707 Third Street, 1st Floor, Room 400
West Sacramento, CA 95605
(800) 559-5529 or (916) 375-4940
FAX (916) 374-4950

Certification will verify that the business is independently owned and operated; not dominant in its field of operation; has its principal office located in California; has officers domiciled in California; and together with affiliates is either a service, construction, or non-manufacturer with 100 or fewer employees and average annual gross receipts of fourteen million dollars (\$14,000,000) or less over the previous three (3) years, or a manufacturer with 100 or fewer employees.

B. Business Information

Select the type of business that describes the proposing entity (Sole Proprietorship, Partnership, Joint Venture, Limited Liability Company or Corporation) and provide the requested information. The type of business must be established prior to submitting a proposal.

- Corporations shall include a copy of the Articles of Incorporation with the California Secretary of State seal, and a board resolution to authorize the concession proposal and identify the individual authorized to act on behalf of the corporation.
- Limited Liability Companies (LLC) shall include a copy of their Articles of Organization with the California Secretary of State seal (LLC-1 or LLC-5) and the Statement of Information (LLC-12) to identify the managing member or members of the organization.
- Partnerships shall include a copy of the Partnership Agreement which clearly describes the role of each partner.

C. Individual Information

This section must be completed by each individual, partner, and member of joint ventures; CEO, officers, and holders of 25% or more of the company's shares for corporations; concession manager; and the managing member(s) of the organization identified on the LLC-12 for a limited liability company. The aforementioned identified individual(s) must also complete and sign the Authorization to Release Information in Section IV.

Experience

For the purpose of this RFP, proposers must have a minimum of five (5) years' experience owning, managing or operating a business of similar type, size and scope as the concession operation set forth and described in this RFP. Proposals with less than the minimum experience will be disqualified.

Provide a narrative describing in detail the duration, extent, and quality of the proposer's education and business experience with special emphasis on the experience and qualifications related to the subject concession. Be specific with respect to the type and dates of experience, the proposer's role in the management and specific duties, type and size of operation, quality of operation, public agency involvement, contractual

relationships, and other factors that demonstrate an ability to successfully operate the proposed concession. Attach additional information as needed.

D. Statement of Financial Capability

Proposers must present evidence satisfactory to the State demonstrating their ability to finance, construct, operate, and maintain the concession facilities as proposed. For the purposes of this RFP, proposers must have the ability to access a minimum of two million five hundred thousand dollars (\$2,500,000). The proposer's statement of financial capability must include the source of funding and detailed information including:

Source of funding and cost of concession development: Identify and describe the specific source of funding that the business will use to undertake the project as proposed. If the development will be funded by proposer cash or company resources (i.e., parent company, third party, LLC partners, etc.), proposal must include documentation, such as a recent bank statement, balance sheet, income statement, or other supporting documents to demonstrate these funds are available, and a signed statement that these funds are unconditionally committed to this concession project. If funds are to be borrowed to finance any portion of the total investment, proposer must provide loan commitment documentation such as a letter-of-intent from the individual, bank, or other lending entity indicating the minimum amount to be loaned and any applicable percentage rate. The loan commitment may contain the qualification that the loan will be consummated only upon award of an agreement with the State, otherwise the commitment must be irrevocable and unconditional.

Business Financial Statement: The Business Financial Statement is intended to describe the condition of the proposer's current business, including assets, liabilities, and net worth. A complete and accurate Business Financial Statement will reflect assets equal to liabilities plus net worth. Round figures to the nearest dollar. If the business is a partnership or joint venture, each general partner or joint venturer must individually submit a Business Financial Statement. Proposers may provide copies of forms filed with the Internal Revenue Service, Franchise Tax Board or statements prepared by a Certified Public Accountant in support of information contained in this statement.

E. Credit Worthiness

Proposers must present evidence of credit worthiness. At a minimum, this shall include a complete credit report from a nationally recognized credit bureau, such as Equifax or Experian, issued within 60 days of the proposal due date and include the FICO score for sole proprietors, each partner within a partnership, and managing member of an LLC. Corporations shall provide the report from a recognized agency such as Dun and Bradstreet (D&B). Any derogatory information listed on said reports must be explained. Below average FICO scores, outstanding debts, delinquent payment history on current concession contracts, and any other negative credit history may disqualify a proposal.

F. References

Financial, client, and vendor references are used to confirm information provided by proposers and to evaluate the proposer's quality of experience and past performance. Proposers should submit one reference for each reference type required below.

However, to adequately substantiate the claims made in the proposal, proposers are encouraged to provide three references that are familiar with the individual and business. Proposers should notify their references in writing that a representative from the State will be contacting them.

For the purposes of this RFP, proposers should provide the references from the following sources:

- Financial References: Include the bank or savings and loan institution.
- Client or Business References: Name clients or other persons that most accurately reflect the business performance and ability to fulfill contract obligations with other entities for the provision of goods and services.
- Vendor References: Proposers should provide vendor references if they are a pre-existing business currently utilizing vendors.

II. PROPOSAL INFORMATION

Provide an Operation Plan and Facility Improvement Plan that addresses each of the checked elements in the Concession Proposal form (DPR 398). Each element of the Concession Proposal is described below. Proposers may submit additional information to describe and enhance their proposal.

As a condition of the contract award, the successful proposer may be required to revise or further develop these plans to the satisfaction of the State and prior to the execution of the contract. If and when it is accepted, the final plans will be incorporated as exhibits to the contract and become an obligation of the concessionaire.

A. Operation Plan

The Operation Plan should address the following elements and must demonstrate an understanding of and commitment to achieving the objectives of this RFP. The proposal must also adhere to the operational requirements as described in the Sample Concession Contract.

Vision/Mission Statement

Provide a Vision/Mission Statement that captures both State's mission and proposer's goals and objectives for the concession business.

Organizational Structure

Provide an organization chart and staffing plan that can guide the operations and ongoing management of the concession business. The plan should identify the proposed concession manager; position titles and salaries for all job classifications with a summary of the required job skills, qualifications and duties; and the number of existing or proposed employees in each job classification to support the operation.

Transition/Business Start-Up

Provide a plan and timeline for starting concession operation and providing a seamless transition in customer service. If applicable, this plan shall consider provisions for the retention of employees of an existing concessionaire who may become displaced during the transition to a new concession operator.

Maintenance and Housekeeping

Provide a comprehensive plan to maintain the concession facilities in a first-class condition throughout the term of the contract. The maintenance plan must describe staffing noting required skills or qualifications, any subcontracted services housekeeping and maintenance schedules, and annual budget allocation.

Customer Service

Describe a clear commitment to successfully implement an effective customer service program. The plan should include, but is not limited to, previously established and effective customer service program models, adequate employee staffing and management oversight, hours of operation equal to or greater than required by this RFP, and must describe a customer satisfaction feedback survey program.

Employee Staffing and Training

Describe personnel policies and training program for all employees including, but not limited to, hiring practices; probationary period; health, safety, and grievance policies and procedures; performance monitoring; uniform requirements; business orientation; job training; and park orientation training. Such programs must provide sufficient staffing with the skills and knowledge to ensure the provision of high-quality services.

Marketing and Advertising

Describe proposed marketing and advertising methods; identify media sources and sample advertising materials, schedules, brochures, signage; and specify an annual marketing budget allocation. Favorable consideration will be given to proposals that identify focused efforts to increase visitors from California's multi-ethnic populations.

Community Involvement

Describe commitment to create added value and benefits to the surrounding community and park visitors. This may include special events, educational programs, and community service activities. In addition, proposer should identify any special skills, knowledge, and resources needed and available to implement the plan.

Products, Merchandise, and Services

Provide a detailed description of the proposed products and services to be provided by the concession operation. The products and services offered should meet or exceed the needs of the park users, and be compatible with and complementary to the mission of the park.

Prices and Pricing Policies

Provide a price schedule for a representative sample of the proposed products and services. The policies should include an explanation of the process to be used to establish prices for products and services. Such policies should provide park visitors with quality products at reasonable prices considering the competition of comparable markets for similar products, services and the cost of doing business.

Conservation and Recycling

Outline the proposer's approach to solid waste management, including reduction, re-use, and recycling, use of post-consumer recycled products, water and energy conservation, pest management, hazardous materials handling, air quality, and other applicable facets of resource conservation and environmental protection that are applicable to the concession operation. The plan should clearly commit proposer to a program that will minimize negative impacts on the environment and encourage park visitors to do the same.

Accessibility

Describe commitment to ensure that visitors with disabilities will have access to all of the events and services provided through the concession operation in accordance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250. Additional accessibility resources are available at www.ada.gov; http://www.parks.ca.gov/?page_id=21944 (State Parks Accessibility Program; and http://www.parks.ca.gov/?page_id=22651 (All Visitors Welcome handbook).

B. Facility Improvement Plan

The Facility Improvement Plan should address the following elements and meet or exceed the objectives of this RFP to provide high-quality and accessible facilities. Greater consideration will be given to those proposals that clearly demonstrate an ability to implement the plan. In addition, the successful proposer must adhere to the facility requirements as described in the Sample Contract.

Furnishings and Equipment

Describe the intended physical facilities of the concession including furnishings, equipment, décor, and layout. Furnishings and equipment must include regulatory and/or informational buoys, and wildlife proof trash containers within the concessionaire's area of control. Implementation of proposer's plan should provide first-class concession facilities that are consistent with park values and will enhance visitor services at the park.

Facility Development

Describe proposed facility improvements to meet or exceed the minimum requirements of this RFP. Facility improvements described in this RFP involve the rehabilitation of marina concession complex that includes slips for a minimum of 674 and up to a maximum of 940 boats, and facilities for boating-related services and retail sales. At a minimum, this includes:

- Repair and/or replace docks, slips, ramp and associated structures, marina lighting, signage, and security systems.
- Provide steel storage buildings for dry boat storage and up to 255 additional boat slips, including optional covered berths.
- All repair and/or replacement of docks and/or other floating facilities shall be with encapsulated materials only.
- Improve and/or replace the sewage pump-out system for vessels and vessel fueling station at the marina.

Proposals should identify the proposed contractors to be used and descriptions and/or schematic drawings of the work to be accomplished and items to be installed. Proposer may submit lists, drawings, pictures, and diagrams to illustrate and clarify the plans.

Accessibility

Describe the proposer's plan to remove any identified physical barriers to accessibility. Include a description of the barriers identified, the means used to identify barriers and a timeline for the removal of said barriers.

Implementation

Provide a timeline for completion of any capital improvements and installation of said décor and equipment prior to the commencement of operations and a description of each step in the process.

Cost Estimates

Provide a cost breakdown for the Furnishings Plan and/or Facility Development Plan.

As a condition of the contract award, the successful proposer may be required to revise or further develop the Facility Improvement Plan to the satisfaction of the State and prior to the execution of the contract. After the State's review and approval, the Facility Improvement Plan from the successful proposal shall be included as an exhibit to the contract

C. Rental Offer

The concessionaire will be required to pay as annual rent a guaranteed amount (Rental Guarantee) or a Percentage of Gross Sales, whichever is greater. Proposers shall bid both the Rental Guarantee and the Percentage of Gross Sales as specified in the Concession Proposal form (DPR 398). For the purposes of this RFP, the Rental Guarantee must be at least GuaranteedRent and the Percentage of Gross Sales must be at least PercentageRent1. Any offer below the minimum rent requirements will result in proposal disqualification.

D. Concession Feasibility

Complete the Concession Development Cost Estimate, Proposed Means to Finance Concession, and the Financial Proforma with projections for the duration of the proposed contract term to demonstrate proposer's ability to successfully initiate and operate the proposed concession in a financially responsible manner. Fiscal documentation that will be considered to receive a pass include the financial proforma; the business financial statement; business, vendor, bank, and/or financial references; credit worthiness; and similar documents necessary to support the proposal commitments. The financial projections should consider the commitments made within the Operation, Facility Improvement, and Interpretive Plans (as applicable). Upon receiving a "pass" under Level II, concession feasibility will be further evaluated under Level III in relation to the Operation, Facility Improvement, and Interpretive Plan commitments.

III. PROPOSAL SUMMARY

The Proposal Summary should summarize relevant experience, knowledge, and expertise, and the Operation, Facility Improvement, and Interpretive Plans (as applicable) in 250 words or less.

IV. CERTIFICATION OF PROPOSER INFORMATION

A. Labor Law Compliance Certification

A request may be made to the National Labor Relations Board for information regarding Administrative Hearing decisions against each proposer. Proposer must have no more than one final, unappealable finding of contempt of court by a federal court issued for violation of the National Labor Relations Act within the two-year period immediately preceding the closing date of this RFP or the proposal will be disqualified.

B. Proposer Certification

A completed certification must be included with the proposal or it may be disqualified.

C. Authorization to Release Information

A signed authorization for each individual, partner, member of joint ventures, officer of corporations, Concession Manager, and holders of 25% or more of the company's shares (as applicable) must be included or the proposal may be disqualified.

V. PRIVACY NOTICE

This section provides notice to proposers. No action by proposers is necessary.

3.2 PROPOSAL EVALUATION CRITERIA

Incumbent Preference

5 Points

Incumbent proposals are awarded points based on annual Performance Evaluations (See DPR 531 in the Sample Concession Contract) performed by the State as follows. The absence of Performance Evaluations defaults to a rating of “Excellent.”

Overall Rating of Evaluation	Number of Years Rating Was Received	Points Awarded
“Excellent”	3 out of last 3 years	5 points
“Excellent” with no “needs improvement” or “unsatisfactory”	2 out of last 3 years	3 points
“Excellent” with no “needs improvement” or “unsatisfactory”	1 out of last 3 years	2 points
Satisfactory	3 out of last 3 years	1 point
“needs improvement” or “unsatisfactory”	1 out of last 3 years	- 1 point
“needs improvement” or “unsatisfactory”	2 out of last 3 years	- 3 points
“needs improvement” or “unsatisfactory”	3 out of last 3 years	- 5 points

Small Business Preference

5 Points

Five points will be awarded to those proposers who have a complete and certifiable application on file with the Office of Small Business Certification.

Experience

15 Points

For the purposes of this RFP, proposers must have a minimum of five (5) years’ experience owning, managing, or operating a business of similar size, type, and scope as the concession operations set forth and envisioned by this RFP. The proposer will be rated according to the years of relevant experience as verified by references and the quality of experience as it relates to the business described in this RFP. In addition, points are awarded for experience contracting with public agencies.

Operation Plan

25 Points

A maximum of twenty-five points will be awarded based upon the degree to which the proposal satisfactorily addresses each of the elements described in Section II Proposal Information and identified in the DPR 398, Concession Proposal.

Facility Improvement Plan

25 Points

A maximum of twenty-five points will be awarded based upon the degree to which the proposal satisfactorily addresses each of the elements described in Section II Proposal Information and identified in the DPR 398, Concession Proposal.

Rental Offer

25 Points

For the purpose of assigning points in the Proposal Evaluation, the highest acceptable rental offer* for each category of rent required (Rental Guarantee and Percentages of Gross Sales) will be assigned the maximum points available for that category. Each lower rental offer will be assigned points in relation to the highest rental offer as follows:

Rental Guarantee (Minimum bid is \$115,000)

$$\frac{(\text{Bid Amount}) \text{ minus } (\$115,000)}{(\text{Highest Bid Amount}) \text{ minus } (\text{Guaranteed Rent})} \times 10 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales <\$500,000 (Minimum bid is 7.5%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 7 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales >\$500,000 (Minimum bid is 10%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 6 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Fuel and Oil Sales (Minimum bid is 2%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 2 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

*Note: the highest bids received may not be considered acceptable. Proposers may be required to prove to the satisfaction of the State their ability to operate a successful business under their rental offer. Failure to prove this ability will be cause to disqualify the proposal. In this case, the second highest acceptable bid would be used to calculate points awarded.

3.3 PROPOSAL EVALUATION SHEET

LEVEL I COMPLIANCE WITH RFP REQUIREMENTS

PROPOSER QUESTIONNAIRE

- | | | |
|------|---|-------------------------|
| I. | PROPOSER INFORMATION | |
| A. | Proposer Identification | _____ (pass/disqualify) |
| B. | Business Information | _____ (pass/disqualify) |
| C. | Individual Information – Minimum Experience | _____ (pass/disqualify) |
| D. | Statement of Financial Capability | _____ (pass/disqualify) |
| E. | Credit Worthiness | _____ (pass/disqualify) |
| F. | Financial/Business/Vendor References | _____ (pass/disqualify) |
| II. | PROPOSAL INFORMATION | |
| A. | Operation Plan | _____ (pass/disqualify) |
| B. | Facility Improvement Plan | _____ (pass/disqualify) |
| C. | Rental Offer | _____ (pass/disqualify) |
| D. | Concession Feasibility | _____ (pass/disqualify) |
| III. | PROPOSAL SUMMARY | _____ (pass/disqualify) |
| IV. | CERTIFICATION AND AUTHORIZATION | |
| A. | Labor Law Compliance Certification | _____ (pass/disqualify) |
| B. | Proposer Certification | _____ (pass/disqualify) |
| C. | Authorization to Release Information | _____ (pass/disqualify) |
| | PROPOSER BOND | _____ (pass/disqualify) |

Proposer must pass LEVEL I to qualify for further consideration.

LEVEL II RENT PROPOSED/CREDIT WORTHINESS & ABILITY TO FINANCE

- A. Rent Proposed Met/Exceeded Minimum Requirement _____ (pass/disqualified)
- B. Ability to Finance _____ (pass/disqualified)
- C. Credit Worthiness _____ (pass/disqualified)

Proposer must pass LEVEL II to qualify for further consideration.

LEVEL III PROPOSAL EVALUATION

- A. Proposer Information
 - Incumbent Preference _____ / 5 Points
 - Small Business Preference _____ / 5 Points
 - Experience/Quality of Experience _____ / 15 Points
- B. Proposal Information
 - Operation Plan _____ / 25 Points
 - Facility Improvement Plan _____ / 25 Points
 - Rental Offer _____ / 25 Points
 - Concession Feasibility _____ / Pass/Fail *
- GRAND TOTAL** _____ / 100 **Points**

Comments:

Board Member: _____ Date: _____

* A 'fail' rating in this category disqualifies the proposal.

3.2 PROPOSAL EVALUATION CRITERIA

Incumbent Preference

5 Points

Incumbent proposals are awarded points based on annual Performance Evaluations (See DPR 531 in the Sample Concession Contract) performed by the State as follows. The absence of Performance Evaluations defaults to a rating of “Excellent.”

Overall Rating of Evaluation	Number of Years Rating Was Received	Points Awarded
“Excellent”	3 out of last 3 years	5 points
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Satisfactory	3 out of last 3 years	1 point
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5 Points

Five points will be awarded to those proposers who have a complete and certifiable application on file with the Office of Small Business Certification.

Experience

15 Points

For the purposes of this RFP, proposers must have a minimum of five (5) years’ experience owning, managing, or operating a business of similar size, type, and scope as the concession operations set forth and envisioned by this RFP. The proposer will be rated according to the years of relevant experience as verified by references and the quality of experience as it relates to the business described in this RFP. In addition, points are awarded for experience contracting with public agencies.

Operation Plan

25 Points

A maximum of (25) points will be awarded based upon the degree to which the proposal addresses each of the elements described in Section II Proposal Information and identified in the DPR 398, Concession Proposal.

Facility Improvement Plan

25 Points

A maximum of (25) points will be awarded based upon the degree to which the proposal addresses each of the elements described in Section II Proposal Information and identified in the DPR 398, Concession Proposal.

Rental Offer**25 Points**

For the purpose of assigning points in the Proposal Evaluation, the highest acceptable rental offer* for each category of rent required (Rental Guarantee and Percentages of Gross Sales) will be assigned the maximum points available for that category. Each lower rental offer will be assigned points in relation to the highest rental offer as follows:

Rental Guarantee (Minimum bid is \$115,000)

$$\frac{(\text{Bid Amount}) \text{ minus } (\$115,000)}{(\text{Highest Bid Amount}) \text{ minus } (\text{Guaranteed Rent})} \times 10 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales <\$500,000 (Minimum bid is 7.5%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 6 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales >\$500,000 (Minimum bid is 10%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 6 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Fuel and Oil Sales (Minimum bid is 2.0%)

$$\frac{(\text{Bid Amount})}{(\text{Highest Bid Amount})} \times 3 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

*Note: the highest bids received may not be considered acceptable. Proposers may be required to prove to the satisfaction of the State their ability to operate a successful business under their rental offer. Failure to prove this ability will be cause to disqualify the proposal. In this case, the second highest acceptable bid would be used to calculate points awarded.

3.3 PROPOSAL EVALUATION SHEET

LEVEL I COMPLIANCE WITH RFP REQUIREMENTS

PROPOSER QUESTIONNAIRE

- | | | |
|------|---|-------------------------|
| I. | PROPOSER INFORMATION | |
| A. | Proposer Identification | _____ (pass/disqualify) |
| B. | Business Information | _____ (pass/disqualify) |
| C. | Individual Information – Minimum Experience | _____ (pass/disqualify) |
| D. | Statement of Financial Capability | _____ (pass/disqualify) |
| E. | Credit Worthiness | _____ (pass/disqualify) |
| F. | Financial/Business/Vendor References | _____ (pass/disqualify) |
| II. | PROPOSAL INFORMATION | |
| A. | Operation Plan | _____ (pass/disqualify) |
| B. | Facility Improvement Plan | _____ (pass/disqualify) |
| C. | Rental Offer | _____ (pass/disqualify) |
| D. | Concession Feasibility | _____ (pass/disqualify) |
| III. | PROPOSAL SUMMARY | _____ (pass/disqualify) |
| IV. | CERTIFICATION AND AUTHORIZATION | |
| A. | Labor Law Compliance Certification | _____ (pass/disqualify) |
| B. | Proposer Certification | _____ (pass/disqualify) |
| C. | Authorization to Release Information | _____ (pass/disqualify) |
| | PROPOSER BOND | _____ (pass/disqualify) |

Proposer must pass LEVEL I to qualify for further consideration.

LEVEL II RENT PROPOSED/CREDIT WORTHINESS & ABILITY TO FINANCE

- A. Rent Proposed Met/Exceeded Minimum Requirement _____ (pass/disqualify)
- B. Ability to Finance _____ (pass/disqualify)
- C. Credit Worthiness _____ (pass/disqualify)

Proposer must pass LEVEL II to qualify for further consideration.

LEVEL III PROPOSAL EVALUATION

- A. Proposer Information
 - Incumbent Preference _____ / 5 Points
 - Small Business Preference _____ / 5 Points
 - Experience/Quality of Experience _____ / 15 Points
- B. Proposal Information
 - Operation Plan _____ / 25 Points
 - Facility Improvement Plan _____ / 25 Points
 - Rental Offer _____ / 25 Points
 - Concession Feasibility _____ / Pass/Fail *
- GRAND TOTAL** _____ / 100 **Points**

Comments:

Board Member: _____ Date: _____

* A 'fail' rating in this category disqualifies the proposal.

3.4 CONCESSION PROPOSAL, DPR 398

If interested in submitting a proposal, please request the DPR 398 Concession Proposal forms from Teresa Montijo, Concessions Program Manager at (916) 653-7733 or teresa.montijo@parks.ca.gov. This provides the State with potential proposer contact information in the event there are changes to the RFP documents. Proposal forms will also be available at the Pre-Proposal Meeting.

SAMPLE CONCESSION CONTRACT

FOR

Folsom Lake Marina

AT

Folsom Lake State Recreation Area

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
MARKETING AND BUSINESS DEVELOPMENT DIVISION
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814



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SAMPLE

Folsom Lake Marina
CONCESSION CONTRACT
INDEX

1. DESCRIPTION OF PREMISES..... 36

2. CONDITION OF PREMISES 36

3. TERM 36

4. RENT 37

5. GROSS RECEIPTS..... 39

6. OTHER FINANCIAL REQUIREMENTS 40

7. USE OF PREMISES..... 40

8. LIABILITY WAIVER 46

9. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES 46

10. ALCOHOLIC BEVERAGES..... 47

11. HEALTHY FOODS INITIATIVE 47

12. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL..... 48

13. RESOURCE CONSERVATION..... 49

14. HAZARDOUS SUBSTANCES..... 51

15. PEST CONTROL ACTIVITIES 53

16. UTILITIES AND SERVICES 53

17. EQUIPMENT 53

18. PERSONAL PROPERTY 54

19. SIGNS AND ADVERTISING..... 54

20. PHOTOGRAPHY..... 54

21. INTELLECTUAL PROPERTY RIGHTS 54

22. GRANT OF STATE’S TRADEMARK LICENSE..... 57

23. PARTICIPATION IN STATE PARK MARKETING PROGRAMS 58

24. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS..... 58

25. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS 63

26. BONDS..... 64

27. INSURANCE 66

28. HOLD HARMLESS AGREEMENT 68

29. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES 69

30. DISABILITIES ACCESS LAWS 69

31. NONDISCRIMINATION 70

32. DRUG-FREE WORKPLACE 71

33. CONFLICT OF INTEREST 71

34. EXPATRIATE CORPORATIONS 72

35. NATIONAL LABOR RELATIONS BOARD CERTIFICATION 72

36. CHILD SUPPORT COMPLIANCE ACT 72

37. RECORDS AND REPORTS 73

38. TAXES 74

39. PERFORMANCE EVALUATIONS AND INSPECTION 74

40. DEFAULT BY CONCESSIONAIRE 75

41. STATE’S REMEDIES 77

42. DEFAULT BY STATE 81

43. STATE BUY-OUT PROVISIONS 81

44. SURRENDER OF THE PREMISES; HOLDING OVER 82

45. NO RECORDATION; QUITCLAIM 83

46. ATTORNEY FEES 84

47. WAIVER OF CLAIMS 84

48. WAIVER OF CONTRACT TERMS 84

49. INTERPRETATION OF CONTRACT 85

50. DURATION OF PUBLIC FACILITIES 85

51. EMINENT DOMAIN 85

52. TEMPORARY TENANCY 85

53. SECTION TITLES 85

54. INDEPENDENT CONTRACTOR 85

55. ASSIGNMENTS AND SUBCONCESSIONS 86

56. MODIFICATION OF CONTRACT 86

57. UNENFORCEABLE PROVISION 87

58. APPROVAL OF CONTRACT 87

59. CONTRACT NOTICE 87

60. STATE’S DISTRICT SUPERINTENDENT 88

EXHIBIT A – THE PREMISES 90

EXHIBIT B – CONCESSIONAIRE’S OPERATION PLAN 92

EXHIBIT C – CONCESSIONAIRE’S FACILITY IMPROVEMENT PLAN..... 93

EXHIBIT D – DPR 54, CONCESSIONAIRE’S MONTHLY REPORT OF OPERATION 94

EXHIBIT E – DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT 96

EXHIBIT F – DPR 531, CONCESSION PERFORMANCE RATING 100

EXHIBIT G – DRUG FREE WORKPLACE CERTIFICATION 102

EXHIBIT H – LICENSE/PERMISSION FOR USE OF TRADEMARKS 103

EXHIBIT I – CONSUMER PRICE INDEX ADJUSTMENT FORMULA 105

EXHIBIT J – WAIVER OF LIABILITY AND RELEASE SAMPLE..... 106

EXHIBIT K – MANAGING PARTNER AGREEMENT (MPA)..... 107

SAMPLE

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

CONCESSION CONTRACT

For

Folsom Lake Marina

Located In

Folsom Lake State Recreation Area

El Dorado County

THIS CONTRACT is made and entered into by and between the STATE OF CALIFORNIA, acting through its Department of Parks and Recreation, hereinafter referred to as "State," and **ConcessionaireName DBA FictitiousBusName of CityState**, hereinafter referred to as "Concessionaire";

RECITALS

WHEREAS, California Public Resources Code Section 5080.03 et seq. authorizes the Department of Parks and Recreation to enter into concession contracts for the operation of state park system lands and facilities; and

WHEREAS, State and the U.S. Department of the Interior, Bureau of Reclamation (BOR) entered into a twenty-five (25) year Managing Partner Agreement (MPA) effective January 24, 2012, providing State the authority to develop and operate Folsom SRA for public recreation purposes; and

WHEREAS, in accordance with Public Resources Code Section 5080.20, the California Legislature approved this concession operation as part of the Supplemental Report to the FY 2013-14 California Budget Act; and

WHEREAS, it is appropriate that the following contract be entered into for the safety and convenience of the general public in the use and enjoyment of, and the

overall enhancement of recreational and educational experience at units of the state park system;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. DESCRIPTION OF PREMISES

The State for and in consideration of the agreements hereinafter stated, grants to Concessionaire for the purposes stated herein, the right, privilege, and duty to develop, equip, operate, and maintain a nonexclusive concession in Folsom Lake State Recreation Area at the location as set forth in **Exhibit A**, attached to and made a part of this Contract (the "Premises").

The possessory interest herein given to the Concessionaire does not exclude the general public from the Premises; however, the use by the general public is limited by the terms and conditions of the possessory interest given herein. This Contract is not intended to confer third party beneficiary status to any member of the public who is benefited by the terms of this Contract. The possessory interest is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title that may affect the Premises.

2. CONDITION OF PREMISES

The taking of possession of the Premises by the Concessionaire, in itself, shall constitute acknowledgment that the Premises are in good and sufficient condition for the purposes for which Concessionaire is entering into this Contract. Concessionaire agrees to accept Premises in their presently existing condition, "AS IS," and that the State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Contract.

3. TERM

The term of this Contract shall be for a period of twenty-one (21) years, or until termination of the MPA on January 23, 2037, whichever occurs first, commencing on the first day of the month following approval by the California Department of General

Services. Should Concessionaire hold-over after the expiration of the term of this Contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this Contract in Section 44, Surrender of Premises; Holding Over, of this Contract, with continuous Consumer Price Index adjustment, as defined below, subject otherwise to all the terms and conditions of this Contract.

Upon mutual agreement of both parties, and renewal of the State's operational control of Premises by BOR, this Contract may be extended up to an additional nine (9) years from the expiration date but not to exceed a total of thirty (30) years.

For purposes of this Contract, the term "Contract Year" shall mean each one-year period of time that commences on the commencement date identified above, extending twelve (12) months therefrom, and continuing from each anniversary throughout the term of the Contract.

4. **RENT**

Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Annual Rent" the sum of one hundred fifteen thousand dollars (\$115,000) [or as bid] annually **or** the following percentage(s) of gross receipts, whichever sum is greater:

Seven and one half percent (7.5%) [*or as bid*] of the first five hundred thousand dollars (\$500,000) of gross receipts; plus

Ten percent percent (10%) [*or as bid*] of Gross Receipts greater than five hundred thousand dollars (\$500,000); plus

Two percent (2%) [*or as bid*] of fuel and oil sales.

Beginning with Contract Year Six (6) and on the first day of each fifth Contract Year thereafter, the Minimum Annual Rent of one hundred fifteen thousand dollars (\$115,000) shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit I**, attached to and made a part of this Contract.

Concessionaire shall make payment of Minimum Annual Rent and other payments to State in lawful money of the United States. However, if any payment made

by a check, draft, or money order is returned to State due to insufficient funds or otherwise, State shall have the right, at any time after the return, upon written notice to Concessionaire, to require Concessionaire to make all subsequent payments in cash or by cashier's or certified check.

Beginning with the fifteenth (15th) day of the month following the execution of the Contract, and on or before the fifteenth (15th) day of each month thereafter, Concessionaire shall furnish to State a verified statement of the concession's gross receipts for the preceding month. Such statement shall be submitted on Form DPR 54, Concessionaire's Monthly Report of Operation, attached hereto as **Exhibit D**, or in a format previously approved by the State, and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current Contract Year. Concessionaire shall also provide such statement for periods of non-operation. Concurrent with such monthly statement, the Concessionaire shall pay to State the appropriate rental fee based on the gross receipts for the preceding calendar month as prescribed above. Payments to State shall be made to the order of the Department of Parks and Recreation and delivered to the District Office identified herein below or at such other location as may from time to time be designated by State. If, at the end of the Contract Year, the total of monthly percentage rental payments made (or due) during that Contract Year is less than the Minimum Annual Rent required for that Contract Year, the difference shall be remitted to State with the last monthly sales statement for the Contract Year. Payments must be received by State on or before the fifteenth (15th) day of the month as described above. Any late payment shall constitute a breach of contract, giving rise to State's remedies as set forth below. Further, any late payment will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or portion thereof. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of Concessionaire's default for the overdue amount, nor prevent State from exercising the other rights and remedies granted under this Contract. Concessionaire shall pay the late charge as additional rent with the next monthly rent payment.

Any amount due to State, if not paid within five (5) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Concessionaire. Payment of interest shall not excuse or cure any default by Concessionaire.

Upon written request by the Concessionaire to State demonstrating unusual or extenuating circumstances causing the late payment, the State, in its sole discretion, may waive the late charge. Further, in the event Concessionaire is prevented from carrying on the operations contemplated herein by reason of an Act of Nature or other reasons beyond Concessionaire's control, and when requested in writing in advance by Concessionaire, Minimum Rent may be abated in proportion to the amount by which gross receipts are reduced by the occurrence for such period of reduced or non-operation, as determined in the sole discretion of State.

If this Contract is terminated by State because of Concessionaire's default, and if Concessionaire becomes liable for any deficiency in rent and/or fees by way of damages or otherwise, or if at any time during the Contract term Concessionaire ceases to conduct in the Premises the business referred to herein below, then from and after the time of the breach causing this termination, or from and after the time of the cessation of business, all unpaid rent and/or fees prior to the breach causing termination or cessation of business shall become due and payable. The amount due shall be deemed to be the greater of: (a) the Minimum Rent provided herein, or (b) an amount based upon the average of the payments that have accrued to State as percentage rent during the twenty-four (24) months preceding the termination or cessation of business, unless the termination or cessation occurs within three (3) years of the beginning of the Contract term, in which event the previous twelve (12) (or fewer, if applicable) months shall be used as the basis of this average.

5. GROSS RECEIPTS

The term "gross receipts," wherever used in this Contract, is intended to and shall mean all moneys, property, or any other thing of value received by or owed to Concessionaire and any sub-concessionaire or operator, if other than Concessionaire, through or in connection with the operation of the concession, including any concession

related business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this Contract, or that associates with or implies an endorsement by State, all without deduction. The term "gross receipts" shall not include any sales taxes imposed by any governmental entity and collected by Concessionaire.

6. OTHER FINANCIAL REQUIREMENTS

A. Facility Improvements: Concessionaire shall plan, design, construct, and complete all concession facility improvements as described in Concessionaire's Facility Improvement Plan, attached hereto as **Exhibit C**, without cost to State and in compliance with State's Guidelines for Construction and Completion of Improvements, with a minimum expenditure of two million five hundred thousand dollars (\$2,500,000). Any penalties, lien charges, and/or costs to resolve construction related disputes shall not be included in the minimum expenditure amount. After completion of all concession facility improvements and acceptance by State, if there remains an unspent balance of the two million five hundred thousand dollars (\$2,500,000), Concessionaire shall pay this unspent balance to State as an additional rental payment within thirty (30) days from State's acceptance of the concession facility improvements.

B. Facility Maintenance: On or before the fifteenth (15th) day of each month, Concessionaire shall remit to State the total sum of two percent (2%) of monthly gross receipts to compensate State for State's expenses to maintain facilities directly related to marina operations. Concessionaire's maintenance obligation shall be in addition to rent requirements specified in Section 4, Rent.

7. USE OF PREMISES

A. The Premises shall be used by the Concessionaire to develop, rehabilitate, equip, operate, and maintain a high-quality, full-service marina concession, including but not limited to provision of steel storage building(s) for dry boat storage, boat ramp, up to 255 additional boat slips, improvement or

replacement of the sewage pump-out system for vessels at the marina, improvement or replacement of the vessel fueling station, repair or replacement of docks, slips, ramp and associated structures, marina lighting, signage, trash containers and security systems, and the provision of boat towing services.

B. The Use of Premises shall be consistent with the State approved Operation Plan and Facility Improvement Plan as proposed by Concessionaire and modified by State as is reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department. The approved Operation Plan and Facility Improvement Plan are incorporated herein, and made part of this Contract as **Exhibits B and C**, respectively.

C. The use of un-encapsulated foam floating materials in the repair and/or replacement of docks or any other floating facilities shall be prohibited. All repair and/or replacement of docks and/or other floating facilities shall be with encapsulated materials only.

D. At a minimum, Concessionaire shall provide:

- 1) Boat slip and mooring rentals, for 685-940 boats;
- 2) Dry boat storage for a minimum of 175 boats;
- 3) Sewer pump-out facility;
- 4) Floating Fueling dock;
- 5) Camper and boater supply store offering camping, picnicking, boating, bait, and fishing tackle supplies, nonalcoholic beverages, ice, packaged foods, boating safety equipment, and fire extinguishers;
- 6) Fuel and oil sales;
- 7) Notification to boat owner(s) within 24 hours if a boat is moved, damaged, or loose;
- 8) Thirty (30) days' notice to boat owners to arrange for removal of vessels from the marina wet slips when it is determined water levels will become too low to accommodate them;
- 9) A 24/7 marina emergency response plan by January 1 of each year approved in writing by District Superintendent or designee;

- 10) If applicable, transportation to buoy moorings in the Brown's Ravine area, at no cost to user;
- 11) Four (4) boat slips for State's use, at no cost to State;
- 12) Boat Towing Services:
 - a) All employees shall possess and maintain a valid United States Coast Guard approved Certification for Assistance Towing.
 - b) Concessionaire shall respond to towing service calls within thirty (30) minutes of request.
 - c) All employees must be at least eighteen (18) years of age.
 - d) Concessionaire shall have a responsible adult on call twenty-four (24) hours a day for boat towing service emergencies. After hour emergency calls shall be coordinated with the state park peace officer on duty.
 - e) Towing services shall not encroach on private property.
 - f) Any towed vessel deemed to be inoperable, unseaworthy, or dangerous by the District Superintendent or authorized representative shall be immediately removed from Premises by Concessionaire. If Concessionaire fails to do so, District Superintendent or authorized representative shall arrange for such removal at Concessionaire's sole cost and expense.

E. Concessionaire area of responsibility as defined in **Exhibit A** includes:

- 1) All marina facilities;
- 2) Sewage pump-out facility;
- 3) Fuel delivery system;
- 4) Fuel storage tank in parking lot above marina launch ramp; and
- 5) Marina service and storage yard; and
- 6) Dry boat storage building.

F. Concessionaire, at Concessionaire's option may provide boat, personal watercraft, motor, and watersports rentals. If rentals are provided:

- 1) Concessionaire shall provide a maximum of eight (8) boats of various configurations, including but not limited to ski, wake board, fishing,

and patio/pontoon boats and a maximum of eight (8) personal watercraft. Other equipment rentals shall include, but not be limited to, ski ropes and inflatable tow behind water toys.

- 2) Concessionaire shall provide all safety items, including, but not limited to PFD's, air horn, paddle, and two-way radios for direct communications with rental office.
- 3) All vessels, used by the public or Concessionaire shall be maintained in a good and safe condition and must meet equipment requirements as set forth in current boating laws.
- 4) All vessels shall have current registration stickers and CF numbers properly displayed in accordance with applicable California boating laws.
- 5) Concessionaire shall provide properly fitting U.S. Coast Guard approved Personal Floatation Devices (PFD) for each person on board each vessel. Children 13 years of age and under must wear an approved PFD at all times when on the vessel.
- 6) Adequate instruction shall be provided to all renters to ensure basic operational knowledge of equipment rented and all safety requirements applicable to each piece of rental equipment.
- 8) Concessionaire shall immediately report any rental vessel accidents to State Park Peace Officer staff.
- 9) Concessionaire shall provide preprinted and numbered rental agreements for review and signature by each renter and initialed by the Concessionaire or his/her designee. The document shall include, or have attached, a checklist identifying any existing or new damage to the craft. The rental agreement shall also include the following boating regulations:
 - a) Watercraft speed is five miles per hour within 200 feet of the shoreline, including when leaving or returning to the dock area;
 - b) Renters operating vessels shall observe Federal Inland Navigation Rules, California State Boating Laws, and local boating regulations. Violations of any of the above may result in termination of rental, expulsion from the lake; citation and/or arrest.

- c) Renters shall not carry more than the prescribed number of people in any of the vessels.
- G. All concession employees shall be certified and current in CPR and First Aid. Concessionaire shall provide State, upon the State's request, with a description of Concessionaire's emergency/first aid plans and procedures.
- H. Concessionaire and concession employees shall have a working communication device onsite at all times with a list of park telephone numbers for emergencies.
- I. Concessionaire and concession employees shall present and display a current, non-transferable park pass upon entry into the park. To obtain park passes, Concessionaire shall submit a list of all employees to District Superintendent or authorized representative by December 1 of each year. Concessionaire shall promptly advise District Superintendent or authorized representative of all personnel changes.
- J. Annual Passes: Concessionaire shall require mooring customers to obtain a current Annual Boat Use Pass as part of their mooring agreement. Concessionaire may sell Annual Boat Use and Annual Day Use Passes when purchased in advance from State at 90% of pass value.
- K. Concessionaire acknowledges that marina customers are required to pay park entrance fees.
- L. Concessionaire shall provide a shuttle service for disabled visitors from designated ADA parking locations to the marina.
- M. Buoys: Concessionaire shall be responsible for the installation and maintenance of regulatory and/or informational buoys within the Concessionaire's area of control.
- N. When wind speeds are 25 mph or greater, Concessionaire shall erect Maritime Weather Warning flags.
- O. Hours of Operation: Concessionaire shall only allow visitor entry and/or departure to/from Folsom Lake SRA during normal park hours, which are seven (7) days per week, between the hours of 6:00 a.m. to 10:00 p.m., the second Sunday in March to the first Saturday in November and 7:00 a.m. to 7:00 p.m.,

the first Sunday in November to the second Saturday in March or when the unit closes, whichever is earlier, during each year of the Contract. Concessionaire may allow slip holder's to remain on their vessels in the marina overnight. In the event State deems the hours of operation inadequate for proper service to the public, State may require Concessionaire to adjust the days and/or hours of operation to a schedule provided by State. Concessionaire may remain open on other dates, observing same (or longer) hours, at Concessionaire's discretion with the concurrence of and in writing by the State. In the event of adverse weather or other operating conditions, State may permit the concession to close at any time during the term of this Contract. Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as herein set forth without the prior written consent of the State.

P. In the event of a Public Safety Emergency, an adverse weather phenomenon, natural disaster or other unsafe or unfavorable operating conditions, State reserves the right to close the park and/or trail(s) with little or no advance notice to Concessionaire.

Q. Marina Mooring Agreements:

- 1) Concessionaire shall require all moored vessels to be currently registered. Vessels without proper registration shall be promptly removed by the vessel owner and the mooring agreement shall be terminated.
- 2) Concessionaire shall provide State with the names; addresses; e-mail addresses; and telephone numbers of current mooring customers by May 1 of each year.

R. Notification to State: Concessionaire shall notify State within 24 hours of any cable breaks, mooring system failures, injury to a park user, or damage to a park user's personal property.

S. Security: Concessionaire shall require all concession employees and volunteers in positions of special trust as determined at the sole discretion of the District Superintendent or designee to undergo a background check, including references and fingerprints, to ensure that the individual has an acceptable

record as a law-abiding citizen. The background check may be similar to the California Department of Justice's Live-Scan Program. Concessionaire shall be responsible for covering all costs associated with said background checks. Any criminal offenses that have a nexus to said job should be considered as a basis for rejection from hire.

T. A competent person shall be on the Premises at all times while the concession is in operation. If the on-site manager is other than the Concessionaire, State reserves the right to approve such manager.

U. Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as herein set forth without the prior written consent of the State.

8. LIABILITY WAIVER

Concessionaire shall require that a liability waiver, equivalent to the waiver attached hereto as **Exhibit J**, Waiver of Liability and Release and incorporated herein by this reference, be executed between Concessionaire and each concession patron prior to the start of each rental or tour. Such waiver is subject to the State's approval and shall release State and the U.S. Department of the Interior, Bureau of Reclamation, its officers, employees, and agents from any liability resulting from any claim associated with services, equipment, and activities provided and facilitated on each rental or tour. The liability waiver text shall be pre-printed, and must be signed by every person participating in each rental or tour within the Premises as permitted in this Contract. Concessionaire shall make signed liability waivers available for State's inspection and shall provide copies upon request. All required waivers shall comply with any and all conditions precedent to insurance coverage as required herein.

9. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES

Concessionaire shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. State reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety

and/or to ensure that the public receives, in the State's view, fair pricing, proper service, and appropriate quality. Any changes to rates or charges to park visitors proposed by Concessionaire following contract approval shall be submitted in writing for the State's approval. Rate changes may not be imposed retroactively.

10. ALCOHOLIC BEVERAGES

Notwithstanding anything to the contrary, the sale of liquor, beer, or other alcoholic beverages on the Premises is expressly prohibited. Exception to this restriction may be allowed through the special event permit process, as approved by State.

11. HEALTHY FOODS INITIATIVE

As the primary food providers in California State Parks, participation by concessionaires in the State's efforts to promote healthy and sustainable food practices is critical. To that end and in accordance with State's mission to provide for the health of Californians, Concessionaire shall promote the importance of healthy, locally and sustainably grown, organic foods, and shall use sustainable practices, organic ingredients, and recycled products whenever possible. These practices shall include the following:

- A. To the extent possible, Concessionaire shall develop a network of local farmers and ranchers who are dedicated to sustainable agriculture and can assure a steady supply of pure and fresh ingredients.
- B. Concessionaire shall offer a selection of food and beverage items that conform to the definition of healthy foods as defined by the U.S. Department of Agriculture and the Food and Drug Administration in the Code of Federal Regulations, Title 9, Section 317 and Title 21, Section 101.
 - 1) Concessionaire shall offer a selection of beverages with no sugar added, such as bottled water, natural fruit juices, and tomato juice.

- 2) To the extent possible, Concessionaire shall provide food products that are as pure and natural as possible, without synthetic additives, pollutants, or unnecessary packaging and marketing.

12. **HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL**

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain the Premises and areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Removal and disposal of all rubbish, refuse, and garbage resulting from concession's operations shall be the Concessionaire's responsibility and shall be disposed of outside the park unit and in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of State. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

A. **Housekeeping**: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks. Concession housekeeping shall conform to California State Park standards as stated in Chapter 8 of the Department Operations Manual.

B. **Maintenance and Repairs**: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this Contract. Such maintenance shall conform to State Park standards as stated in Chapter 8 of the State's Operations Manual. For the purposes of this Contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment

in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

Should Concessionaire fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to perform such maintenance or repairs for Concessionaire. In this event, Concessionaire shall promptly reimburse State for the cost thereof provided that State shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs. State shall not be obligated to make any repairs to or maintain any improvements on the Premises. Concessionaire hereby expressly waives the right to make repairs at the expense of State and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto if any there be. State has made no representations respecting the condition of the Premises, except as specifically set forth in this Contract.

C. Removal and Restoration: At the expiration or sooner termination of this Contract, Concessionaire at its own expense shall remove all personal property brought onto the Premises by Concessionaire. Concessionaire, at Concessionaire's expense, shall restore and repair the Premises, and any of Concessionaire's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.

13. RESOURCE CONSERVATION

A. Environmental Conservation Program: Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the State. Accordingly, Concessionaire shall prepare and execute a program, subject to the prior written approval of the State, designed to reduce environmental impacts that result from concession operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, pest management, grease removal and disposal, hazardous

materials handling and storage, and air quality. Specifically, the program must include the following:

1) **Recycling and Beverage Container Programs:** The Concessionaire shall implement a source reduction and recycling program designed to minimize concession and patron use of disposable products, per Public Contract Codes Sections 12161 and 12200 et seq. Reusable and recyclable products are preferred over "throwaways." Where disposable products are needed, products that have the least impact on the environment will be selected. No Styrofoam containers or other non-biodegradable containers are to be used or sold by Concessionaire. The use of "post-consumer" recycled products is encouraged wherever possible.

The Concessionaire shall participate in the California beverage container redemption/recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each Contract Year, Concessionaire and State shall review items sold, and containers or utensils used or dispensed by Concessionaire, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

2) **Water and Energy Conservation:** The Concessionaire shall implement water and energy conservation measures. As new technologies are developed, Concessionaire shall explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, and/or reduced impacts on the environment.

3) **Erosion Control/Water Quality/Environmental Sensitivity:** The Concessionaire shall comply with all requirements set forth by various oversight agencies that have jurisdiction and oversight authority relating to the Premises and surrounding properties, including, but not limited to, erosion control, water quality and environmental sensitivity standards.

- B. Resource Management and Preservation: Concessionaire shall comply with State's resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include the Public Resources Code Sections 5024 and 5097 et seq., the Department Operations Manual Chapter 300, Department's cultural resource directives and Secretary of the Interior's Guidelines for Historic Preservation.
- C. Air and Water Pollution Violation: Under State laws, Concessionaire shall not be (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

14. HAZARDOUS SUBSTANCES

- A. On the Premises, Concessionaire shall not:
- 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous except as provided for in Item C, below;
 - 2) Carry-on any offensive or dangerous trade, business, or occupation; or
 - 3) Use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way.
- B. Nothing in this Section shall preclude Concessionaire from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in carrying-on Concessionaire's business.
- C. Storage of Hazardous Materials: Concessionaire shall comply with all applicable laws and best practices pertaining to the use, storage, transportation, and disposal of hazardous substances. Gasoline, oil and other materials

considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

D. Concessionaire shall protect, indemnify, defend, and hold harmless the State, the U.S. Department of the Interior, Bureau of Reclamation or any of its affiliates, successors, principals, employees, or agents against any liability, cost, or expense, including attorney fees and court costs, arising from illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, by Concessionaire. Where Concessionaire is found to be in breach of this provision due to the issuance of a government order directing Concessionaire to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by Concessionaire or any person acting under Concessionaire's direct control or authority, Concessionaire shall be responsible for all cost and expense of complying with such order, including any and all expenses imposed on or incurred by the State in connection with or in response to such government order. Notwithstanding the foregoing, in the event a government order is issued naming Concessionaire, or Concessionaire incurs any liability during or after the term of the Contract in connection with contamination that preexisted the Concessionaire's obligations and occupancy under this Contract or prior contracts, or that were not directly caused by Concessionaire, the State shall be solely responsible as between Concessionaire and the State for all expenses and efforts in connection therewith, and State shall reimburse Concessionaire for all reasonable expenses actually incurred by Concessionaire therewith.

E. Certification: Upon termination of this Contract, when requested by State, Concessionaire shall provide certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Premises.

15. PEST CONTROL ACTIVITIES

Pest inspections shall be performed regularly. Concessionaire will remedy all pest infestations in a timely manner. Concessionaire shall provide to State copies of all pest inspection reports or other professional assessments of the condition of the facilities.

All pest control activities, chemical and non-chemical, shall be approved by the State prior to action by the Concessionaire. Concessionaire, or the pest control business acting on behalf of Concessionaire, shall submit a DPR 191, Pest Control Recommendation (or equivalent) to the State for approval. The State has fourteen (14) days to approve or deny the request. Such approval shall be solely for compliance with State's policies and in no way shall relieve Concessionaire or its contractors, employees, agents or representatives from compliance with all laws and regulations concerning such activities and from carrying out the work in a workmanlike manner.

Concessionaire, or the pest control business acting on behalf of Concessionaire, shall submit a report of completed work for each pest management action to the State no later than seven (7) days after performance of the work. The report may be submitted on a DPR 191, Pest Control Recommendation (or equivalent information).

16. UTILITIES AND SERVICES

Concessionaire shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises, including but not limited to sewage disposal. When installing facilities, no trees shall be trimmed or cut without permission of State.

17. EQUIPMENT

Concessionaire, at Concessionaire's own expense, shall completely equip the concession improvements described herein and shall keep the same equipped in a safe and first-class manner throughout the term of this Contract.

18. PERSONAL PROPERTY

Except to the extent covered by Section 25 Modifications, Additions, Title to Improvements, title to all personal property provided by Concessionaire shall remain in Concessionaire. All marina floating facilities including docks, retail space, floating public restroom, sewer pump-out, courtesy dock, necessary connector floats and ramps, and marina cable and anchoring systems shall be considered personal property and will vest with the Concessionaire at the end of the Contract. Title to all real property improvements will vest with the State at the end of the contract term. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property will be considered a real property improvement and shall become property of State at the time this Contract is terminated.

19. SIGNS AND ADVERTISING

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, circulated, or published, including electronically or on the internet, without prior written consent of the State and only consistent with the purposes of the Contract.

20. PHOTOGRAPHY

State may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Premises for such purposes when such permission shall not interfere with the primary business of Concessionaire. Such permits shall not be deemed to be a competitive activity with regard to Concessionaire's rights to possession and operation under this Contract.

21. INTELLECTUAL PROPERTY RIGHTS

A. Clarify Ownership of Pre-existing Intellectual Property Rights: Other than as specifically identified and authorized in this Contract, no names, logos, trademarks or copyrighted materials belonging to and/or associated with State Parks shall be used, circulated, or published without the express written consent

of State Parks. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in Concessionaire any rights of ownership on such names, logos, trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Contract.

Any trademarks and/or copyrights belonging to Concessionaire prior to the commencement of the Contract shall remain in Concessionaire's sole ownership upon termination of the Contract.

During the course of this relationship, Concessionaire shall use the name, [Name]. Any additional and/or different names may be used only upon written agreement of State Parks.

B. Ownership of New Logos and Trademarks Developed During Contract:

Any names, logos, and/or trademarks developed during and/or pursuant to this Contract that in any way associate with, identify or implicate an affiliation with State Parks and/or are funded by State Parks shall be approved in writing by State Parks, shall belong to State Parks upon creation, subject to express written agreement otherwise, and shall continue in State Park's exclusive ownership upon termination of the Contract. Further, all good will and other rights in said marks shall inure to the benefit of the State as the mark owner.

C. Ownership of new Copyrights, Developed by Concessionaire for State Parks, Absent a Separate Written Agreement: Any copyrighted materials developed and created by Concessionaire for State Parks during the term of this Contract shall be deemed to be "works for hire" under the United States Copyright Act 17 USC §101 et seq. and shall, unless otherwise agreed to in writing, belong to State Parks upon creation, and continue in State Park's exclusive ownership upon termination of this Contract. Unless otherwise agreed to in writing, Concessionaire intends and agrees to assign to State Parks all rights, title, and interest in and all works created pursuant to this Contract as well as all related intellectual property rights.

Concessionaire agrees to cooperate with State Parks and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

D. Concessionaire Rights in Separately Created Works: Any copyrighted materials and/or trademarks developed and created by Concessionaire separate and apart from this Contract, shall belong to Concessionaire, and shall continue in Concessionaire's exclusive ownership upon termination of this Contract. In the event that any trademarks and/or copyrights are created by Concessionaire during the term of this Contract and same are proposed for use in connection with Concessionaire's performance under the Contract, Concessionaire shall promptly notify State Parks in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

E. Construction Projects and/or Concessionaire Deliverables: As stated above, any works developed by Concessionaire pursuant to this Contract, including all related copyrights and other proprietary rights therein, shall be deemed to be "works for hire" under the United States Copyright Act, 17 USC §101 et seq., and shall belong to State Parks upon creation, and continue in State Parks' exclusive ownership upon termination of this Contract. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, and other works developed in the performance of this Contract. Upon request, Concessionaire shall deliver to State Parks the disk or tape that contains the design files of any work that is performed with the assistance of Computer Aided Design and Drafting (CADD) technology, and shall specify the supplier of the software and hardware necessary to use said design files. Operator intends and agrees to assign to State Parks all rights, title, and interest in and to such materials as well as all related copyrights and other proprietary rights therein, unless otherwise agreed to in writing.

Concessionaire warrants that it is the sole exclusive owner and has the full right, power, and authority over all tangible and intangible property deliverable to State Parks in connection with this Contract, and that title to such materials conveyed to State Parks shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances, or security interests.

Concessionaire agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights

of third parties without (1) obtaining State Parks' prior written permission, and (2) granting to or obtaining for State Parks a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display, and distribute, for any purpose whatsoever, any such prior works.

Concessionaire further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret, or any other intellectual property rights of any person, entity, or organization. Concessionaire agrees to execute any documents reasonably requested by State Parks in connection with securing State Parks' registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Operator further agrees to incorporate these provisions into all of its contracts with architects, engineers, and other consultants or contractors.

Concessionaire, at its sole expense, shall hold harmless, protect, defend, and indemnify State Parks against any infringement action and/or dispute brought by a third party in connection with any deliverable hereunder. Concessionaire shall pay all costs, expenses, losses, damages, judgments, and claims including reasonable attorney's fees, expert witness fees, and other costs.

22. GRANT OF STATE'S TRADEMARK LICENSE

State hereby grants Concessionaire, and Concessionaire hereby accepts a non-exclusive, non-assignable license to use the State Park Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by State, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as **Exhibit H** and is incorporated herein by this reference. After signature by both Concessionaire and State Parks, this License shall authorize the use of the Trademark and associated goodwill, in connection with this Contract only.

A record of each authorized use by Concessionaire of the Trademark shall be maintained by Concessionaire and by State Parks.

Concessionaire and State Parks will use the State Park name, Trademark, and brand consistent with the State Park Brand Standards Handbook available at <http://isearch.parks.ca.gov/pages/321/files/BrandHandbookJanuary2007.pdf>.

The State Park name, Trademark and brand will not be used on Concessionaire social media pages.

23. PARTICIPATION IN STATE PARK MARKETING PROGRAMS

Concessionaire acknowledges that the State has an established advertising and marketing program designed to promote additional revenue for the State and to deliver a consistent and positive image to the public, and Concessionaire agrees to participate in this program in the manner described below without compensation from the State for such cooperation. Any programs established following execution of the contract will be implemented upon mutual consent by Concessionaire and State.

- A. Concessionaire agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.
- B. Concessionaire agrees to place on the Premises any advertising that the State approves under this program. Any advertising approved by the State under this program will be placed at State's expense.

Concessionaire agrees to rent or sell, along with all other items of merchandise that are part of the Concessionaire's normal and customary inventory, any item of merchandise that the State approves under this program, provided that Concessionaire is authorized to sell or rent it under the terms of the Contract, and the Concessionaire receives reasonable compensation for its sale.

24. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS

- A. Facility Development: At Concessionaire's sole cost and expense, Concessionaire shall be responsible for the scheduling and securing of all environmental permits, design, construction permits, construction, construction mitigation measures, completion, and installation of facility improvements, décor, equipment, fixtures, and furnishings as described in the Concessionaire's Facility

Improvement Plan, incorporated herein and made part of this Contract as **Exhibit**

C. Implementation of the Plan shall generally follow:

- 1) **Plan Amendment:** Concessionaire shall meet with State within 30 days of contract execution to review the implementation plan and modify as reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department.
- 2) **Schematic Design:** Within four (4) weeks of contract execution, Concessionaire shall provide to State for its review and approval a Schematic Design. The State shall not unreasonably withhold such approval. The objective of the Schematic Design is to clearly define the Facility Improvement Plan (Exhibit) and should include a site plan, building floor plans, all building elevations, outline specification, and any additional detailed specifications necessary to describe project work, floor area usage, Critical Path Method (CPM) construction schedule, and Preliminary Statement of Probable Construction Cost. In developing such materials, Concessionaire shall consider the Project Evaluation Form provided by State to evaluate environmental permit requirements. If the State disapproves any element of the program statement, Concessionaire shall promptly submit to State all necessary modifications and revisions.
- 3) **Design Development:** Within four (4) weeks of State's approval of Concessionaire's Schematic Design, Concessionaire shall submit the Design Development for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Design Development is to define and describe all the important aspects of the Facility Improvement Plan (Exhibit) and should include the necessary details of each element of the Schematic Design to adequately convey key conditions of major improvements. In addition, the Design Development should include Reflected Ceiling Plans, Schedules, Structural Requirements, Plumbing, Mechanical, and Electrical Plans, Food Service Requirements, Color Boards, Material and Systems Specifications, and an updated construction schedule and Preliminary Statement of Probable

Construction Cost. If the State disapproves any element of the Design Development, Concessionaire shall promptly submit necessary modifications and revisions. Concessionaire shall concurrently complete California Environmental Quality Act (CEQA) and other environmental documents as may be required, and file such with California State Clearinghouse.

4) Working Drawings: Within four (4) weeks of State's approval of Concessionaire's Design Development, Concessionaire shall submit Working Drawings for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Working Drawings is to set forth in detail the requirements for construction of the Facility Development Plan (**Exhibit C**) including bidding and contracting. At a minimum, the drawings should include all Design Development elements plus: complete documentation of quantities, qualities, and relationships of all work required to construct the Facility Improvement Plan; documentation of decisions made in the Design Development phase; all documentation needed for obtaining regulatory and State approvals; construction schedule; and the final Statement of Probable Construction Cost. If the State disapproves any drawings, plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions. No changes or alterations shall be made to the approved Working Drawings without prior written approval of State.

B. Use of Consultants: Concessionaire shall employ licensed Contractor(s) in the completion of all required construction work. Additionally, Concessionaire shall utilize professional contractors and consultants, including architects(s) and engineer(s), acting in accordance with the latest American Institute of Architects' standards of practice to develop comprehensive construction plans, including schematic design plans, design development plans, and working drawings, and to conduct independent inspections and monitoring of all construction. Concessionaire agrees to select contractors and consultants who are licensed to practice in the State of California and are acceptable to the State. However, in

no event shall State be deemed to have control of or be responsible for Concessionaire's final hiring decisions, the day-to-day management of the project, or administration of contracts with contractors or consultants. Contracts between Concessionaire and any contractor or consultant must be approved in writing by State in advance of execution by Concessionaire.

C. Permits: At its sole cost and expense, including mitigation costs, Concessionaire shall obtain all permits, licenses, and other approvals necessary for the construction and completion of the Facility Improvement Plan. Such permits may include, but are not limited to, those required under the California Environmental Quality Act (CEQA), Public Resources Code 5024, County Health Department, California Coastal Act, California Building Code, and State Fire Marshal. All plans must comply with the Americans with Disabilities Act of 1990 (ADA) and require certification from the State's Accessibility Section in accordance with Contract Section 42, Disability Access Laws. Concessionaire shall reimburse State for all costs incurred by State on behalf of Concessionaire in association with acquisition of said permits. State will produce records of such costs for review by Concessionaire on a monthly basis. The State shall cooperate with Concessionaire with respect to securing said permits including the execution of documents required by a governmental authority to be initiated by State. In the event Concessionaire, having exercised all due diligence in applying for and seeking all approvals, cannot secure all required permits within two (2) years from Concessionaire's taking possession of the premises, the State shall have the option to terminate this Contract.

D. State Approval/Acceptance of Plans and Work: Concessionaire shall allocate a minimum of thirty (30) days in construction schedules for each required review by State. Concessionaire shall reimburse State for all professional services, including but not limited to architectural, engineering, construction monitoring, inspection, plan review and approval. State will produce records of such costs for review by Concessionaire on a monthly basis. State's approval of the work and plans shall be for the purpose of determining that such work conforms in scope and quality to State's policies and standards, and in no way

shall relieve Concessionaire or its contractors or subcontractors of the responsibility to perform and complete the work (1) in accordance with generally accepted industry standards, (2) faithfully adhering to the approved plans, specifications, and drawings, and (3) in accordance with all applicable codes, laws, regulations, or other requirements, including but not limited to, the standards contained in this Contract. Permission to start construction will not be granted until all required permits and approvals have been secured.

Alterations: It is the intent of this Contract and the contracting parties that the concession facilities contemplated herein shall not only be constructed in accordance with the requirements herein, but in coordination with State's development of the unit. The State, in its discretion after consultation with Concessionaire, may alter the Facility Improvement Plan and Working Drawings and construction schedule, and/or the construction timeline to agree with its schedule of development for the unit. Any changes to the timeline shall not be earlier than the dates set forth in the Working Drawings, as approved by State, except with concurrence of Concessionaire.

E. Completion of Improvements: Upon State approval of the Working Drawings and receipt of all required permits, licenses, and other approvals, Concessionaire shall commence construction to the facility as described herein, and prosecute the same to completion with all due diligence and within one year. Such time shall be extended as reasonably necessary in the event of delays caused by fire, earthquakes, wars, strikes, adverse weather, or other calamity beyond Concessionaire's control. Concessionaire shall hold monthly or more frequent status meetings throughout the period of construction, which shall include representatives of the general contractor, appropriate subcontractors, a representative of Concessionaire, and a representative of the State.

Upon completion of construction, Concessionaire shall (1) file a Notice of Completion of Construction in County within which work was executed, and identify State as recipient of recorded document; (2) secure Certificate of Occupancy if required by State Fire Marshal; (3) provide State with a complete set of "as-built" plans and updated specifications for all improvements in a format

acceptable to State; (4) submit evidence that all improvements are clear of any mechanic's liens; (5) have work certified by a licensed architect or engineer to be in compliance with the Working Drawings as approved by State and all applicable building or other laws, codes, or regulations; (6) secure sign-off for CEQA compliance; and (7) submit an account of the cost for all facility improvements, excluding equipment and trade fixtures that are the personal property of Concessionaire.

The cost accounting as required by item (8) above shall include cost statements and substantiating invoices for all project expenses including labor and materials. After such accounting has been examined by State, State in its sole discretion will establish in a reasonable and fair manner the cost of facilities and improvements for the purposes of evaluating Concessionaire's compliance with the facility development expenditure requirements of this Contract. In the event such accounting is not filed by Concessionaire at the time specified, State shall estimate the cost of the project and serve notice of same on Concessionaire in the manner provided herein.

25. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS

In the event that Concessionaire desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, required accessibility barrier removal work, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively Alteration(s)), the approval in writing of State shall be obtained prior to the commencement of any Alterations. State shall dictate the plan approval process.

Once any Alteration has been approved by State and the work has begun, Concessionaire shall, with reasonable diligence, prosecute to completion all approved Alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to State as required herein, and shall comply with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of Concessionaire, at its own cost and expense,

to obtain all licenses, permits, and other approvals necessary for the construction of approved Alterations.

Title to all Alterations and improvements existing or hereafter erected on the Premises, regardless of who constructs such improvements, shall immediately become State's property and, at the end of the Term, shall remain on the Premises without compensation to Concessionaire. Concessionaire agrees never to assail, contest, or resist title to the Alterations and improvements. The foregoing notwithstanding, State may elect, by notice to Concessionaire, that Concessionaire must remove any Alterations that are peculiar to Concessionaire's use of the Premises and are not normally required or used by State and/or future occupants of the Premises. In this event, Concessionaire shall bear the cost of restoring the Premises to its condition prior to the installment of the Alterations.

26. BONDS

A. All bonds required under this Contract must be in a form satisfactory to State, issued by a corporate surety licensed to transact surety business in the State of California.

B. Performance Bond: Concessionaire, at Concessionaire's own cost and expense, agrees to obtain and deliver to State, prior to the commencement date of this Contract and prior to entering the Premises, and shall maintain in force throughout the term of this Contract, a valid Performance Bond (which may be renewed annually) in the sum of one years' Minimum Annual Rent [as bid] payable to the State. This bond shall insure faithful performance by Concessionaire of all the covenants, terms, and conditions of this Contract inclusive of, but not restricted to, the payment of all rentals, fees, and charges and prompt performance of and/or payment for all maintenance obligations. In lieu of a bond, the Concessionaire may substitute another financial instrument (such as an Irrevocable Standby Letter of Credit), which must be sufficiently secure and acceptable to State. At least thirty (30) days prior to the expiration or termination of said bond or acceptable financial instrument, a signed endorsement or certificate showing that said bond or financial instrument has been renewed or extended shall be filed with the State. Within 15 days of State's

request, Concessionaire shall furnish State with a signed and complete copy of the valid bond or financial instrument.

C. Construction Payment Bond: Prior to the commencement of construction required hereunder, Concessionaire shall furnish the State with a bond, listing Concessionaire's contractor(s) as principals, in a sum not less than **fifty percent (50%)** of the total cost of the construction. The bond shall guarantee payment by Concessionaire of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect the State from any liability, losses, or damages arising therefrom. In no event shall Concessionaire allow the imposition of a mechanics' lien or other lien on the concession property, and at its sole expense shall take all steps to remove such liens or the threat of such liens.

D. Construction Performance Bond: Prior to the commencement of construction required hereunder, Concessionaire shall furnish the State with a bond, listing Concessionaire's contractor(s) as principals, in a sum not less than **fifty percent (50%)** of the total cost of the construction. The bond shall guarantee faithful performance of the construction by Concessionaire's contractor.

E. Concessionaire acknowledges that allowing the Performance Bond or other security instrument(s) to expire or otherwise terminate and/or allowing the total secured amount to fall below the security required herein will cause State to incur costs and significant risks not contemplated by this Contract, the exact amount of which will be difficult to ascertain. These costs include, but are not limited to, administrative costs and other expenses necessary to ensure continued performance of services for the public and protection of the Premises. Accordingly, if Concessionaire allows the Performance Bond or other security instrument to expire or otherwise terminate and/or allows the total secured amount to fall below the security required pursuant to this Contract, Concessionaire shall pay to State an amount equal to five percent (5%) of the required security or five hundred dollars (\$500), whichever is greater. The parties agree that this charge represents a fair and reasonable estimate of the

costs State will incur. Acceptance of this charge by State shall not constitute a waiver of Concessionaire's default, nor prevent State from exercising the other rights and remedies available to it under this Contract or applicable law, including the right to terminate this Contract and seek the payment of damages.

27. **INSURANCE**

A. Concessionaire shall provide before entering the Premises and shall maintain in force throughout the term of this Contract the following:

- 1) **Commercial General Liability Insurance**: Concessionaire shall maintain general liability on an occurrence form with limits not less than \$2,000,000 per occurrence for bodily injury and property damage liability combined with \$5,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal and advertising injury
- 2) **Automobile Liability**: Concessionaire shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of motor vehicles including owned, hired and non-owned motor vehicles used by Concessionaire in the conduct of business under this Contract.
- 3) **Watercraft Liability**: If Concessionaire uses any watercraft in the conduct of business under this Contract, the Concessionaire shall maintain watercraft liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of watercraft used by Concessionaire in the conduct of business under this Contract.
- 4) **Workers' Compensation Insurance**: Concessionaire shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Contract. Employer's liability limits of \$1,000,000 are required. The workers' compensation policy shall contain a waiver of subrogation in favor of the

State of California on a form acceptable to State. The workers' compensation policy shall contain an additional waiver of subrogation in favor of United States Bureau of Reclamation.

5) Property Insurance: Concessionaire shall provide Special Form building coverage on a replacement cost basis limits based on the estimated replacement value of facilities occupied by Concessionaire. Replacement value effective XXXX is \$XXX,XXX.

6) Business Interruption Insurance: Guarantees State's rental revenue stream during any period of non-operational or any period of curtailed operation not solely attributable to State. Policy shall guarantee such compensation for a minimum period of one (1) year.

7) Rental Insurance Coverage/Waiver Release Form: In the event Concessionaire offers boat and personal watercraft rental, Concessionaire shall offer rental customers the option of an insurance policy that covers damage or loss of rental equipment when used in compliance with the terms and conditions set forth in the boat/personal watercraft rental agreement.

B. The State shall be named as "loss payee" for any Property Insurance claim related to the destruction, loss, or damage of State-owned buildings. In the event of destruction, loss, or damage of any of the State-owned buildings, improvements, or fixtures located on the Premises that the State determines (1) to be essential to the continued operation of the Contract and (2) cannot be repaired within one-hundred-eighty (180) days of the occurrence, the State may terminate this Contract. A decision by the State to terminate the Contract under this provision shall be communicated in writing to Concessionaire as soon as practicable. If the Contract is so terminated, State shall be entitled to the proceeds payable under any applicable insurance policies pertaining to the loss as its interest may appear. Receipt of such proceeds by State shall be in addition to the right of State to pursue whatever other remedies it may have to recover any losses due to the occurrence. If the State determines not to terminate the Contract, then, in State's discretion, any buildings, improvements,

or fixtures built in replacement of any damaged or destroyed property shall be subject to the terms and provisions of this Contract as if they had existed at the onset. In no event shall the provisions of this Section be deemed or construed to relieve Concessionaire from the requirement to repair or replace any damaged or destroyed property except as specifically excepted by express terms of this Contract.

C. Each policy of liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Concessionaire's limit of liability. The policy must include **the State of California, Department of Parks and Recreation and the US Department of the Interior, Bureau of Reclamation, their officers, agents, and employees, as additional insureds.**

These endorsements must be supplied under form acceptable to State. Any subcontractors shall be included under Concessionaire's policy or provide evidence of coverage equal to limits and policies required of Concessionaire.

D. Concessionaire is responsible to provide the State within five (5) business days following receipt by Concessionaire a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Concessionaire fails to keep in effect at all times the specified insurance coverage, State may, in addition to other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

E. Each policy shall be underwritten to the satisfaction of the State. Concessionaire shall submit to State a signed and complete certificate of insurance with all endorsements required by this Section, showing to the satisfaction of State that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, Concessionaire shall furnish State with a signed and complete copy of the required policy.

28. HOLD HARMLESS AGREEMENT

Concessionaire hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Contract, except claims

arising from, and to the extent of, the sole gross negligence or willful misconduct of the State, its officers, agents, or employees. Concessionaire shall protect, indemnify, hold harmless, and defend State and U.S. Department of the Interior, Bureau of Reclamation, their officers, agents, and employees against any and all claims, demands, damages, costs, expenses, attorney fees, expert costs and fees, or liability costs arising out of the development, construction, operation, or maintenance of the Premises property described herein and compliance with all laws, including but not limited to the Americans With Disabilities Act of 1990 as provided for herein, except for liability arising out of, and to the extent of, the sole gross negligence or willful misconduct of State, its officers, agents, or employees or other wrongful acts for which the State is found liable by a court of competent jurisdiction.

29. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES

Concessionaire shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Contract, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges that all rights and privileges extended through this Contract are subject to the terms, conditions, exceptions, and reservations memorialized in the MPA, attached to this Contract as **Exhibit K**. Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and State building codes and regulations. Concessionaire further acknowledges State policy for concession employees to maintain compatible relations with State employees and the public.

30. DISABILITIES ACCESS LAWS

Without limiting Concessionaire's responsibility under this Contract for compliance with all laws, with regard to all operations and activities that are the responsibility of Concessionaire under this Contract, Concessionaire shall be solely

responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (ADA) [Public Law 101-336, commencing at Section 12101 of Title 42, United States Code (and including Titles I, II, and III of that law)], the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

Concessionaire shall be solely responsible to complete necessary modifications to Premises to meet ADA requirements within the first Contract Year.

With regard to facilities for which Concessionaire is responsible for operation, maintenance, construction, restoration, or renovation under this Contract, Concessionaire also shall be responsible for compliance with Government Code Section 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws. Written approval from State is required prior to implementation of any plans to comply with accessibility requirements.

These facilities must be compliant with the 2010 ADA Standards for Accessible Design, California Building Code, Title 24 Chapter 11B (latest edition), Accessibility to Public Accommodations, and the Final Accessibility Guidelines for Outdoor Developed Areas put forth by the United States Access Board.

31. NONDISCRIMINATION

During the performance of this Contract, Concessionaire and its employees shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, or any member of the public because of sex, sexual orientation, race, color, religious creed, marital status, need for family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, need for pregnancy disability leave, or need for reasonable accommodation. Concessionaire shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

For contracts over \$100,000 executed or amended after January 1, 2007, the Concessionaire certifies compliance with Public Contract Code Section 10295.3 concerning domestic partners.

Further, as part of compliance with the foregoing, Concessionaire shall comply with The Americans With Disabilities Act Title II Regulations Part 35, Subpart B – §35.130 General Prohibitions Against Discrimination, and Subpart D - Program Accessibility § 35.149 Discrimination Prohibited.

Concessionaire shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Division 4, Chapter 5). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Concessionaire and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

Concessionaire shall include the non-discrimination and compliance provisions of this Section in all agreements to perform work under and/or in connection with this Contract.

In the event of violation of this Section, the State will have the right to terminate this Contract, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by the Concessionaire.

32. DRUG-FREE WORKPLACE

Concessionaire agrees to comply with Government Code Section 8355 in matters relating to the provision of a drug-free workplace. This compliance is evidenced by the executed Standard Form 21 entitled Drug-Free Workplace Certification, **Exhibit G**, attached hereto and made a part of the Contract.

33. CONFLICT OF INTEREST

Concessionaire warrants and covenants that no official, employee in the state civil service, other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Contract; (b) will be

employed in the performance of this Contract without the immediate divulgence of such fact to State. In the event State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Concessionaire shall terminate such employment immediately. For breaches or violation of this Section, State shall have the right both to annul this Contract without liability and, in its discretion, recover from the Concessionaire the full amount of any compensation paid to such official, employee, or business entity.

34. EXPATRIATE CORPORATIONS

Concessionaire hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1 and is eligible to contract with the State.

35. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Concessionaire, by signing this Contract, does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Concessionaire within the two-year period immediately preceding the date of this Contract because of Concessionaire's failure to comply with a Federal Court order that Concessionaire shall comply with an order of the National Labor Relations Board.

36. CHILD SUPPORT COMPLIANCE ACT

In the event the annual gross income generated as a result of this Contract shall exceed One Hundred Thousand Dollars (\$100,000.00), Concessionaire acknowledges that:

- A. The Concessionaire recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall comply with all applicable state and federal laws provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

B. The Concessionaire to the best of its knowledge is complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

37. RECORDS AND REPORTS

Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this Contract in a manner that conforms to industry standards and practices and in a manner acceptable to State. Concessionaire shall keep all records for a period of at least four (4) years.

In accordance with Public Resources Code Section 5080.18(b), copies of all sales and use tax returns submitted by Concessionaire to the California State Board of Equalization, the Employment Development Department, the Franchise Tax Board, or any other governmental agency shall be concurrently submitted to State.

In accordance with Public Resources Code Section 5080.18(c), State shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine and copy Concessionaire's books and records including all tax records and returns. Concessionaire hereby agrees to make all such records, books, and tax returns available to State upon State's request therefor. Concessionaire further agrees to allow interviews of any employees who might reasonably have information related to such records.

Concessionaire will submit to State, no later than May 1st of each year during the term of this Contract, a verified profit and loss statement for the previous calendar year. Such statement shall be submitted on Form DPR 86, Concessionaire's Financial Statement, attached hereto as **Exhibit E**, or in a format previously approved by the State, and shall contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to the State. Within forty-five (45) days of the expiration or termination of this Contract, Concessionaire shall submit to the State a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

Concessionaire shall obtain and install cash registers or other accounting equipment acceptable to the State, through which Concessionaire shall record all gross receipts from the operation of the concession. This equipment shall be non-resettable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display that is visible to the public. Concessionaire shall make all cash register tapes available to the State upon State's request. Concessionaire shall provide a cash register receipt to each customer setting forth the full amount of a sale.

38. TAXES

A. By signing this Contract, Concessionaire acknowledges that occupancy interest and rights to do business on state property being offered Concessionaire by this Contract may create a possessory interest as that term is defined in Revenue and Taxation Code Section 107.6, which possessory interest may subject Concessionaire to liability for the payment of property taxes levied on such possessory interest.

B. Concessionaire agrees to pay all lawful taxes, assessments, or charges that at any time may be levied by the State, County, City, or any tax or assessment levying body upon any interest in or created by this Contract, or any possessory right that Concessionaire may have in or to the premises covered hereby, or the improvements thereon by reason of Concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Concessionaire in or about the Premises.

39. PERFORMANCE EVALUATIONS AND INSPECTION

As part of its administration of this Contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A Concessionaire Performance Rating (DPR Form 531) attached hereto as **Exhibit F**, or other similar format(s) as may be adopted by the State will be utilized for evaluation purposes. State

further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the State Park System. Concessionaire agrees to cooperate with State in all respects related to the implementation of State's Concession Performance Evaluation program and with State's activities on the Premises. State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State's entry in the Premises as provided herein, except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

40. DEFAULT BY CONCESSIONAIRE

A. Defaults: The occurrence of any one of the following shall constitute a default and breach of this Contract by Concessionaire:

- 1) Failure to Pay Rent: Any failure of Concessionaire to timely pay any rent due or any other monetary sums required to be paid hereunder where such failure continues for a period of ten (10) consecutive days after such sums are due.
- 2) Absence from Premises: Any complete absence by Concessionaire or its agents and employees from the Premises for thirty (30) consecutive days or longer. The Premises shall be deemed abandoned after State has followed the procedures set forth in Civil Code Section 1951.3.
- 3) Nuisance: Should Concessionaire create or allow to be created a nuisance on the Premises, State may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Premises without notice to Concessionaire. For the purpose of this paragraph, "nuisance" consists of an egregious activity that threatens the health, welfare, and safety of the public. Concessionaire shall immediately vacate the Premises and

remove all personal property within thirty (30) days after State's declaration of default.

4) Failure to Observe Other Provisions: Any failure by Concessionaire to observe or perform another provision of this Contract where such failure continues for twenty (20) consecutive days after written notice thereof by State to Concessionaire; this notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. However, if the nature of Concessionaire's default is such that it cannot reasonably be cured within the twenty (20) day period, Concessionaire shall not be deemed to be in default if it is determined at the sole discretion of State that Concessionaire has commenced such cure within the twenty (20) day period and thereafter continues to diligently prosecute such cure to completion to the satisfaction of State.

5) Involuntary Assignments, Bankruptcy: State and Concessionaire agree that neither this Contract nor any interest of Concessionaire hereunder in the Premises shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Contract; (d) the appointment of a receiver with the authority to take possession of the Premises in any proceeding or action in which Concessionaire is a party; or (e) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a default by Concessionaire and State shall have the right to elect to take immediate possession of the Premises, to terminate this Contract and/or invoke other appropriate remedies as set forth below, in which case this Contract shall not be treated as an asset of Concessionaire.

B. Notices of Default: Notices of default shall specify the alleged default and the applicable contract provision and shall demand that Concessionaire perform the provisions of this Contract within the applicable time period or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Contract unless State specifically so states in the notice.

41. **STATE'S REMEDIES**

In the event of default by Concessionaire, State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of State at law or in equity.

A. Collection of Rent: In any case where State has a cause of action for damages, State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar State from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of State in any suit or entry of judgment for any part of the rent reserved under this Contract, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Contract. The claims for rent may be regarded by State, if it so elects, as separate claims capable of being assigned separately.

B. Maintain Contract in Effect: The State has the remedy described in California Civil Code 1951.4 (lessor may continue lease in effect after lessee's breach or abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). The following do not constitute a termination of the Concessionaire's right to possession: (1) Acts of maintenance or preservation or efforts to relet the Premises; (2) The appointment of a receiver upon initiative of the State to protect State's interests under the Contract; (3) Withholding consent to a subletting or assignment so long as such consent is not unreasonably withheld.

C. Continued Performance: At State's option, Concessionaire shall continue with its responsibilities under this Contract during any dispute.

D. Termination of Concessionaire's Right to Possession: Upon an event of default, State may terminate Concessionaire's right to possession of the Premises at any time by written notice to Concessionaire. In the absence of such written notice from State, no act by State, including, but not limited to, acts of maintenance, efforts to relet and/or assign rights to possession of the Premises, or the appointment of a receiver on State's initiative to protect State's interest under this Contract shall constitute an acceptance of Concessionaire's surrender of the Premises, or constitute a termination of this Contract or of Concessionaire's right to possession of the Premises. Upon such termination, State has the right to recover from Concessionaire:

- 1) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Contract;
- 2) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Contract until the time of the award exceeds the amount of loss of rent that Concessionaire proves could have reasonably been avoided;
- 3) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the loss of rent that Concessionaire proves could have been reasonably avoided; and
- 4) any other amount necessary to compensate State for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Contract, which, without limiting the generality of the foregoing, includes any cost and expenses incurred by the State in recovering possession of the Premises, in maintaining or preserving the Premises after such default, in preparing the Premises for a new concessionaire, in making any repairs or alterations to the Premises necessary for a new concessionaire, in making any repairs or alterations to the Premises, and costs of clearing State's title of any interest of

Concessionaire, commissions, attorneys' fees, architects' fees, and any other costs necessary or appropriate to make the Premises operational by a new concessionaire.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

E. Assignment at State's Direction: In the event of a default by Concessionaire, when cure is not received and acknowledged by State after having provided notice of the breach as provided herein above, Concessionaire shall, in addition to the damages provided for herein, be obligated to assign all rights to occupy, possess, and operate on and in the Premises to State's designee within thirty (30) days of receipt of written demand by State. Concessionaire shall further remove itself and its personal property from the Premises within the same time frame. Concessionaire agrees to execute all documents necessary to effectuate and implement this provision. Upon such assignment, all rights of Concessionaire under the Contract shall transfer to the assignee.

Any designated assignee, as provided for herein, shall take and operate the concession under the same terms and conditions as those set forth herein, except for requirements that have already been performed and are no longer applicable. However, Concessionaire shall not be relieved of obligations incurred. An assignment of the Contract pursuant to the terms hereof shall not cause the Contract to terminate and shall not work a merger.

F. Receiver: If Concessionaire is in default of this Contract, State shall have the right to have a receiver appointed to collect rent and conduct Concessionaire's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by State to terminate this Contract.

G. Right to Cure Concessionaire's Default: At any time after Concessionaire commits a default, State can cure the default at Concessionaire's cost. If State, at any time by reason of Concessionaire's default, pays any sum or does any act

that requires the payment of any sum, the sum paid by State shall be due immediately from Concessionaire to State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by State until State is reimbursed by Concessionaire. Any such sum shall be due as additional rent.

H. Personal Property of Concessionaire: In the event any personal property or trade fixtures of Concessionaire remain at the Premises after State has regained possession or after an assignment is accomplished, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Premises provided below.

- 1) State's Obligations After Default: State shall be under no obligation to observe or perform any covenant of this Contract on its part to be observed or performed that accrues after the date of any default by Concessionaire. Such nonperformance by State shall not constitute a termination of Concessionaire's right to possession nor a constructive eviction.
- 2) No Right of Redemption: Concessionaire hereby waives its rights under California Code of Civil Procedure Sections 1174 and 1179 or any present or future law that allows Concessionaire any right of redemption or relief from forfeiture in the event State takes possession of the Premises by reason of any default by Concessionaire.
- 3) Other Relief: All monetary obligations of the Concessionaire of any kind shall be considered rent. State shall have such rights and remedies for failure to pay such monetary obligations as State would have if Concessionaire failed to pay rent due. The remedies provided in this Contract are in addition to any other remedies available to State at law, in equity, by statute, or otherwise.
- 4) No Buy-out: In accordance with Public Resources Code Section 5080.18 (h), where the Contract has been terminated due to a breach on the part of the Concessionaire under any terms of this Contract the State shall not be obligated to purchase any improvements made by

Concessionaire or to pay the Concessionaire for said improvements before or after taking possession of the Premises.

42. DEFAULT BY STATE

State shall not be in default of the performance of any obligation required of it under this Contract unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Concessionaire to State specifying the alleged default and the applicable contract provision giving rise to the obligation. However, if the nature of State's obligation is such that more than thirty (30) days is required for its performance, then State shall not be deemed in default if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

43. STATE BUY-OUT PROVISIONS

A. Notwithstanding any other provision in this Contract and in addition to any other remedy available to State, upon twelve (12) months written notice, State shall have the option to terminate the Contract and to pay Concessionaire the then depreciated cost of the facilities placed, created, or developed by Concessionaire on the Premises.

B. It is expressly understood that this Section does not apply to the situation where the State may terminate this Contract for any breach on the part of the Concessionaire under Section 40, Default By Concessionaire, or where the Contract is terminated at Concessionaire's request. Where there has been a breach on the part of the Concessionaire, under any terms of this Contract, the State shall not be obligated to pay the Concessionaire before or after taking possession of the Premises.

In the event of breach, bankruptcy, insolvency, abandonment, or the Contract is terminated at Concessionaire's request, the buy-out provisions contained herein are not to be considered as an obligation of the State.

C. For the purposes of this Section, such facilities shall be deemed to be the structures Concessionaire is expressly required to construct, create, or develop

under Section 24, Construction and Completion of Improvements, or later adds, exclusive of Concessionaire's personal property. The cost of such facilities for the purposes of this Section shall be those values established under Section 24(e), Construction and Completion of Improvements, above.

D. The amount to be paid as the then depreciated cost of the facilities in the event of termination under this Section shall be based on a four percent (4%), (30) year capital recovery schedule, which shall provide three thousand five hundred and six Dollars (\$3,506.00) for each one hundred thousand Dollars (\$100,000) of beginning cost, multiplied by the remaining years of the Contract.

E. In the event there is an assignment of this Contract for security and as consented to by State, then any payments made pursuant to this Section shall be used to satisfy such assignee to the extent of assignee's interest.

F. This Section shall only be operative when funds required by State for such buy-out are lawfully available to State, either through appropriation by the Legislature and through the normal budgeting processes of the State or otherwise.

44. SURRENDER OF THE PREMISES; HOLDING OVER

A. Surrender: On expiration or within thirty (30) days after earlier termination of the Contract, Concessionaire shall surrender the Premises to State with all fixtures, improvements, and Alterations in good condition, except for fixtures, improvements, and Alterations that Concessionaire is obligated to remove. Concessionaire shall remove all of its personal property and shall perform all restoration required by the terms of this Contract within the above stated time unless otherwise agreed to in writing.

1) Personal Property: All of Concessionaire's personal property remaining on the Premises beyond such time specified in this Section shall be dealt with in accordance with California Code of Civil Procedure Section 1174 and California Civil Code Sections 1980, or such other laws as may be enacted regarding the disposition of Concessionaires' property remaining at the Premises. Concessionaire waives all claims against

State for any damage to Concessionaire resulting from State's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to State for State's costs in storing, removing, and disposing of Concessionaire's personal property or trade fixtures.

2) Failure to Surrender: If Concessionaire fails to surrender the Premises to State on the expiration, assignment, or within thirty (30) days after earlier termination of the term as required by this Section, Concessionaire shall hold State harmless for all damages resulting from Concessionaire's failure to surrender the Premises.

B. Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Premises with State's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the Minimum Rent shall be increased by Consumer Price Index adjustments required by this Contract in accordance with Section 4, Rent, unless otherwise agreed to in writing by State. Concessionaire shall pay such rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this Contract except those pertaining to the term shall apply to the month-to-month tenancy.

45. NO RECORDATION; QUITCLAIM

A. No Recordation: This Contract shall not be recorded.

B. Quitclaim: Concessionaire shall execute and deliver to State on the expiration or termination of this Contract immediately on State's request, a quitclaim deed to the Premises and the rights arising hereunder, in recordable form or such other document as may be necessary, to remove any claim of interest of Concessionaire in and to all property belonging to the State. Should Concessionaire fail or refuse to deliver to State a quitclaim deed or other documents as aforesaid, a written notice by State reciting the failure of the Concessionaire to execute and deliver said quitclaim deed as herein provided, shall after ten (10) days from the date of recordation of said notice be conclusive

evidence against the Concessionaire and all persons claiming under Concessionaire of the termination of this Contract.

46. ATTORNEY FEES

Concessionaire shall reimburse the State on demand for all reasonable attorney fees (including attorney fees incurred in any bankruptcy or administrative proceeding or in any appeal) and expenses incurred by State as a result of a breach or default under this Contract. If Concessionaire becomes the prevailing party in any legal action brought by State, Concessionaire need not reimburse the State for any attorney fees and expenses incurred by the State.

47. WAIVER OF CLAIMS

The Concessionaire hereby waives any claim against the State of California, its officers, agents, or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same or any part thereof from being carried out.

48. WAIVER OF CONTRACT TERMS

Unless otherwise provided by this Contract, no waiver by either party at any time of any of the terms, conditions, or covenants of this Contract shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such breach 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 State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise

thereof in one or more instances. The rights, powers, options, and remedies given to the State by this Contract shall be deemed cumulative.

49. INTERPRETATION OF CONTRACT

This Contract is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

50. DURATION OF PUBLIC FACILITIES

By entering into this Contract, State makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of State ownership thereof, nor does the State guarantee the accuracy of any financial or other factual representation that may be made regarding this concession.

51. EMINENT DOMAIN

If, during the term of this Contract, any property described herein or hereinafter added hereto is taken in eminent domain, the entire award shall be paid to State.

52. TEMPORARY TENANCY

This tenancy is of a temporary nature and the parties to this Contract agree that no relocation payment or relocation advisory assistance will be sought or provided in any form as a consequence of this tenancy.

53. SECTION TITLES

The Section titles in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Contract, or in any way affect this Contract.

54. INDEPENDENT CONTRACTOR

In the performance of this Contract, Concessionaire and the agents and employees of Concessionaire shall act in an independent capacity and not as officers or employees or agents of the State.

55. ASSIGNMENTS AND SUBCONCESSIONS

No transfer, assignment, or corporate sale or merger by the Concessionaire that affects this Contract or any part thereof or interest therein directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer, assignment, or corporate merger or sale is first consented to in writing by State. Before State considers such assignment, evidence must be given to State that the proposed assignee qualifies as a "best responsible bidder" under the terms of Section 5080.05 of the Public Resources Code or "best responsible person or entity submitting a proposal" under the terms of Section 5080.23 of the Public Resources Code and the Bid Prospectus or Request for Proposals under which this Contract was awarded and executed. To be effective, any such assignment must comply with applicable law including, without limitation on generality, Public Resources Code Sections 5080.20 and 5080.23.

Portions of this concession may be operated by others under a subconcession agreement with prior written consent of State under the following conditions:

- A. The subconcessionaire must be qualified.
- B. The subconcessionaire's interest shall be subordinate and in all ways subject to the terms of this contract.
- C. Concessionaire's gross receipts shall include all receipts of the subconcessionaire.

56. MODIFICATION OF CONTRACT

This concession contract contains and embraces the entire agreement between the parties hereto and neither it, nor any part of it, may be changed, altered, modified, limited, or extended orally or by any agreement between the parties unless such agreement be expressed in writing, signed, and acknowledged by the State and the Concessionaire or their successors in interest.

An amendment is required to change the Concessionaire's name as listed in this Contract upon receipt of legal documentation to support such change.

Notwithstanding any of the provisions of this Contract, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions

thereto, or terminations thereof, which are not forbidden by law. Such written modifications or additions to this Contract shall not be effective until signed and acknowledged by the State and Concessionaire and approved in writing by the Department of General Services and the Attorney General of the State of California. The State 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.

57. UNENFORCEABLE PROVISION

In the event that any provision of this Contract is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Contract have force and effect and shall not be effected thereby.

58. APPROVAL OF CONTRACT

This Contract, amendments, or modifications thereof shall not be effective until approved by Department of General Services and the Attorney General of the State of California.

59. CONTRACT NOTICE

Any notices required to be given or that may be given by either party to the other shall be deemed to have been given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

Concessionaire at:	Concessionaire Name
	Concession Contact Address
	Concession City, State, Zip
	Concessionaire Phone
State at:	Department of Parks and Recreation
	Gold Fields District
	7806 Folsom Auburn Road
	Folsom, California
	(916) 988-0205

Copy to: Department of Parks and Recreation
Marketing and Business Development Division
P.O. Box 942896
Sacramento, California 94296-0001
916-653-7733

The address to which notices shall or may be mailed as aforesaid by either party shall or may be changed by written notice given by such party to the other, but nothing in this Section shall preclude the giving of any such notice by personal service.

60. STATE'S DISTRICT SUPERINTENDENT

For the purposes of this Contract, the District Superintendent is the State representative responsible for the Premises. The District Superintendent is charged with the day-to-day administration of this Contract and is the Concessionaire's initial contact with the State for information, contract performance, and other issues as might arise. The District Superintendent may delegate these responsibilities to a Sector or Park Superintendent or other individual.

IN WITNESS WHEREOF, the parties hereto warrant that they respectively have the requisite authority to enter this Contract, binding the named parties for which they sign, and have executed this concession contract at the respective times set forth below.

CONCESSIONAIRE:

**STATE OF CALIFORNIA
DEPARTMENT OF PARKS & RECREATION**

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED:

APPROVED:

ATTORNEY GENERAL:

DEPARTMENT OF GENERAL SERVICES:

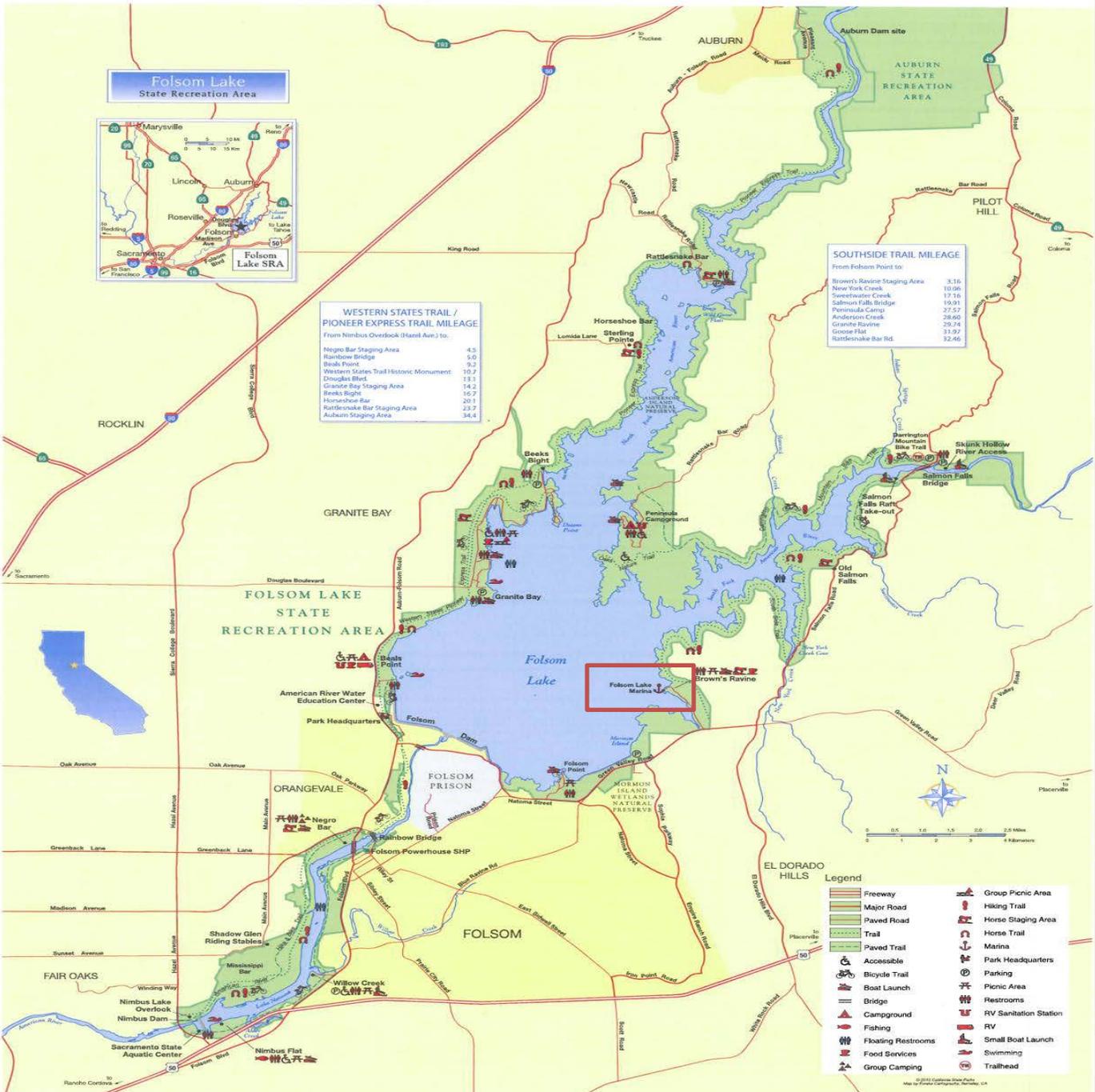
Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

**KAMALA D. HARRIS, Attorney General
of the State of California**

By: _____
Deputy Attorney General

Dated: _____

EXHIBIT A – THE PREMISES





SAW

EXHIBIT B – CONCESSIONAIRE’S OPERATION PLAN

SAMPLE

EXHIBIT C – CONCESSIONAIRE’S FACILITY IMPROVEMENT PLAN

SAMPLE

EXHIBIT D – DPR 54, CONCESSIONAIRE’S MONTHLY REPORT OF OPERATION

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

FOR DEPARTMENT COMPLETION	
DISTRICT NO.	PARK UNIT NO.
ROC DOCUMENT NO.	

CONCESSIONAIRE'S MONTHLY REPORT OF OPERATION

FOR THE MONTH OF _____, YEAR _____

(Instructions on reverse.)

NAME OF CONCESSION	
ADDRESS	CITY/STATE/ZIP CODE
DISTRICT	PARK UNIT

TYPE OF RECEIPT	GROSS RECEIPTS	NUMBER OF UNITS (WHERE APPLICABLE)	CUMULATIVE GROSS TO DATE (CONTRACT YEAR)	PERCENT RATE OR AMOUNT PER UNIT DUE STATE	AMOUNT DUE TO STATE
FOOD & NONALCOHOLIC BEVERAGES					
ALCOHOLIC BEVERAGES					
MERCHANDISE					
EQUIPMENT RENTALS					
PAY SHOWERS					
VENDING MACHINES (SEE REVERSE)					
SUBTOTALS					
ADJUSTMENTS (EXPLAIN REASON ON REVERSE)					
TOTAL DUE (EXPLAIN REASON ON REVERSE)					

MAINTENANCE FEES (COMPLETE THIS SECTION IF APPLICABLE)	
THIS MONTH'S MAINTENANCE FEE ALLOCATION _____ % x Monthly Gross Revenue = \$	CUMULATIVE MAINTENANCE FEE ALLOCATION YEAR TO DATE _____ % x Cumulative Gross Revenue = \$
AMOUNT SPENT ON ELIGIBLE MAINTENANCE THIS MONTH \$	CUMULATIVE AMOUNT EXPENDED ON ELIGIBLE MAINTENANCE YEAR TO DATE \$

SEASONAL CONCESSIONS (COMPLETE THIS SECTION IF APPLICABLE)	EXACT DATE YOU CEASED OPERATIONS	DATE YOU EXPECT TO RESUME OPERATIONS

DECLARATION		
<i>I declare under penalty of perjury that the information on this form is accurate and complete to the best of my knowledge.</i>		
CONCESSIONAIRE'S SIGNATURE	PRINTED NAME	DATE
TITLE/POSITION	PHONE NO.	

EXHIBIT D – *continued*

DPR 54 COMPLETION INSTRUCTIONS

1. Provide the month and year of operation for which this report is being prepared.
2. Provide full name of the concession and the name and address of the concessionaire, including city, state and zip code.
3. Include all revenue for the month for each appropriate category. For "Vending Machine" revenue, please include the following sources:
 - Ice machines
 - Newspaper vending machines
 - Map and brochure vending machines
 - Grab boxes
 - Firewood dispensers
 - Air compressors
 - Washing machines and dryersDo not include the following sources as "Vending Machine" revenue:
 - Park UR Self machines
 - Pay showers
 - Iron rangers
4. Types of revenue that might be recorded on a "per unit" basis include:
 - Petroleum products (per gallon)
 - Group tours (per adult or children's ticket)
5. Complete the "Maintenance Fees" and "Seasonal Concessions" sections of the form if your concession contract requires a maintenance fee allocation and/or if your concession operates on a seasonal basis.
6. Sign and date the form and provide the preparer's title and telephone number.

COMMENTS/EXPLANATIONS:

DPR 54 (Back)

EXHIBIT E – DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

CONCESSIONAIRE FINANCIAL STATEMENT

CONCESSIONAIRE NAME	CONCESSION NAME
PARK UNIT NAME	REPORTING PERIOD From: _____ To: _____

A. CASH FLOW STATEMENT

GROSS SALES/RECEIPTS

		\$ _____
Less Returned Sales and Allowances	\$ _____	
Less Sales Taxes	_____	
Net Sales for Period		\$ _____
Cost of Goods Sold:		
Inventory at Beginning of Period	\$ _____	
Add Purchases During Period	_____	
Merchandise Available for Sale	_____	
Less Inventory at Close of Period	_____	
Less Cost of Goods Sold		\$ _____
	GROSS PROFIT	\$ _____

LESS EXPENSES

Salaries & Wages <i>(do not include Concessionaire salaries)</i>	\$ _____	
Rent to State	_____	
Insurance	_____	
Materials & Supplies	_____	
Maintenance & Repairs	_____	
Utilities <i>(including telephone)</i>	_____	
Advertising	_____	
Taxes & Licenses <i>(other than income & sales)</i>	_____	
Legal & Accounting	_____	
Travel & Transportation	_____	
Interest	_____	
Security	_____	
Administrative Overhead	_____	
Depreciation <i>(equipment)</i>	_____	
Amortization <i>(improvements)</i>	_____	
Other: _____	_____	
	TOTAL EXPENSES	\$ _____
	NET PROFIT FROM OPERATIONS	\$ _____
	<i>(before income taxes)</i>	

CONCESSIONAIRE FINANCIAL STATEMENT

CONCESSIONAIRE NAME	CONCESSION NAME
PARK UNIT NAME	REPORTING PERIOD From: _____ To: _____

C. BALANCE SHEET

ASSETS

CURRENT ASSETS

Cash	\$	
Accounts Receivable		
Merchandise Inventory		
Notes Receivable (Less than 1 year)		
TOTAL CURRENT ASSETS	\$	

NONCURRENT ASSETS

Equipment/Property	\$	
Less Depreciation Reserve		
Net Equipment/Property Cost		
Prepaid Expenses		
Other: _____		
Other: _____		
TOTAL NONCURRENT ASSETS	\$	
TOTAL ASSETS	\$	

LIABILITIES

CURRENT LIABILITIES

Accounts Payable	\$	
S & W Payable		
Short-Term Notes Payable		
Interest Payable		
Short-Term Loan Payable		
Other: _____		
Other: _____		
TOTAL CURRENT LIABILITIES	\$	

OTHER LIABILITIES

Other: _____	\$	
Other: _____		
TOTAL OTHER LIABILITIES	\$	
TOTAL LIABILITIES	\$	

CAPTIAL

OWNER'S EQUITY

Capital	\$	
Less Personal Drawing	\$	
Net Addition	\$	
Stockholder's Equity	\$	
Other: _____	\$	
TOTAL CAPITAL	\$	
TOTAL LIABILITIES AND CAPITAL	\$	

CONCESSIONAIRE FINANCIAL STATEMENT

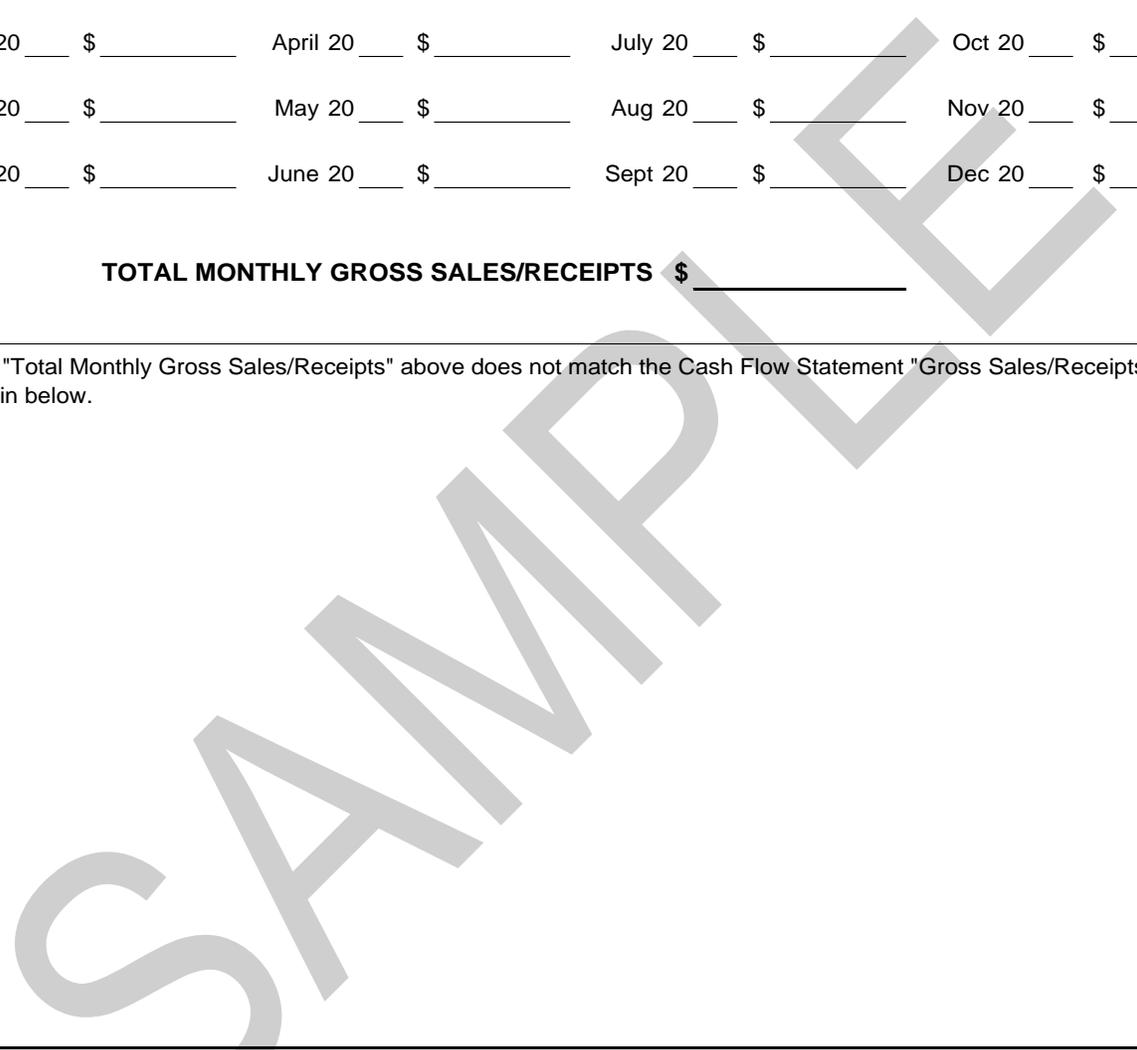
CONCESSIONAIRE NAME	CONCESSION NAME
PARK UNIT NAME	REPORTING PERIOD From: _____ To: _____

D. STATEMENT OF MONTHLY GROSS SALES/RECEIPTS

Jan 20 ___ \$ _____	April 20 ___ \$ _____	July 20 ___ \$ _____	Oct 20 ___ \$ _____
Feb 20 ___ \$ _____	May 20 ___ \$ _____	Aug 20 ___ \$ _____	Nov 20 ___ \$ _____
Mar 20 ___ \$ _____	June 20 ___ \$ _____	Sept 20 ___ \$ _____	Dec 20 ___ \$ _____

TOTAL MONTHLY GROSS SALES/RECEIPTS \$ _____

If the "Total Monthly Gross Sales/Receipts" above does not match the Cash Flow Statement "Gross Sales/Receipts," please explain below.



The undersigned declares and certifies that the above statement and the attached Cash Flow Statement, Schedule of Depreciation, and Balance Sheet are correct.

AUTHORIZED SIGNATURE

DATE



PRINTED NAME OF PREPARER

EXHIBIT F – DPR 531, CONCESSION PERFORMANCE RATING

CONCESSION PERFORMANCE RATING

State of California - The Resources Agency
CALIFORNIA STATE PARKS

DISTRICT		PARK UNIT					DATE	
CONCESSIONAIRE		TYPE OF CONCESSION						
CATEGORIES		EXCELLENT (E)	SATISFACTORY (S)	NEEDS IMPROVEMENT (NI)	NONCOMPLIANCE/ UNACCEPTABLE (NON)	COMPLIANCE (COM)	NOT APPLICABLE (NA)	COMMENTS
<i>Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box.</i>								
ACCOUNTING	RENTAL PAYMENT	8	6	2	0			
	MONTHLY DPR 54 SUBMITTAL	4	3	1	0			
	ANNUAL DPR 86 SUBMITTAL	4	3	1	0			
	MAINTAINS REGISTER JOURNAL/\$ TRAIL				0	4		
	OTHER:				0	4		
BONDS/INSURANCE	PERFORMANCE BOND				0	4		
	LIABILITY INSURANCE				0	4		
	FIRE INSURANCE				0	4		
	AUTOMOBILE INSURANCE				0	4		
	OTHER:				0	4		
CONSTRUCTION	REQUIRED IMPROVEMENTS				0	4		
	TIME SCHEDULE				0	4		
	PAYMENT BOND				0	4		
	OTHER:				0	4		
USE OF PREMISES	OPERATING DAYS/HOURS	4	3	1	0			
	AUTHORIZED GOODS/SERVICES	4	3	1	0			
	APPROPRIATE SIGNAGE/ADVERTISING	4	3	1	0			
	OTHER:	4	3	1	0			
QUALITY ASSURANCE	GOODS	8	6	2	0			
	SERVICES	8	6	2	0			
	PRICES (COMPETITIVE/POSTED)	4	3	1	0			
	CUSTOMER SERVICE	8	6	2	0			
	OTHER:	4	3	1	0			
TOTAL POINTS PER COLUMN					0			
<i>PAGE 1 ONLY</i>								

CATEGORIES		E	S	NI	NON	COM	NA	COMMENTS
SAFETY	FIRE SAFETY/PREVENTION	4	3	1	0			
	GAS/ELECTRIC	4	3	1	0			
	GENERAL SAFETY	4	3	1	0			
	OTHER:	4	3	1	0			
FACILITY MAINTENANCE	INTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	INTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	EXTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	EXTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	GROUNDS - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	GROUNDS - FACILITY MAINTENANCE	4	3	1	0			
	MAINTENANCE PLAN	4	3	1	0			
	OTHER:	4	3	1	0			
	INTERPRETIVE PROGRAM <i>(When Applicable)</i>	COSTUMES	4	3	1	0		
MERCHANDISE AND INTERPRETIVE PLAN		4	3	1	0			
FURNISHINGS AND INTERPRETIVE PLAN		4	3	1	0			
EVENTS/ACTIVITIES AND INTERPRETIVE PLAN		4	3	1	0			
IMPLEMENTATION OF INTERPRETIVE PLAN		4	3	1	0			
OTHER:		4	3	1	0			
TOTAL POINTS PER COLUMN <i>PAGE 2 ONLY</i>					0	0		
TOTAL POINTS PER COLUMN <i>PAGE 1 + PAGE 2</i>					0			
TOTAL POINTS RECEIVED FROM ALL CATEGORIES		MAXIMUM POINTS POSSIBLE FOR RATED CATEGORIES		PERCENT RATING		ARE THERE ANY NONCOMPLIANCE OR UNACCEPTABLE RATINGS IN ANY CATEGORY?*		
(÷) x 100 =		#DIV/0!		
OVERALL RATING <i>(Based on percent rating)</i>						<input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> EXCELLENT (90% to 100%) <input type="checkbox"/> SATISFACTORY (70% to 89%) <input type="checkbox"/> NEEDS IMPROVEMENT (60% to 69%) <input type="checkbox"/> UNACCEPTABLE (less than 60%)								
RATER'S SIGNATURE		TITLE		DATE		RATER DISCUSSED REPORT WITH CONCESSIONAIRE?		
						<input type="checkbox"/> Yes. Date: _____ <input type="checkbox"/> No		
<i>In signing this report I do not necessarily agree with the conclusion of the rater.</i>								
CONCESSIONAIRE'S SIGNATURE		TITLE		DATE				

***NOTE:** A rating of UNACCEPTABLE or NONCOMPLIANCE in any category will result in an overall rating of no higher than NEEDS IMPROVEMENT.

EXHIBIT G – DRUG FREE WORKPLACE CERTIFICATION

STATE OF CALIFORNIA

DRUG-FREE WORKPLACE CERTIFICATION

STD. 21 (Rev. 12/93)(CA ST PKGS, EXCEL 4/9/1999)

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized to legally to bind the contractor or grant recipient to the certification described below. I am fully aware that this certification, executed on the date below, is made under penalty of perjury under the laws of the State of California

CONTRACTOR/BIDDER FIRM NAME		FEDERAL ID NUMBER
BY (Authorized Signature)		DATE EXECUTED
PRINTED NAME AND TITLE OF PERSON SIGNING		TELEPHONE NUMBER (Include Area Code)
TITLE		()
CONTRACTOR/BIDDER FIRM'S MAILING ADDRESS		

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy in maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that everyone who works on the proposed contract or grant:
 - (a) Will receive a copy of the company's drug-free workplace policy statement, and
 - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until (NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts or grants entered into between the contractor or grantee and this state agency without requiring the contractor or grantee to provide a new and individual certificate for each contract or grant. If the contractor or grantee elects to fill in the blank date, then the terms and conditions of this certificate shall have the same force, meaning, effect and enforceability as if a certificate were separately, specifically, and individually provided for each contract or grant between the contractor or grantee and this state agency.

EXHIBIT H – LICENSE/PERMISSION FOR USE OF TRADEMARKS

LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

REQUESTER NAME _____ hereafter called the "Licensee."																									
<p>Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation ("State Parks") grants permission to use certain trademarks (the "Mark(s)"), created and owned by State Parks in accordance with the terms and conditions of this License, identified as follows:</p> <p style="text-align: center;">The State Park Logo Registration No. 2437051</p> <p>See http://search.parks.ca.gov/pages/321/files/BrandHandbookJanuary2007.pdf, incorporated herein, for additional provisions regarding use of the Mark, including specifications, registration, and logo usage guidelines.</p> <p>State Parks hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable right and license to use the Mark pursuant to the terms and conditions of this license from and including XXX through XXX, intended to match and run concurrent with Licensee's Concession Contract with State Parks.</p> <p>This license shall authorize the use of the Mark and associated goodwill, in connection with only the following:</p> <p>Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable. This is not an exclusive privilege to the user, and State Parks reserves the right to make the Mark available to others.</p> <p>Licensee shall not modify or alter the Mark in any way without prior written approval from State Parks.</p> <p>All uses of the Mark must be accompanied by the trademark registration symbol (®) unless it is infeasible from a design standpoint.</p> <p>IN NO EVENT SHALL STATE PARKS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. STATE PARKS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MARK IS GRANTED "AS IS."</p> <p>Licensee agrees to indemnify, protect, hold harmless, and defend State Parks from and against any liability that might arise from any and all use of the Mark by Licensee, its licensees, successors or assigns.</p> <p><u>Goodwill and Quality Control</u> A. Licensee recognizes the great value and goodwill associated with the Mark and acknowledges that such goodwill belongs to State Parks. Licensee further acknowledges that the Mark has acquired a secondary meaning among the public. Licensee agrees not to take any action that could be detrimental to the goodwill associated with the Mark or to State Parks. B. Before Licensee uses the Mark on any materials, it shall send a copy of each representative item showing the proposed use to, and obtain written approval from, State Parks. State Parks shall not unreasonably withhold or delay such approval.</p> <p><u>Third Party Infringement</u> State Parks, at its sole discretion, shall take whatever action it deems advisable in connection with any unauthorized use of the Mark(s) by a third party. State Parks shall bear the entire cost and expense associated with any such action, and any recovery or compensation that may be awarded or otherwise obtained as a result of any such action shall belong to State Parks.</p> <p>The provisions above constitute page 1 of 2 of this agreement. Page 2 must be initialed by both parties for this agreement to be valid.</p>																									
AGREED AND ACCEPTED																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">State of California Department of Parks and Recreation</td> <td colspan="2">LICENSEE</td> </tr> <tr> <td>BY</td> <td>DATE</td> <td>BY</td> <td>DATE</td> </tr> <tr> <td>></td> <td></td> <td>></td> <td></td> </tr> <tr> <td colspan="2"></td> <td colspan="2">PRINTED NAME AND TITLE OF PERSON SIGNING</td> </tr> <tr> <td>TITLE</td> <td>DISTRICT/SECTION</td> <td colspan="2">ADDRESS</td> </tr> <tr> <td>PHONE NO.</td> <td>EMAIL</td> <td>PHONE NO.</td> <td>EMAIL</td> </tr> </table>		State of California Department of Parks and Recreation		LICENSEE		BY	DATE	BY	DATE	>		>				PRINTED NAME AND TITLE OF PERSON SIGNING		TITLE	DISTRICT/SECTION	ADDRESS		PHONE NO.	EMAIL	PHONE NO.	EMAIL
State of California Department of Parks and Recreation		LICENSEE																							
BY	DATE	BY	DATE																						
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		PRINTED NAME AND TITLE OF PERSON SIGNING																							
TITLE	DISTRICT/SECTION	ADDRESS																							
PHONE NO.	EMAIL	PHONE NO.	EMAIL																						

10/2005

LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

The provisions below constitute page 2 of 2 of this agreement. This page must be initialed by both parties for this agreement to be valid.

Ownership Rights

Licensee acknowledges State Park's exclusive right, titles and interest in and to the Mark. Licensee further covenants that it shall not at any time challenge or contest the validity, ownership, title and registration of State Parks in and to the Intellectual property or the validity of this License. Licensee's use of the Mark shall inure to the benefit of State Parks. If Licensee acquires any trade rights, trademarks, equities, titles, or other rights in and to the Mark, by operation of law, usage, or otherwise, Licensee shall, upon the expiration of this License, assign and transfer the same to State Parks without any consideration other than the consideration of the License.
All rights not specifically transferred by this License are reserved to State Parks.

Termination

A. State Parks shall have the right to terminate the License without cause upon sixty (60) days notice if the Licensee's Concession Contract with State Parks is terminated, whereupon all rights granted herein shall revert immediately to State Parks.
B. Upon early termination by State Parks or by expiration of the License, the License shall terminate, Licensee's rights shall cease immediately and Licensee shall discontinue all use of the Mark(s) and/or other licensed property at once. Licensee shall dispose of all goods, works and materials bearing or relating to the Mark in accordance with State Park's instructions and consistent with the terms and conditions of the Concession Contract.

No Partnership or Agency Created

Nothing herein shall be construed to constitute the parties hereto as partners or joint venturers, nor shall any similar relationship be deemed to exist between them. Further, nothing in this License shall make one party the agent of the other, and neither party has power or authority to bind the other.

Applicable Law

This License shall be construed in accordance with the laws of the State of California; Licensee consents to jurisdiction of the courts of Sacramento, California.

Integration

This License, the Brand Standards Handbook, and the Concession Contract referenced herein, constitute the entire agreement between the parties hereto and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto. This License shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

Notices

All notices and reports to be sent to State Parks shall be in writing and shall be mailed or delivered to California Department of Parks and Recreation, Concessions Division, PO Box 942896, Sacramento CA 94296-0001. All notices to be sent to Licensee shall be mailed or delivered to the address specified on the first page of the License form. All notices and reports shall be deemed delivered immediately upon personal delivery, or, if mailed, three (3) days after being deposited in the United States mail system, postage prepaid, first class mail, and properly addressed. State Parks and Licensee shall provide notice to the other of any change in address.

Modifications

This License may not be modified except by a written instrument, signed by both parties, making specific reference to this License by date, parties and subject matter.

Severability

The invalidity or unenforceability of any provision of this License, or the invalidity or unenforceability of any provision of this License as applied to a particular occurrence or circumstance, shall not affect the validity or enforceability of any of the other provisions of this License or any other applications of such provisions, as the case may be.

Attorneys Fees

If litigation becomes necessary to secure compliance with the terms and conditions of this License, to recover damages and/or to terminate the License, the prevailing party in any legal action shall be entitled to recover reasonable attorney fees and expenses incurred.

AGREED AND ACCEPTED

LICENSOR'S INITIALS	DATE	LICENSEE'S INITIALS	DATE
▷		▷	

09/2005

EXHIBIT I – CONSUMER PRICE INDEX ADJUSTMENT FORMULA

Consumer Price Index (CPI) adjustments applied to the \$\$\$ Minimum Annual Rent shall be based on changes in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, San Francisco All Items, (1982-84=100). Calculations shall employ the following formula:

"Base Index" = CPI Index published for the month preceding the commencement date of this Contract.

"Base Rent" = Minimum \$\$\$ rent during the first Contract Year.

"Year End Index" = CPI Index for the month preceding the start of the subject Contract Year.

"Year End Index" - "Base Index"

Step #1: "Base Index" = % Change

Step #2: % Change x Base Rent = Adjustment

Step #3: Base Rent + Adjustment = New Rent

EXHIBIT J – WAIVER OF LIABILITY AND RELEASE SAMPLE

Waiver of Liability and Release, Express Assumption of Risk and Indemnity Agreement

I understand and acknowledge that there are risks of personal injury, death, and property damage while participating in the activities that are the subject of this rental agreement. The risks are inherent in these concession activities; still other risks may arise from conditions, situations, or activities of which I am presently unaware. My participation is voluntary and based on my independent assessment of the risks, without reliance on representations or advice by employees or representatives of the Concessionaire, the State of California, or any other person.

In consideration of being granted this rental agreement and the use of concession equipment,

I HEREBY RELEASE, WAIVE, AND RELINQUISH ALL CLAIMS AND LEGAL ACTIONS FOR PERSONAL INJURY, WRONGFUL DEATH, OR PROPERTY DAMAGE AGAINST CONCESSIONAIRE, AND AGAINST THE STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION (STATE) and BUREAU OF RECLAMATION, ARISING AS A RESULT OF MY PARTICIPATION IN THESE CONCESSION ACTIVITIES, OR ANY ACTIVITIES INCIDENTAL THERETO INCLUDING RESCUE ACTIVITIES; THIS RELEASE APPLIES EVEN IF CONCESSIONAIRE AND/OR STATE IS NEGLIGENT OR OTHERWISE AT FAULT. I ALSO AGREE TO PROTECT, HOLD HARMLESS, DEFEND AND INDEMNIFY CONCESSIONAIRE AND STATE FROM ALL CLAIMS AND LEGAL ACTIONS FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING FROM MY CONDUCT; THESE INDEMNITIES APPLY EVEN IF CONCESSIONAIRE AND/OR STATE IS NEGLIGENT OR OTHERWISE AT FAULT.

I understand the effect of my signing this document is that I (1) acknowledge and assume all risk of injury, death, or property damage I might suffer while participating in these concession activities, even if it occurs as a result of the negligence of Concessionaire and/or State or defects in equipment, (2) absolve and release Concessionaire and State from the consequences of their negligence, including without limit, rescue efforts, and defects in equipment, and (3) will protect, hold harmless, indemnify and defend Concessionaire and State against any legal actions or other claims for damages arising from my actions. **I UNDERSTAND THAT I AM FORFEITING IMPORTANT LEGAL RIGHTS AND INCURRING IMPORTANT LEGAL RESPONSIBILITIES.**

I understand that certain minimum skills, capabilities, physical and mental health, and fitness are required in order to participate in dangerous activities such as these concession activities; I warrant that I possess these. I understand and agree that should emergency rescue services or evacuation become necessary, the expenses are my sole responsibility and not those of Concessionaire and/or State or any other public or private entity.

I warrant that I am executing this agreement voluntarily and that neither Concessionaire nor the State has made any representations to induce or coerce me to sign this document. I agree that the terms of this document bind me, my heirs, assigns, executors, and administrators, and expressly and specifically protect Concessionaire and State including, as applicable, their agents, employees, officers, directors, and shareholders.

Printed Name & Address: _____

Signature: _____ Date: _____

Signature of parent or guardian for participant under age 18: _____

Name & Telephone of person to contact for emergencies: _____

EXHIBIT K – MANAGING PARTNER AGREEMENT (MPA)

SAMPLE

United States
Department of the Interior
Bureau of Reclamation
Central Valley Project
American River Division

MANAGEMENT AGREEMENT

Between

THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA

For the

ADMINISTRATION, OPERATION, MAINTENANCE, AND DEVELOPMENT OF
RECREATION USES AND FACILITIES

At

FOLSOM LAKE, LAKE NATOMA, AND AUBURN DAM AND
RESERVOIR AREA PROJECT LANDS

Managing Agreement No. 12-LC-20-0017

Date: JAN 24 2012

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project
American River Division

MANAGEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE STATE OF CALIFORNIA
FOR THE ADMINISTRATION, OPERATION, MAINTENANCE, AND
DEVELOPMENT OF RECREATION USES AND FACILITIES AT FOLSOM LAKE, LAKE
NATOMA, AND AUBURN DAM AND RESERVOIR AREA PROJECT LANDS

Article No.	Table of Contents	Page No.
	Preamble	1
1	Definitions	5
2	Management of the Project Areas	12
3	Terms of Agreement and Termination of Existing Management Agreements	12
4	Funding/Cost Share	13
5	Fees and Revenues	16
6	Reserve Fund	16
7	Reclamation Use Paramount	17
8	Partnership and Cooperation	19

9	Administration	19
10	Risk and Damages/Hold Harmless	20
11	Operations and Maintenance	21
12	Use Authorization, Concessions, Special Events	30
13	Facility Development	35
14	Title to Land, Recreation Facilities, Improvements	35
15	Resource Management Plan/General Plan	37
16	Reservoir Water Levels	38
17	Real Property Management	39
18	Fire Prevention, Protection and Suppression	41
19	Sever or Reassign Lands	42
20	Extraordinary or Catastrophic Occurrences	42
21	Consumptive Use of Water by State	43
22	Reservations	43
23	Contingent on Appropriations	44
24	Miscellaneous Provisions	44
25	Notice of Cure/Dispute Resolution	46
26	Modification	47
27	Termination	47
28	Designated Representatives/ Notices	48
29	Severability	48
30	Officials or Employees Not to Benefit	49
31	Survivor Clause	49
	Signature Page	49

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project
American River Division

MANAGEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE STATE OF CALIFORNIA
FOR THE ADMINISTRATION, OPERATION, MAINTENANCE, AND
DEVELOPMENT OF RECREATION USES AND FACILITIES AT FOLSOM LAKE, LAKE
NATOMA, AND AUBURN DAM AND RESERVOIR AREA PROJECT LANDS

THIS MANAGING PARTNER AGREEMENT, hereinafter referred to as "Agreement" or "MPA", made as of this 24th day of January 2012, pursuant to Act of Congress June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, collectively known and referred to as Federal Reclamation Laws, particularly the Federal Water Project Recreation Act of July 9, 1965, Public Law 89-72 (79 Stat. 213), as amended particularly by Title XXVIII of Reclamation Recreation Management Act of October 30, 1992 (102-575, 106 Stat. 4690-4693), between the United States of America acting by and through the Regional Director, Mid-Pacific Region, Bureau of Reclamation, or his duly authorized representative hereinafter styled "Reclamation", and the State of California, acting by and through the Director, Department of Parks and Recreation, hereinafter referred to as the "State" or "California State Parks", in accordance with California Public Resource Code Section 5080.30 et seq., as amended.

WITNESSETH THAT:

WHEREAS, the United States has constructed Folsom and Nimbus Dams and Reservoirs (Folsom Lake and Lake Natoma) and associated diversion facilities and canals located in Placer, El Dorado, and Sacramento Counties, California pursuant to the Flood Control Act of 1944 (Act of December 22, 1944, h. 665, 58 Stat. 887) and the American River Basin Development Act (Act of October 14, 1949, ch. 690, 63 Stat. 852), and;

WHEREAS, the United States acquired certain lands, hereinafter referred to as "Auburn Dam and Reservoir Area Project Lands" for the purpose of constructing, operating and maintaining the Auburn Folsom South Unit, Auburn Dam and Reservoir, an authorized feature of the Central Valley Project, located in Placer, El Dorado and Sacramento Counties, California as well as portions of the cities of Folsom and Rancho Cordova, and;

WHEREAS, the Public Law 89-161 (79, Stat 615) authorized the Auburn-Folsom South Unit of the Central Valley Project including Auburn Dam, and further authorized the Secretary of the Interior to construct, operate and maintain public outdoor recreation and fish and wildlife enhancement facilities and to provide for public use and enjoyment of unit lands in a manner coordinated with other unit purposes, and;

WHEREAS, the Auburn Project remains a congressionally authorized water resource project and Reclamation must preserve and maintain the Auburn Dam Project Lands for the project purposes and minimize uses and development that could significantly impact those lands for the construction of Auburn Dam, and;

WHEREAS, the parties hereto have previously entered into recreation area specific agreements and/or contracts including No. 14-06-200-7171 "Folsom Lake Lease of Land for State Park," dated August 16, 1956 as amended; and various agreements for the management of Auburn State

Recreation Area since 1977, including Purchase Order R11PX2002 – Auburn State Recreation Area; for the management and development of public recreation and recreation facilities at the above referenced projects in order to provide for law enforcement, public safety, resource protection, use and enjoyment of those areas consistent with project purposes, and;

WHEREAS, the California State Park and Recreation Commission has classified Folsom Lake as a State Recreation Area, the Folsom Powerhouse as a State Historic Park, and the Auburn Dam Project Lands as a State Recreation Area, and;

WHEREAS, the mission of California State Parks is to provide for the health, inspiration and education of the people of California by helping to preserve the state’s extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high quality outdoor recreation, and;

WHEREAS, the State has purchased approximately 2500 acres of land as additions to these recreation areas (see Definitions, “Recreation Area”) and has funded the development of significant recreation facilities in these areas, and;

WHEREAS, Folsom Lake State Recreation Area encompasses approximately 20,000 acres of water and land and is a major recreational resource for the Sacramento region, with an annual visitation of approximately two million visitors, and;

WHEREAS, Auburn State Recreation Area encompasses approximately 30,000 acres of federal lands and has become a major recreational resource for the greater Sacramento region with an annual visitation of approximately 1 million visitors, and;

WHEREAS, California Public Resources Code Section 5080.30 allows California State Parks to enter into agreements with the United States “...for the care, maintenance, administration, and control by any party to the agreement, of lands under the jurisdiction of any party to the agreement for the purpose of the state park system”, and;

WHEREAS, the parties wish to continue a longstanding partnership to provide for the public services and project purposes described above, but in a more efficient and comprehensive manner by incorporating all lands of the Folsom Lake, Lake Natoma, and Auburn Dam And Reservoir Area Project Lands into a single Managing Partner Agreement, and;

WHEREAS, the parties hereto mutually agree to enter into a Managing Partner Agreement for the continued administration, operation, maintenance and development of public recreation facilities, protection of natural and cultural resources and provision of public health and safety at Folsom Lake, Lake Natoma and Auburn Dam and Reservoir Area Project Lands, and;

WHEREAS, the parties acknowledge and agree that the longstanding partnership between Reclamation and the State has been a benefit to the Project Area and the visiting public.

NOW, THEREFORE, it is agreed as follows:

1. DEFINITIONS

When used herein unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms

- (a) "Appropriation" means any funds, subject to Federal appropriation law, provided to the State from the Federal government without regard to the authorization for such funds or the manner in which they were transferred.
- (b) "CEQA" means the California Environmental Quality Act, California Public Resources Code 21000 et seq.
- (c) "Commercial Filming" means any still photography or filming activity within the Project Area by "for-profit" or "non-profit" entities pursuant to Public Law 106-206 (Commercial Filming on Public Lands Act).
- (d) "Concession (Federal)" means a non-Federal commercial business that supports appropriate public recreational uses and provides facilities, goods, or services for which

revenues are collected. A concession generally involves use of the Federal Lands and Water and may involve the use or development of real property improvements.

(e) “Concession (State)” means a person, corporation, partnership or association contracted with the State to provide services not normally provided by State employees for the safety and convenience of the general public in the use and enjoyment of and the enhancement of recreational and educational experiences as units of the State Park System. Concessions shall not be entered into solely for their revenue producing potential (Cal. Pub. Resources Code § 5080.3).

(f) “Cost Share” means the value of Federal Government or non-Federal Partners’ contributions that is reasonable and allowable for the proper accomplishment of a project or program. Contributions can be third-party and in-kind contributions when allowed in the Financial Assistance Agreement. All contributions must be verifiable in the records of the partners.

(g) “Deferred Maintenance” means the practice of postponing maintenance activities such as repairs on both real property (i.e. infrastructure) and personal property (i.e. machinery) in order to save costs, meet budget funding levels, or realign available budget monies.

(h) “EAP” means the Reclamation Emergency Action Plan.

(i) “ESA” means the Endangered Species Act of 1973; and 16 U.S.C. §1531 et seq.

(j) “Emergency” means any situation that requires immediate action to reduce or avoid endangering public health and safety, the environment or protection of property.

(k) “Federal Ceiling” means the maximum amount of appropriated Federal funds that Reclamation will commit for consideration of Cost Share funding.

- (l) “Federal Fiscal Year” means that annual period, from October 1 of one calendar year to September 30 of the next calendar year, on which the United States government bases its budget.
- (m) “Federal Lands and Water” means those land and water areas within the Project Areas owned by the United States and managed by the Department of the Interior, Bureau of Reclamation.
- (n) “Financial Assistance Agreement” means the appropriate legal instrument to reflect the relationship between the United States Government and a non-Federal partner when the principal purpose of the relationship is to provide Federal funding to accomplish a mutual public benefit and support, as authorized and defined by law.
- (o) “Fire Management Plan” means a strategic Federal plan that defines a program to manage wildland and prescribed fires and documents the Fire Management Program in the approved land use plan. The plan is supplemented by operational plans such as preparedness plans, preplanned dispatch plans, prescribed fire plans, and prevention plans.
- (p) “General Plan” means the State plan prepared in accordance with the State’s Planning Handbook, California Public Resources Code, Section 5002.2 and related sections that apply to the Recreation Areas. General Plans direct the long-range development and management of a park unit by providing a broad framework of goals, policies and guidelines.
- (q) “Good Repair” means maintaining functional use and longevity of facilities and equipment through use of appropriate actions including, but not limited to, controlled maintenance, standard operating procedures, maintenance manuals; meeting Federal,

State and applicable local health department standards; meeting public safety needs and standards; and maintaining facilities in a safe, neat, clean, and well kept condition.

(r) “Hazardous Material” means (1) any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 (14) and (33); (2) oil as defined by the Clean Water Act, 33 U.S.C. Section 1321 (a) and the Oil Pollution Act, 33 U.S.C. Section 2701 (23); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste; and (4) any other substance regulated as hazardous or toxic under Federal, State, local, or Tribal law.

(s) “Industrial Areas” means those areas reserved by Reclamation to manage project facilities including dam works, power generation, water delivery, and related functions. Industrial Areas include all areas within the Project Areas surrounding the dam, outlet works, feeder canals, and distribution works, wherein Reclamation and/or water user organization(s) retains responsibility for the protection, operation, and maintenance of Project Facilities. The Industrial Areas are shown on Exhibit A.

(t) “Integrated Pest Management Plan” (IPMP) means the Federal plan which is systematic and environmentally compatible to maintain pest populations within economically and environmentally tolerable levels.

(u) “Maintenance” means the act of keeping fixed assets in Good Repair. It includes preventive maintenance, normal repairs, replacement of parts and structural components, and other activities needed to preserve the asset so that it continues to provide acceptable services and achieves its expected life. Maintenance excludes activities aimed at expanding the capacity of an asset or otherwise upgrading it to serve needs different from, or significantly greater than, those originally intended.

(v) “Management of the Project Areas” means to administer, operate, maintain, and develop the Project Areas identified in Exhibit A – Area Map, to provide a benefit to the public and to assist Reclamation to meet the authorized project purposes including providing public health and safety, recreation, and protection of lands and surface waters in accordance with this Agreement. Management includes preserving and managing resource values and conditions as opportunities and funding are available.

(w) “Mutually Agree” or “Mutually Agreed” means each parties’ designated representatives are in agreement on a proposed action. Such agreements will be in writing.

(x) “NEPA” means the National Environmental Policy Act 42 USC § 4321, et. seq.

(y) “Operations & Maintenance (O&M)” means the functions, duties and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life.

(z) “Operational Deficit” means the difference between the amounts of Revenue collected and the State’s actual operation and maintenance costs for Management of the Project Areas. State’s actual operation and maintenance costs include, but are not limited to, costs incurred for management of the District relative to the Project Areas, Folsom Lake SRA, and Auburn SRA, as well as administrative overhead. Operation Deficit does not include indirect overhead such as required audits.

(aa) “Private or Exclusive Use” as defined by 43 CFR 429 means any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses or which creates the perception of such exclusion and are not associated with the official management of a Reclamation Project. This includes, but is

not limited to boat docks, cabin sites, residences, trailers, manufactured or mobile homes, structures, roads, or other improvements.

(bb) "Project Areas" means all lands withdrawn or acquired in the name of the United States, and waters within the Folsom and Auburn Folsom South Unit cited in the title to this agreement (as shown on Exhibit A) for which management of recreation and recreation facilities is authorized pursuant to this Agreement . The Project Areas also include lands covered by flood easements and lands withdrawn by Federal agencies other than Reclamation when these lands are part of the authorized projects, and included in current or future agreements between the Federal agency and Reclamation for management of recreation and other purposes.

(cc) "Project Facilities" means those water diversion, collection, storage, and carriage facilities, and appurtenant ancillary facilities constructed as features of the Central Valley Project related to Folsom Unit and Auburn/Folsom South Unit -for --flood control, water supply and other purposes.

(dd) "Project Operations" means functions, duties and labor associated with Project Facilities.

(ee) "Reclamation" means the United States Department of the Interior, Bureau of Reclamation, or its duly authorized representative(s).

(ff) "Recreation Area" means all Federal lands and water within the Project Areas and adjoining state owned lands as shown in Exhibit A.

(gg) "Recreation Facilities" means those facilities constructed or installed at the Project Areas for recreational purposes for the public or for support of such recreational purpose. Recreation Facilities -include, but are not limited to, buildings such as park headquarters, visitor centers, and maintenance shops; other structures or amenities including

campgrounds, picnic grounds, boat docks and ramps; and infrastructure; consisting of electrical lines, water systems, roads, trails, parking areas, sewer systems, signs, trash facilities, and interior fencing.

(hh) “Reserve Fund” means a separate fund established by the State to facilitate available funds for capital improvements, major repairs, or replacement of facilities, roads or other infrastructure, emergency purposes or catastrophic incidents.

(ii) “Resource Management Plan(s)” means the plan(s) prepared in accordance with Title XXVIII of Public Law 102-575 and Reclamation’s Resource Management Plan Guidebook.

(jj) “Revenues” means all receipts derived from entry, use fees and permits which the State is permitted to collect pursuant to its authority; including, but not limited to fees, charges, tolls, and rents, charged by the State for public recreation use, special events and uses and concessionaire agreements issued or administered by the State pursuant to California Public Resources Code §§ 5010(a) and 5080.32.

(kk) “State” or “California State Parks” means the State of California, Department of Parks and Recreation, or its duly authorized representative(s).

(ll) “State Fiscal Year” means that annual period, from July 1 of one calendar year to June 30 of the next calendar year, on which the State government bases its budget.

(mm) “Third Party Agreements” means agreements and contracts, including, but not limited to, special use, Concession contracts, and service contracts, issued by the State to another entity to provide recreation related services and facilities for the Project Area other than Commercial Filming and Rights-of-Use.

(nn) “Use Authorization” means various land use or resource management documents or instruments including, but not limited to, license agreements, contracts, rights-of-way,

rights of entry, easements, leases, permits, and other rights of use issued or granted by Reclamation on, over, across or under the Federal Lands and Water.

(oo) "Use-Authorization Permittee" means the person or entity that has been granted a "Use Authorization".

(pp) "Water User Organization(s)" means the Water Districts and Water Authorities associated with the Recreation, Industrial and Project Areas or their duly authorized representative(s).

(qq) "Wildfire Management Plan" means a State plan to identify and coordinate responsibilities and actions for the prevention and suppression of wildfires and post-fire stabilization and restoration.

2. MANAGEMENT OF THE PROJECT AREAS

(a) The State agrees to accept Management of the Project Areas, including any changes or alterations to the boundaries or definition of the Project Areas from time to time through a notification process by both parties and such changes or alterations shall be noted and described on the Project maps (Exhibit A).

(b) This transfer of Management of the Project Areas is subject to any existing or subsequently issued Use Authorization.

(c) If such Use Authorization materially affects either the scope or provisions of the MPA, including but not limited to recreation use of the Project Areas and Revenues then Reclamation and the State will review the terms and conditions of the MPA affected by the Use Authorization and amend the MPA, if necessary.

3. TERMS OF AGREEMENT AND TERMINATION OF EXISTING MANAGEMENT AGREEMENTS AND/OR CONTRACTS

The term of this MPA will be twenty five (25) years from the date first written above, unless terminated sooner as provided herein. If either party desires to renew this MPA, notice is to be provided to the other party no later than three years prior to expiration of this MPA, and the parties hereto shall, in good faith, commence negotiation of a new management agreement. By execution of this MPA, all other agreements including leases and permits between the State and Reclamation for the management of public recreation and Recreation Facilities at the subject Project Areas are terminated and superseded.

4. FUNDING AND COST SHARE

(a) Reclamation and the State recognize that costs for Management of the Project Areas pursuant to this Agreement may exceed the Revenue generated, resulting in an "Operational Deficit". Reclamation shall, in situations where the State's actual Operation and Maintenance (O&M) costs at the Project Areas exceed Revenues and result in an Operational Deficit, enter into a Financial Assistance Agreement with the State to provide O&M funding of no more than fifty percent by way of a Cost Share arrangement as authorized by law. As provided in the Reclamation Recreation Management Act "Reclamation may cost share up to fifty percent of O&M for periodic, short-term situations when cost sharing is determined by Reclamation to be in the best interest of the United States and the public." O&M Cost Share amounts provided by Reclamation shall be solely for the purposes identified in this MPA.

(b) Reclamation intends to enter into Financial Assistance Agreements subject to Federal appropriations to Cost Share up to fifty percent of the annual Operational Deficit

not to exceed the Federal Ceiling. This Federal Ceiling is initially established at \$2.5 million; however, both parties will revisit this Ceiling in conjunction with the development of subsequent Financial Assistance Agreements and through an amendment of this MPA, as necessary. Reasonable adjustments to the Federal Ceiling may be made as frequently as annually, but no less frequent than upon the issuance of each new successive Financial Assistance Agreement. Such adjustments are to be based upon increased management costs, inflation, cost of living, available appropriations, and other factors. Notwithstanding the above, both parties will review this value every five years in conjunction with any future Financial Assistance Agreement, and make reasonable adjustments through an amendment of this MPA.

(c) Award of Cost Share funds by Reclamation will require the State, at their own expense, to conduct an annual audit in accordance with the Single Audit Act Amendments of 1996, as may be amended, for each year that funds are received.

(d) Should circumstances preclude a Cost Share by Reclamation, or adequate State appropriations and/or revenues in any particular year, both parties will meet immediately to devise a strategy to address the funding shortfall (see section (i)).

(e) The following Cost Share formula shall be applied and will be determined annually on a State Fiscal Year basis:

- **State operational costs minus Revenues = Operational Deficit**
- **Operational Deficit divided by 2 = O&M Cost Share**

Cost Share figures will be used by each party, subject to the limits identified in the MPA, for the purposes of requesting budget appropriations for future fiscal years.

(f) State and Federal appropriations and Revenues will comprise the funding mechanism for the operation and maintenance for the Project Areas pursuant to this MPA.

 (g) Outside funding sources, when available, may be used to offset the Cost-Share obligation for each party for the purpose of this MPA.

(i) Outside sources of funding are those other than Revenues and Federal or State appropriations.

(ii) Not all outside funding sources may be applicable to the O&M Cost Share.

(iii) It is recognized by both parties that different sources of outside funding may have specific applications.

(h) The parties agree to consider in-kind services within their respective agency authorities that may be mutually beneficial to the overall objectives of this MPA. By mutual agreement, the value of any in-kind services or work may be applied in determining annual Cost-Share obligations. Application of in-kind services for this purpose will be based upon official financial or other documentation.

(i) Reclamation and the State will

(i) Convene annually prior to the beginning of the State Fiscal Year to review the State's proposed operating plan including any projected operating deficit, and will work together in good faith to review the opportunities and feasibility of reducing the projected operational deficit through adjustment to the fee structure, identification of additional revenue sources such as special use fees, and reduction in cost elements.

quarterly to review financial information, evaluate the status of any emerging operational deficit and take reasonable action to minimize the deficit.

(iii) Develop an operating plan for the upcoming State Fiscal Year as a basis of the Financial Assistance Agreement's scope of work and financial accountability. For this purpose the State shall provide the use data, financial and other information requested by Reclamation by January 15th of each year.

(iv) Create efficiencies through the sharing of resources for the purposes stated in this MPA.

5. FEES AND REVENUES

(a) Fees will be set in accordance with the fee schedule established for California State Parks in accordance with State statutes, and shall comply with Federal laws relating to recreation on Federal lands. Consistent with California Public Resources Code §§ 5010.1, 5080.30, and 5080.32, the State will collect, and retain Revenues for use at the Recreation Area. Types of fees authorized by Reclamation are shown on Exhibit L. The current approved fee schedule shall be provided as part of the annual financial documentation. All Revenue collected by the State shall be retained in a State account and shall be used for the purposes of this MPA consistent with California Public Resources Code § 5080.32. In the event of termination of this MPA for any reason, or expiration of this MPA, any unexpended Revenues shall become the property of the State.

6. RESERVE FUND

- (a) Both parties agree that the State shall implement and utilize a Reserve Fund to facilitate availability of adequate funds for capital improvements, major repairs and replacement of Recreation Facilities. The State, with the concurrence of Reclamation, will determine the appropriate use for funds contained within the Reserve Fund in accordance with the purposes of this Article 6.
- (b) Upon mutual agreement of both parties the Reserve Fund may be used for emergency situations or catastrophic occurrences at the Recreation Area.
- (c) The Reserve Fund will be comprised of:
 - (i) A Capital Improvement and Repair (CIR) fee assessed by California State Parks and paid by park visitors for activities including but not limited to entrance, camping, boat launching, annual passes and day use occurring within the Project Areas. Generally, the CIR fee will range in the amount of 10% to 25% above the existing base fees identified in the annual financial document but may be adjusted in response to market conditions, special programs, fee type or category and special needs.
 - (ii) CIR fee percentage will be established and implemented by the State within one year of the date of execution of this MPA, and will be periodically reviewed and adjusted.
 - (1) An inventory and prioritization of all Deferred Maintenance intended to be accomplished through the CIR shall be identified in each Financial Assistance Agreement.
 - (2) Deferred Maintenance project costs shall determine the amount of funds required to establish a funding target for the CIR.

- (iii.) The Reserve Fund shall not be considered in the Cost Share calculations and obligations.
- (d) In the event of termination of this MPA for any reason, or expiration of this MPA, any unexpended funds of the Reserve Fund shall become the property of the State.

7. RECLAMATION USE PARAMOUNT

- (a) The rights of the State under this MPA are subordinate to the prior rights of Reclamation and Water User Organization(s) or Use-Authorization Permittees (Exhibit M) to use any portion of the Project Areas for the primary purposes of the Project Facilities or activities pursuant to Federal Reclamation Law, rules and regulations. Reclamation will give written notice to the State if Reclamation determines that changes in land use within the Project Areas are necessary for the primary purposes of the project.
- (b) Reclamation and Water User Organization(s) retain responsibility over the Industrial Areas as defined herein and shown at Exhibit A. Jurisdiction is retained by Reclamation to provide proper operation, maintenance, repair, and protection of Project Facilities, including, but not limited to the Industrial Areas. Any use of the Industrial Areas for recreation purposes by the State must have specific prior written approval by Reclamation's designated representative and written concurrence from Water User Organization(s), and shall not interfere with the operation of the Industrial Areas. In areas where authorized recreational use currently exists such as trail use across the top of Dikes 1-6, Mormon Island Auxiliary Dam, the State is responsible for managing the recreation use and Reclamation is responsible for the operation and maintenance of the Project Facilities.

(c) Pursuant to Title 43 CFR 423, Reclamation may close the Project Areas, or any portion thereof, including the Industrial Areas to public use whenever Reclamation determines such restriction is necessary in the interest of Project operation, public safety, or national security. Reclamation's designated representative shall give written notice to the State of any such closure. This notice shall be given as soon as practicable after a determination for closure is made and shall include the date when the closure becomes effective. The State shall enforce such closure and such enforcement shall include coordination and cooperation with Reclamation and Water User Organization(s). Reclamation will work with the State to minimize impacts to Revenues during such closures. Enforcement of such closures shall be at no cost to the State.

8. LIAISON

Both parties agree to identify individuals who will serve as liaisons and points of contact for each party to ensure timely responses to inquiries, the smooth, uninterrupted flow of information and compliance with this MPA. The liaisons do not have any authority to direct any activity under the MPA or to amend or modify the MPA.

9. ADMINISTRATION

(a) The parties will meet annually, to review and inspect the Project Areas regarding compliance with this MPA. The purpose being to ensure that administration, operation, maintenance, and development procedures are adequate; to identify and correct deficiencies and problems; and to ensure the Management of the Project Areas is in accordance with the MPA.

- (i) Reviews will be in accordance with the Reclamation Manual and will include, but are not necessarily limited to: monitoring health and safety; appropriate use of the Federal Lands and Water; land interests and resources; and inspections of Recreation Facilities and operations, including third party Concession contracts or permits, and basic service contracts, within the Project Areas.
- (ii) Deficiencies and problems within the Project Areas will be corrected in a timely manner in accordance with the terms of this MPA. Conclusions and recommendations based upon such reviews and inspections will provide direction for, and possible modification of the administration, operation, maintenance, and development responsibilities pursuant to this MPA.
- (b) The State shall maintain financial accounting record for Project Areas to satisfy the requirements of this MPA and shall furnish to Reclamation an annual report not later than 120 days following the close of the State Fiscal Year. An annual financial report shall include all revenues received and expenditures for operations and development of Recreation Facilities and Management of the Project Areas. The State will keep all financial records in accordance with generally accepted accounting principles.
- (c) RECREATION USE DATA REPORT – On September 15 of each year, the State will furnish to Reclamation’s designated representative an annual summary of recreation related visitor uses at the Project Areas for the year (eg. September 15, 2011 to September 14, 2012). Reclamation will provide the forms for this report, which is currently titled “Recreation Use Data Report”.

(d) The State agrees that Reclamation shall have the right to examine and to access any pertinent books, documents, papers, and records of the State and/or third party entities involving transactions related to this MPA.

(e) Reclamation's designated representative may at any time request an independent audit or examination of records related to any third party Concession contract or other service contracts. Such independent audit or examination of records shall be performed at Reclamation's cost.

10. RISK AND HOLD HARMLESS

(a) The parties hereto will each be responsible and liable only for the negligent acts or omissions of their respective employees to the extent provided by law. However, nothing in this Agreement will be construed to be an admission of fault or liability, and nothing will limit the defenses and immunities legally available to each party against each other and third parties.

(b) The State agrees to hold harmless the United States, its employees, contractors, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the State's activities under this Agreement.

(c) The United States agrees to hold harmless the State of California, its employees, contractors, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the United States' activities under this Agreement.

11. OPERATIONS AND MAINTENANCE

(a) In accordance with this MPA, the State will be responsible for providing the following services in the Project Area: visitor services, law enforcement and emergency services, recreation facility maintenance, management of recreation and public use, environmental compliance, resource protection and management as defined in subsection (v). The State will determine the proper and/or minimum service and staffing levels necessary for ongoing provision of the above services, consistent with available funding.

(b) The State must ensure its management activities under this MPA, do not compromise Reclamation's responsibility to meet statutory, regulatory and policy requirements for flood control, the delivery of water and power and other project purposes.

(c) The State will ensure that land use and administration of the Project Areas will conform to all applicable Federal laws, rules, regulations, policies, and Executive Orders. (Exhibit "T"). Where State policy, law, and/or regulations are more stringent, but do not conflict with Federal policy, law, and/or regulations, the State's will be the required standard.

(d) Scope of Services to be provided by the State:

(i) LAW ENFORCEMENT

1. The State assumes full responsibility for maintaining lawful order and providing for the safety of the public in the Project Areas managed by the State pursuant to this MPA.

2. The State will exercise its law enforcement authority in the Project Areas, as staffing and resources allow, to maintain and preserve law and order, and to protect Recreation Facilities, resources, and Federal Lands and Water from unauthorized use.

3. The State will, under its authority (Cal. Pub. Resources Code § 5003), adopt and enforce rules and regulations as necessary and desirable to effectively manage the Project Areas, including law enforcement, public health and safety pursuant to this MPA.
4. The State's rules and regulations will be consistent with regulations promulgated by Reclamation in 43 Code of Federal Regulations, Part 423 and Part 429 (Attachments) and other applicable Federal and State laws, rules, regulations, and policies currently in place or as may be adopted in the future. Reclamation will notify State of new or updated regulations or policies as they apply to the provisions of this MPA.
5. The State is not responsible for security requirements of Project Facilities within the Industrial Areas; but may be requested to coordinate and cooperate with Reclamation security personnel and contractor.
6. The State will exchange law enforcement information with Reclamation's designated Regional Special Agent (RSA) as appropriate on a case by case basis. State law enforcement personnel and the designated RSA will collaborate as necessary and reasonable in the exchange of law enforcement information related to the Project Areas. The RSA may provide resources and expertise as applicable and necessary to address violations of federal laws.
7. The State will perform initial response for incidents involving cultural and natural resources for the purpose of preventing further damage to resources. As appropriate, the State may investigate and

7. The State will perform initial response for incidents involving cultural and natural resources for the purpose of preventing further damage to resources. As appropriate, the State may investigate and prosecute or may turn over cases to Reclamation personnel for necessary follow up.

8. The State will ensure appropriate safety, fire, medical and search and rescue procedures are developed and in place to respond, or cooperate in the investigation, or cooperate in the investigation by the agency having jurisdiction, for all incidents involving death, serious injury or property damage, hazardous material spills or other incidents of a serious nature within the Project Areas. The State will make an initial verbal report on such incidents to Reclamation's emergency official or other designated representative within one working day of knowledge of the incident. The State will submit a written report to Reclamation's Emergency Official or other designated representative in accordance with Reclamation's Emergency Action Plan (EAP). Annually, Reclamation will provide orientations and briefings on the EAP to the State.

(ii) FACILITIES

1. Reclamation manages the Federal owned infrastructure and structures within the Project Areas which pre-existed State management of recreation in these areas and which were not constructed by the State to serve recreation use, including but not limited to the Ponderosa Way Bridge and the historic Mountain Quarries

Railroad Bridge. The State is authorized but not responsible for the replacement of Federal-owned Infrastructure and structures.

2. In the event of a catastrophic occurrence the State and Reclamation will work together to seek solutions for repairs or replacement of the Federal-owned infrastructure and structures.

3. To the extent that specific roads are used for recreation purposes the State and Reclamation will share in the annual operations and maintenance costs for these roads. Major repairs and/or replacement of Project Area roads are not the responsibility of the State.

4. Reclamation will continue to provide the existing administrative facilities (Exhibit K) at no cost to the State for its Management of the Project Areas. The State shall be responsible for annual operation and maintenance costs for these facilities.

5. Reclamation may fund major repairs and/or replacement of these administrative buildings and facilities as necessary for the administration and management of the Project Areas.

6. Reclamation and the State may cost share replacement of Recreational Facilities on a project by project basis outside of the O&M Financial Assistance Agreement in accordance with Article 4 per LND 01-01.

(iii) MAINTENANCE

1. The State will provide for maintenance of Recreation Facilities within the Project Areas subject to the provisions of this MPA.

(iv) HAZARDOUS MATERIALS AND FEATURES

1. The State shall not be responsible for existing known or unknown hazardous features on the Federal lands within the Project area, such as , abandoned mines, drainage tunnels associated with historic mining and unstable cliffs and slopes resulting from past mining, or similar features.

2. The State is responsible for any damages or claims related to their actions related to any contamination or pollution incidents arising by or on behalf of the State.

3. The State shall not knowingly allow contamination or pollution on any Federal lands and waters or facilities by its employees or agents.

4. Within the authority provided by this MPA, the State shall take reasonable precautions to prevent such contamination or pollution.

Substances causing contamination or pollution shall include but are not limited to hazardous materials, refuse, garbage, sewage effluent, industrial waste, petroleum products, misused pesticides, and pesticide containers.

5. The State shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies, directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in the federal lands, water or facilities.

6. Upon discovery of any event which may or does result in contamination or pollution of the Federal lands, waters or facilities, the

State shall be an initial responder and will implement initial measures necessary to protect public health and the environment, including notification of the appropriate agencies, and shall report full details of the actions to Reclamation's Emergency Official or other designated representative in accordance with Reclamation's Emergency Action Plan (EAP). Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

7. The State agrees to include the provisions contained in paragraphs (2) through (6) of this Article in any third party permits, agreements, contracts or Concession contracts it may enter into pursuant to this MPA.

(v) ENVIRONMENTAL COMPLIANCE

1. Reclamation will be the Federal lead for NEPA, ESA, NHPA and other applicable statutes and agreements for activities within the Project Areas. Reclamation reserves the exclusive authority to approve any proposal for use of Project Areas.

2. California State Parks shall be the State lead for CEQA and any State permits.

3. The California State Parks will ensure compliance with all applicable environmental clearances and permits as indicated in section v (2). Reclamation agrees to provide timely information and approvals within a reasonable time frame, once requested by State.

4. Each party shall bear its own environmental review costs under the terms of this MPA related to recreation management projects consistent with this agreement. The parties may agree to share costs for environmental review.

(vi) NATURAL RESOURCE MANAGEMENT

1. Reclamation is responsible for the protection of natural resources on Federal property.

2. The State is not responsible for tree hazard management and response outside the Recreation Areas within the Project Areas, including along the federal property boundary.

3. The State is responsible for tree hazard management in the Recreation Areas including developed campgrounds and day use areas in accordance with the State Park Tree Hazard policy.

4. If funded and as staffing allows, the State may assist in the protection and management of natural resources within the Project Areas.

(vii) PEST MANAGEMENT

1. The State is not responsible for Pest Management in Project Areas. If funded and as staffing allows, the State may assist in the Pest Management Program.

2. The State shall only use pesticides in the Project Areas that are approved by Reclamation.

3. Activities for the control of undesirable plants and animals in the Project Areas will incorporate Integrated Pest Management concepts and practices consistent with Reclamation Policy.

4. All pesticides used by the State and its contractor's or third party permittee shall be in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy, directives and standards.
5. Applicators will meet applicable Federal and state training or licensing requirements.
6. Records maintenance shall be in accordance with the MPA and State requirements.
7. Any equipment, tools and machines used for pesticide application shall be in good repair and suitable for such use.
8. Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas consistent with all state and Federal requirements.
9. The State shall take any necessary measures for containment and clean up of pesticide spills caused by the State. Spills shall be reported to the Reclamation's authorized representative with full details of the actions taken. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.
10. The State agrees to include the provisions contained in paragraphs 2 through 9 of this Article in any subcontract or third-party contract it may enter into pursuant to this MPA.

(viii) CULTURAL RESOURCE MANAGEMENT

1. The State is not responsible for Cultural Resource Management in the Project Areas. If funded and as staffing allows, the State may assist in the Cultural Resource Management.

2. State personnel will coordinate with Reclamation to ensure that compliance with section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C 470f), and implementing regulations at 36 CFR Part 800, is completed prior to project implementation. The management of cultural resources located within the Project Areas shall be consistent with (Exhibit F) Reclamation's Cultural Resources Management Policy, Directives and Standards

3. In the event that human remains are found within the Project Areas, immediately notify the respective Reclamation Area Manager and follow provisions of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and Reclamation's Directives and Standards for the Inadvertent Discovery of Human Remains on Reclamation Lands (LND 07-01).

4. The unauthorized excavation of prehistoric, cultural or historical artifacts is prohibited by the Archaeological Resources Protection Act (ARPA) (16 U.S.C.70a et seq.). Planned collections of such items are not allowed unless approved through the issuance of a permit by Reclamation pursuant to ARPA. Any archaeological or historical items removed from the Project Areas, including items collected and turned in by members of the public, shall be assessed by Reclamation to determine

whether they constitute federal museum property. If so, they will be managed by Reclamation in a manner consistent with 36 CFR Part 79, the curation of Federally-Owned and Administered Archaeological Collections. (ix) EDUCATION AND INTERPRETATION
The State may provide educational and interpretive services within the Recreation Area as funding and staffing allow.

12. USE AUTHORIZATIONS, CONCESSIONS, CONTRACTS, AND SPECIAL EVENTS

Reclamation and the State will coordinate regarding any administration, operation, maintenance, and development activities pursuant to this MPA that affect any management, operation, and maintenance activities of the Use-Authorization Permittees.

(a) USE AUTHORIZATIONS

The State may issue and administer third party permits, agreements, contracts or Concession contracts to businesses, organizations, associations or other appropriate entities for the purpose of providing appropriate and necessary services, goods, and facilities for the purposes of this MPA and in accordance with any current or future planning documents.

Such contracts, agreements and permits shall contain language subjecting the rights and privileges there under to all terms, conditions, exceptions, and reservations in this MPA.

(1) Any contract, agreement or permit issued shall contain language that recognizes the right of paramount use by Reclamation of the Project Areas and shall hold harmless and indemnify Reclamation its officers, agents, employees,

contractors, and assigns from any loss or damage and from any liability on account of injury, damage or death due to construction, operation and maintenance activities. The State may include similar hold harmless and indemnification provisions in any such contract, agreement or permit.

(2) The State shall require all contractors, concessionaires, agreement holders and permittees operating within the Project Areas to carry adequate liability and property damage insurance. Said insurance will be of sufficient amount to cover, as a minimum, the State's liability under its governmental liability statutes and will be consistent with the services and facilities provided and the potential for injury or damage to life and property. Reclamation shall be named as an additional insured party on all such insurance, and a certificate of insurance shall be provided to the State by the contractor, concessionaire, agreement holder or permittee to ensure that the insurance is in effect. State may also be named as an additional insured party on such insurance.

(3) No third party permits, agreements, contracts or Concession contracts issued by the State as provided in subsection (a) above shall purport to transfer or convey any interest in the land, water or any public facilities; and, the right given to the State to enter into such contracts and permits shall not be construed as a right to grant or convey an interest in the land, water, or any public facilities. No assignment or transfer of a Concession contract or permit or interest therein, whether as security or otherwise, shall be effective until such assignment or transfer has been approved. All Concession contracts including transfers and assignments issued by the State must comply with Reclamation's Concession Management Policy and Directives and Standards, attached as Exhibit F.

(4) All Concession contracts must provide that they are not assignable from the State to Reclamation and will terminate at the expiration or termination of this MPA. In the event of termination of this MPA and at Reclamation's discretion, Reclamation may issue a new Concession contract or permit that is in compliance with the Concessions Management Policy and Directives and Standards. In the event this MPA is terminated, the State may pay to the concessionaires, contractors, or Permittees the pro-rated unexpended portion of any fees or rents paid to the State.

(5) The term for a third party permits, agreements, contracts or Concession contracts may not extend beyond the term of this MPA. Reclamation may authorize extension of said Concession contract or agreements to a monthly basis based upon an extension to the MPA. In general, the term of such contracts or permits should be as short as possible and based on economic factors, conditions, and any new investment, as determined by the State through a financial feasibility evaluation. Reclamation will work with the State to determine reasonable lengths of term.

(6) Concessionaires, contractors and permittees shall be required to comply with all applicable provisions of Federal, State, and local laws, rules and regulations, Executive Orders, and Reclamation Policies, in force now or as may be promulgated or changed in the future.

(7) In accordance with Title 43 CFR part 429, except for uses associated with official management of the Project Areas the State shall not issue, or allow to be issued, directly or through the actions of its concessionaires or permittees, new permits or other forms of agreements that allow for the development of

privately owned exclusive uses, as defined in 43 CFR 429.2 and including such as, but not limited to, cabin sites; mobile homes or travel trailer sites; private boat docks; ski clubs; boat clubs; or, the issuance of livestock grazing permits. Uses associated with the official management of the Project Areas include, but are not limited to, employee housing, such as State employees, concessionaire security and management staff and volunteers for the purpose of executing this MPA.

(8) The State may enter into basic service contracts without prior review and written approval of Reclamation. Such contracts are limited to essential services for routine maintenance, including, but not necessarily limited to, trash removal and disposal, toilet pumping, building painting and repairs, road maintenance or general grounds maintenance.

(9) Subject to Reclamation review of project plans and environmental compliance, including NEPA, the State may enter into contracts and agreements for the construction and repair of public use and recreation facilities consistent with this MPA.

(10) Subject to Reclamation review of project plans and environmental compliance, including NEPA, the State may enter into contracts and agreements for other management purposes consistent with this MPA, including but not limited to treatment of weeds, vegetation modification for fuel reduction purposes, hazard tree removal and other resource management purposes.

(b) SPECIAL USE AND EVENT PERMITS

(1) The State is authorized to issue special event permits in accordance and in compliance with 43 CFR § 429 and limited to permits for the following activities identified in 43 CFR 429.3, Commercial guiding and outfitting, Commercial or

organized sporting events, organized recreational activities, and public gatherings, with a single event lasting seven days or less.

(2) The State is authorized to issue special use permits for Commercial Filming. The State may recover their cost for administering and managing special use permits for Commercial Filming activities. Reclamation reserves the right to collect Commercial Filming fees for Commercial Filming special use permits issued on the Project Areas. These fee amounts shall be developed by Reclamation and provided to the State. The special use applicant will pay Reclamation directly for the Commercial Filming fee. The State shall not issue a special use permit for Commercial Filming until Reclamation acknowledges receipt of the Commercial Filming fee. Commercial Filming fees shall be sent to:

Attn: Area Manager

Central California Area Office

7794 Folsom Dam Road, Folsom CA 95630

(3) With prior Reclamation approval the State may also issue permits related to the above activities occurring on an annual basis, with no single event lasting seven days at a time, and for one-time events exceeding seven days.

(4) Reclamation reserves the right to establish and collect fees for Rights-of-Use pursuant to Public Law 102-575 (Title 28) Section 2805 (a)(1)(A).

(5) Applicable fees for these activities shall be collected by the State and are considered as Revenues in accordance with P.L. 89-72. The financial reporting for these Revenues will be performed in accordance with Exhibit "E".

(4) Reclamation reserves the right to establish and collect fees for Rights-of-Use pursuant to Public Law 102-575 (Title 28) Section 2805 (a)(1)(A).

(5) Applicable fees for these activities shall be collected by the State and are considered as Revenues in accordance with P.L. 89-72. The financial reporting for these Revenues will be performed in accordance with Exhibit "E".

(6) The State is not granted authority to issue special use permits or other types of authorizations related to the following activities as identified in 43 CFR 429.3 Grazing, farming or agricultural uses; Infrastructure including transportation, telecommunications, utilities, pipelines; Removal or exploration of sand, gravel or other minerals; or timber harvesting.

13. FACILITY DEVELOPMENT AND IMPROVEMENTS

Recreation Facilities shall be developed, operated and maintained and visitor services shall be provided in accordance with the Resource Management Plan/General Plan for each Recreation Area, subject to the provisions of this MPA.

The State shall be the lead agency for the planning, development and construction of Recreation Facilities. The State shall provide Reclamation with any development plans for review and concurrence that could affect Reclamation's current or future management, operation, and maintenance activities within any of the Project Areas. In reviewing plans for improvements Reclamation shall consider all O&M costs associated with any improvements and the impacts such improvements would have on the authorized purposes of the Project Areas.

14. TITLE TO LAND, RECREATION FACILITIES AND IMPROVEMENTS,
EQUIPMENT AND RESTORATION

- (a) Permanent structures and improvements constructed on the Federal Lands and Water which were funded, or partially funded, by the United States shall remain the property of the United States.
- (b) The State shall keep a current and accurate property record/inventory of all Recreation Facilities installed or constructed within the Project Areas and all equipment purchased with Federal funds for use at the Project Areas pursuant to this MPA.
- (c) The State shall keep a current and accurate inventory of any Recreation Facilities installed or constructed solely at its own expense or at the expense of its contractors, concessionaires and permittees and shall annually provide Reclamation such inventory so that Reclamation inventory records can be maintained accordingly.
- (d) No concession area shall be developed unless State ensures that the disposition of all improvements is included in the concessions agreement.
- (e) Upon termination of this MPA, Reclamation may purchase, at the Cost Less Depreciation value, those Recreation Facilities determined necessary for the future operation and maintenance of the Project Areas, provided the facilities were exclusively constructed and financed by the State its contractors, concessionaires or permittees.
- (f) State may relinquish ownership of Recreation Facilities to Reclamation through mutual consent of both parties.
- (g) Upon termination of this MPA or such longer period as may be determined by Reclamation to be reasonable, the State, its contractors, concessionaires or permittees, shall at their sole cost or expense, be responsible for salvaging and/or removing of the Recreation Facilities that were exclusively financed, constructed or installed by the State,

(i) Upon failure of the State, its contractors, concessionaires and permittees to perform removal or restoration requirements the State shall be responsible for payment of all expenses incurred by the United States or its assigns, related to the removal of Recreation Facilities and restoration of said lands.

15. RESOURCE MANAGEMENT PLAN / STATE GENERAL PLAN &

OTHER PLANNING

- (a) The State's administration, operation, maintenance, and development of the Project Areas will be consistent with the Reclamation approved Resource Management Plan and State Park and Recreation Commission approved General Plan for each area. Any authorization given by Reclamation to the State for any activity related to the Project Areas shall include a provision requiring compliance with said plans.
- (b) Where a Resource Management Plan/General Plan does not exist such Plans will be prepared for the Project Areas as funds are available. Said Resource Management Plan/General Plan will be jointly prepared by Reclamation and the State.
- (c) The Resource Management Plan/General Plan will be prepared and/or updated in compliance with Reclamation's Resource Management Plan Guidebook and NEPA Handbook, the State Parks Planning Handbook, and other applicable Federal and State policies and guidelines.
- (d) Reclamation and the State will consult and cooperate in commenting on plans, projects and proposals by third parties outside the Project Area which may affect public use, facilities and resources within the Project Areas.
- (e) The State will have the lead in the development of specific recreation management plans such as road and trail management plans.

(f) Reclamation and the State will coordinate and cooperate regarding resource management planning. Each agency is responsible for specific resource management planning efforts on their respective lands (e.g. vegetation management plans, prescribed fire, etc.) within the Project Areas. If funded and as staffing allows, the State may assist in the development of other specific resource management plans on Project lands within the Project Area.

16. RESERVOIR WATER LEVEL

Reclamation reserves the right to vary both the Folsom Reservoir and Lake Natoma water levels as necessary for Project purposes. Reclamation's designated representative will, to the extent reasonably practicable, provide timely notice to the appropriate California State Park Manager of any emergency increases or decreases in water levels that would significantly or adversely affect recreational use and related facilities of the Project Areas.

Both parties recognize that fluctuating water levels directly affect recreation use and the revenue generating ability within the Recreation Area and will have a direct effect on the Cost Share obligations from both parties pursuant to this MPA.

Many State funded recreation facilities at Folsom Reservoir exist between the current operational high pool elevation (466') and the Folsom Dam crest (480.5'). These facilities were sited and constructed assuming the current operational high pool level (466'). In the event that changes in established reservoir operations causes water fluctuations either above the operational high pool elevation (466') or below the dead and/or conservation pool elevation (327'), Reclamation and State Parks shall consult to determine feasible options to mitigate impacts to recreation use. If either party fails to Mutually Agree on a course of action, then the remedies

outlined in this MPA may be utilized.

17. REAL PROPERTY MANAGEMENT

(a) Except as authorized in this MPA, only Reclamation may issue land use authorizations within the Project Areas. Reclamation may delegate authority to the State for Concession contracts, agreements, short term special use permits and other entry permits specific to the State's management purposes. No easements will be granted by the State for any activities occurring in the Project Areas.

(b) Reclamation will provide within 180 days of the effective date of this MPA, a list of existing third-party agreements and contracts to the State to be included in the Appendix (Exhibit M). Reclamation will annually provide an updated list of all third party agreements and contracts to the State.

(c) Reclamation shall, prior to approval of any use authorization, provide the State with a copy of any Use Authorization application for review and comment. The State may review any such application and make written comment to Reclamation.

Reclamation shall consider timely written comments of the State during the approval process and, if appropriate, incorporate them into the Use Authorization. Reclamation shall include in each Use Authorization disclosure of the State's role as managing partner and except for any such Use Authorization issued to the State include provisions whereby the grantee indemnifies and holds harmless the State, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the Use Authorization granted by Reclamation. Should any Use Authorization materially affect the scope of the MPA the process as outlined in Article 2 (c) shall be followed. Reclamation shall also

include measures in each applicable Reclamation-issued Use Authorization to protect the recreating public and Recreation Facilities, to provide for replacement or repair of damages of Recreation Facilities which may occur as a result of the Use Authorization.

(d) As permitted by 43 CFR Part 429 and other applicable law or regulation, administrative fees incurred by Reclamation and the State for costs associated with the review of Use Authorization applications may be recouped by both parties. The Use Applicant shall be responsible for negotiating and providing payment to State for costs that such use may have on their operations. The State shall validate and notify Reclamation of receipt of payment prior to the issuance of a Use Authorization. The Use Authorization is based on the appraised value of such use as determined by Reclamation and is separate of the State's administrative costs. The payment for the value of such Use Authorization and the incurred administrative charges for issuance of the authorization will be collected by Reclamation at the time for which a Use Authorization is issued.

(e) The State shall take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized recreation facility use within the Project Areas. This includes any legal actions necessary to prevent or prosecute such unauthorized use provided that any such action by the State cannot bind the United States in a manner either to payment of money or any other form or commitment. Reclamation hereby delegates to the State the right to bring action in the State's name in order to protect each party's interests, and carry out their responsibilities.

(f) The State is not responsible for any real property management including, but not limited to; unauthorized land uses, resource damage boundary encroachments and disputes and other real property issues on Federal lands within the Project Areas. The

State shall provide initial investigation and will notify Reclamation regarding unauthorized land, resource or encroachment issues within the Project Areas. The State shall notify Reclamation's designated representative of boundary disputes, encroachments or other unauthorized use incidents within 10 calendar days of discovery. To the extent funding and staffing permit, the State may assist Reclamation in addressing these real property issues.

(g) The State shall not be responsible for marking and fencing the boundary of the Federal lands and for any required survey of the boundary.

18. FIRE PREVENTION, PROTECTION AND SUPPRESSION

Reclamation and State Parks acknowledge that fire management is critical to the protection of public lands and provides for the health and safety of the visiting public. Both parties will cooperate and coordinate to address fire prevention, fire management and vegetation management issues that affect both state and Federal lands.

The State is not responsible for fire prevention, suppression, hazard fuel management and fire management planning for Federal owned lands within the Recreation Areas. This may include, but is not limited to; development of Fire Management Plans, fuel management and reduction project planning and implementation pursuant to federal policies/plans and the responsibility for fire suppression within the Project Areas.

The State is responsible for fire prevention, suppression, vegetation and hazard fuel management for state owned lands within the Recreation Areas. This may include, but is not limited to, the development of Wildfire Management Plans, vegetation management and fuel reduction project planning and implementation pursuant to state policies, plans and coordination

with the state or local agency responsible for fire suppression on the state owned lands within the Recreation Area.

19. SEVER OR REASSIGN LANDS

The State recognizes that the United States retains the right to sever or reassign lands from the Project Areas (Folsom Unit and the Auburn Folsom South Unit). If such severance or reassignment materially affects either the scope or provisions of the MPA, the parties will revisit the terms and conditions of the MPA affected by the severance or reassignment. This is particularly applicable to the Federal Land and Waters associated with the Auburn Dam Project Lands where Congress, the Secretary of the Interior, or Secretary of the Army may require the severance or reassignment of some or all lands to another agency, sale or other disposition of lands within the Project footprint.



20. EXTRAORDINARY OR CATASTROPHIC OCCURRENCES

In the event of extraordinary or catastrophic occurrences, such as flooding, large debris build-ups on or along waterways, earthquakes and fires, that cause major damage to structures, facilities or resources, for example major damage to Project Areas, office buildings, bridges, and roads or large debris build-ups, Reclamation and the State shall cooperate to identify Cost Share or other solutions for repair or replacement of the damaged facilities/resources or the clean-up of debris.

21. CONSUMPTIVE USE OF WATER BY STATE

The State may pursue acquisition of water, water wells, potable water supplies piped in from commercial sources, and/or water rights for consumptive use for recreation purposes within

the Project Areas. Such consumptive uses may include, for example, water for operation of bathrooms, showers, fire fighting, campgrounds, riding stables, irrigation, and other recreation related purposes. Said water, water wells, water supplies, or water rights, except for commercial water sources, will be obtained in the name of Reclamation and upon termination or expiration of this MPA, will be retained for use at the Project Areas for which it was obtained.

22. RESERVATIONS

The State's management of the Project Areas is subject to the following conditions and reservations:

- (a) Existing land uses, rights, or interests within the Project Areas and lawfully held by Reclamation, Water User Organization(s), Use-Authorization Permittees or persons or entities not party to this MPA (Exhibit M).
- (b) The right of Reclamation, its assigns, employees, contractors and agents, to enter upon the Project Areas on official business without charge, for the purpose of enforcing, protecting, and exercising the rights of Reclamation, and also to protect the rights of those not party to this MPA.
- (c) The right of Reclamation, and its agents, employees, assigns, contractors, lessees, or permittees, to remove from the Project Areas, any and all materials necessary for the construction, operation, and maintenance of Project works and facilities. All such removal activities shall not encroach on developed sites without mutual agreement of the parties hereto.
- (d) The right of Reclamation and its agents, assigns, permittees, or lessees to prospect for, extract, and carry on the management of oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals under the Act of

February 25, 1920 (41 Stat. 437), and amendatory acts, the Act of August 4, 1939 (53 Stat. 1187), as amended, and the Act of August 7, 1947, (61 Stat. 913).

(e) Except in emergency situations, Reclamation's designated representative shall give written notice to the State's designated representative 30 calendar days prior to the exercise of the above rights.

23. CONTINGENT ON APPROPRIATIONS

The expenditure of any funds and the performance of any work by Reclamation or the State as provided for by the terms of this MPA is made contingent on Congress or the California Legislature making the necessary appropriations and shall be contingent upon such appropriation funds being made. The failure of Congress or the California Legislature to appropriate funds shall not impose any liability on Reclamation or the State.

24. MISCELLANEOUS PROVISIONS

(a) The State, its contractors, concessionaires or permittees shall comply with the Environmental Requirements set forth in Exhibit B attached hereto and incorporated herein.

(b) The State, its contractors, concessionaires or permittees (Exhibit M) shall comply with the Equal Opportunity requirements set forth in Exhibit C and Title IV of the Civil Rights Act of 1964 set forth in Exhibit D attached hereto and incorporated herein.

(c) The State, its contractors, concessionaires or permittees, shall perform this MPA consistent with all applicable Federal, State and local laws, regulations and policies.

(d) The State, its contractors, concessionaires or permittees shall comply with the most current version of all applicable accessibility laws, rules, regulations, executive orders, and Reclamation policies including but not limited to, the Rehabilitation Act of 1973 as amended; the Architectural Barriers Act of 1968; 43 CFR part 17 subparts B and E; and Reclamation Manual Directive and Standards CRM 03-01 "Nondiscrimination on the Basis of Disability in Federally Conducted Programs, Activities, and Services"(e) The State, its contractors, concessionaires or permittees, shall perform this MPA consistent with Reclamation's Federal Indian trust responsibilities as set forth in Exhibit G, entitled "Departmental Manual Part 512, Chapter 2, Departmental Responsibilities for Indian Trust Resources", attached hereto and incorporated herein.

(e) The State, its contractors, concessionaires, or permittees shall make all Recreation improvements at a minimum compliant with the Reclamation Recreation Facility Design Guidelines. The State, its contractors, concessionaires or permittees shall submit proposed improvement plans and design drawings to Reclamation for approval.

(f) The State, its contractors, concessionaires or permittees shall comply with Reclamation Visual Identity Standards and incorporate applicable Reclamation "Sign Guidelines" when planning, designing, fabricating installing and maintaining facility signs, displays and exhibits throughout the Project Area. Reclamation shall be provided an opportunity to review proposed signs.

(g) The parties hereto understand and agree that the various terms and conditions within this MPA apply to the MPA as a whole, and are not to be narrowly defined within the specific article under which a given term or condition is located.

(h) Each party hereto will provide to the other parties any additional reports or information which may be reasonably requested.

(i) Any activity deemed to be illegal on the Federal Lands and Water will be cause for immediate action under Articles 27 and 29 of this MPA.

25. NOTICE OF CURE/ DISPUTE RESOLUTION

(a) Reclamation and the State may provide notice of any non-compliance with the terms and conditions of this MPA. Notification of non-compliance shall be in writing, giving a 90-day period of time in which the non-compliant act or omission shall be corrected. If either party fails to Mutually Agree to satisfactorily correct any substantial or persistent non-compliance within the specified time the following remedies are available: Reclamation may close all or part of the Project Areas, Reclamation or the State may temporarily suspend Management of the Project Areas, or terminate the MPA after notice in writing of such intent, in accordance with Article 27.

(b) In the event Reclamation and the State cannot Mutually Agree on a proposed action within 90 calendar days, a longer period may be Mutually Agreed to by the parties hereto, to address any notice of non-compliance. Each party shall present its proposed action to the Director of California State Parks and the Director of the Mid-Pacific Region of the Bureau of Reclamation. If within 90 calendar days after submitting such proposal to the respective Directors, the parties have still not Mutually Agreed on the proposed action, Reclamation's proposed action shall take precedent. In the absence of a cure each party shall have the right to terminate this MPA after notice in writing as set forth in Article 27.

26. MODIFICATION OF MPA

This MPA may be modified, amended, or superseded at any time during its term as Mutually Agreed by the parties hereto. At a minimum, this MPA will be subject to review and modification or amendment every five years as to coincide with the inception or renewal of any funding agreements.

27. TERMINATION

(a) This MPA will terminate and all rights and obligations of the parties under this MPA will cease under the following conditions:

(i) Upon expiration of the term of this MPA, as provided in Article 3; or

(ii) Upon receipt of a written notice of non-compliance, efforts to resolve have not been Mutually Agreed to by the parties under the terms of Article 25 and a written notice of termination has been received by Reclamation or the State; or

(b) If the U.S. Congress or the California Legislature fails to provide O&M Cost Share funding to enable Reclamation or the State to carry out their respective obligations under this MPA in any respective fiscal year as provided in Article 4, either party may give written notice that this MPA shall terminate on a certain date at least 180 days after the date of notice.

(c) For conditions other than those expressed in (a) and (b) herein, Reclamation or the State will give the other party at least 2 years written notice of the intent to terminate this MPA.

28. DESIGNATED REPRESENTATIVES / NOTICES

The parties hereto agree the designated representatives for administration of this MPA are as follows, or as may be further delegated in writing by the following:

- (a) Reclamation - Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630.
- (b) State of California, District Superintendent, Gold Fields District, 7806 Folsom Auburn Road, Folsom, CA 95630.
- (c) Any written notice, demand, or request, as required or authorized by this MPA, will be properly given if delivered by hand, or by mail, postage prepaid, to the other party as above listed. All parties hereto are responsible for notifying all affected parties of any subsequent change of address, organizational changes, responsibility adjustments, and other related changes, as they take place.

29. SEVERABILITY

Each provision of this MPA shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this MPA shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provision, or this MPA as a whole.

30. OFFICIALS OR EMPLOYEES NOT TO BENEFIT

No member or delegate of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

30. OFFICIALS OR EMPLOYEES NOT TO BENEFIT

No member or delegate of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

31. SURVIVOR CLAUSE

Terms and conditions that require action by the State or its contractors, concessionaires, permittees, agents or assigns may survive the termination of this MPA when they are deemed by Reclamation for the benefit of the United States.

IN WITNESS WHEREOF, the parties hereto have executed this MPA as of the first date written above.

STATE OF CALIFORNIA

Department of Parks and Recreation

United States of America

Department of the Interior

Bureau of Reclamation

By



Ruth Coleman, Director
State of California
Department of Parks and Recreation

By



Donald R. Glaser, Regional Director
Mid-Pacific Region

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

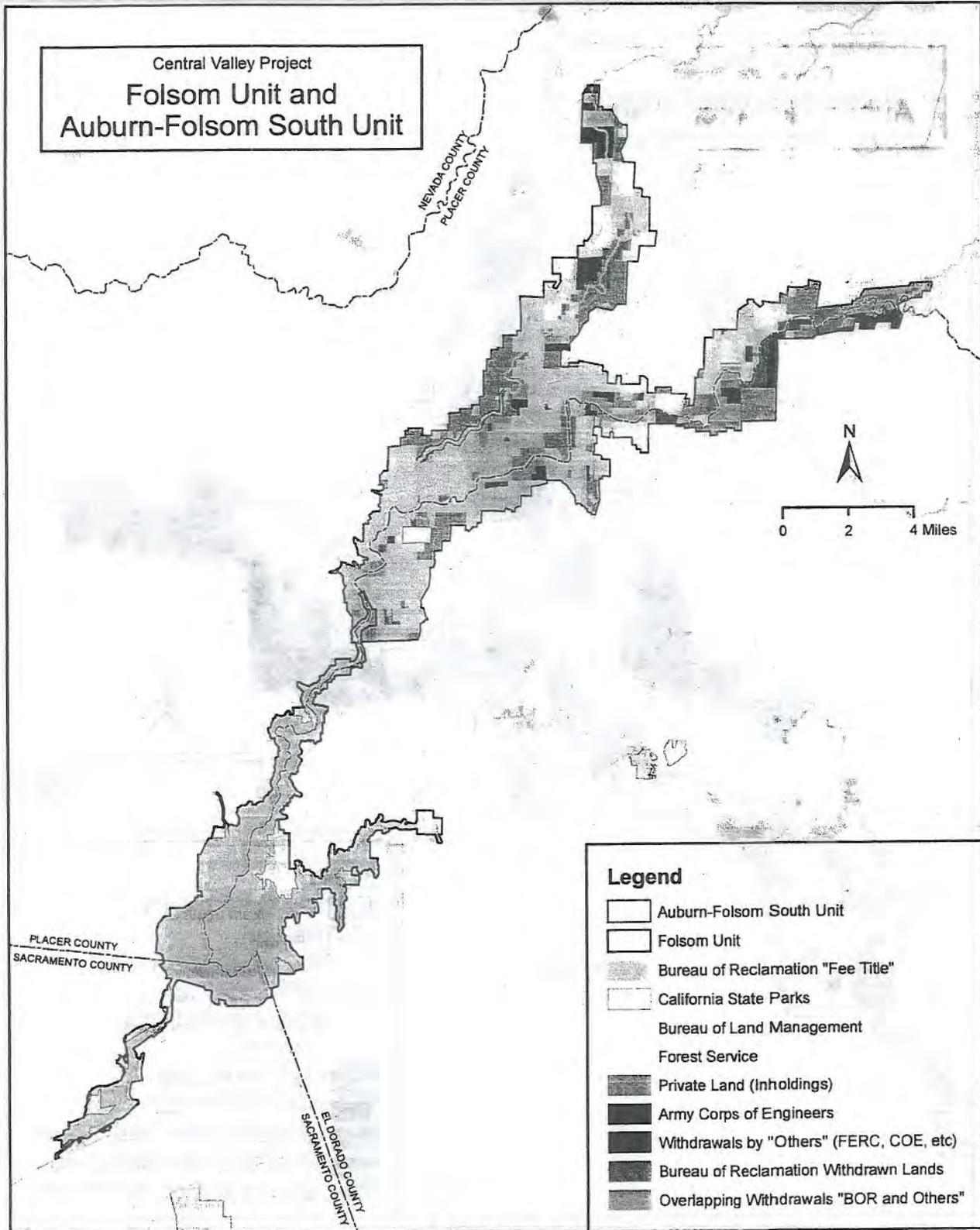


OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

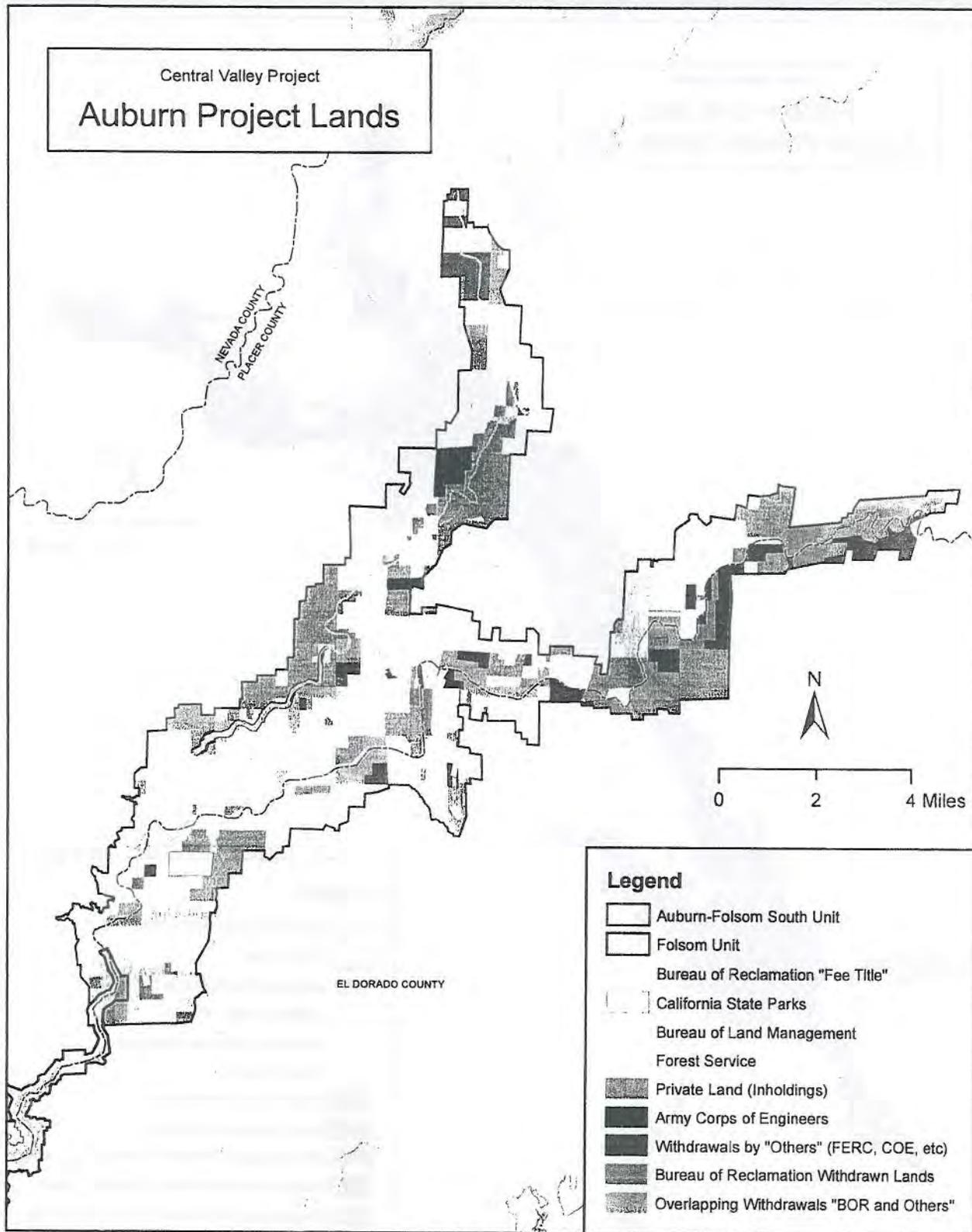


Map Dated: 11-14-11

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation



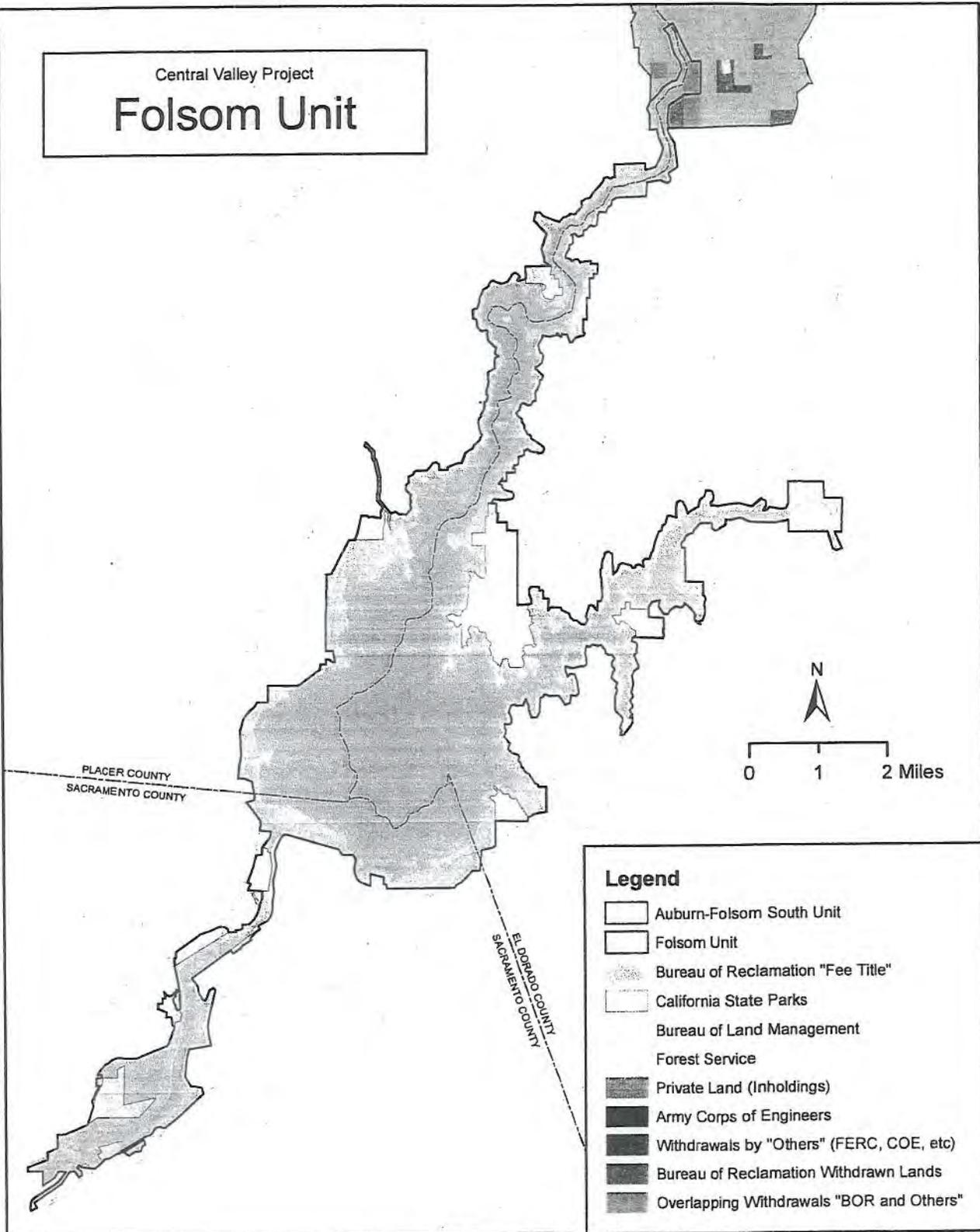
Map Dated: 11-14-11

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

Central Valley Project
Folsom Unit



Map Dated: 11-14-11

EXHIBIT B

ENVIRONMENTAL REQUIREMENTS

1.1 Introduction

All Actions taking place on federal property must comply with the National Environmental Policy Act (NEPA) and associated laws and regulations as amended. The Managing Partner shall work with Reclamation to integrate NEPA processes with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process and to head off potential conflicts (40 CFR 1501.2).

Actions must be consistent with the following:

1.1.1 Laws and regulations

- Fish and Wildlife Coordination Act
(PL 85-624, as amended)
- Endangered Species Act
(PL 93-205, as amended)
- Migratory Bird Treaty Act
(16 USC 703-711)
- Section 404 of the Clean Water Act
(PL 92-500, as amended; 33 USC § 1344; 40 CFR Part 230)
- Cultural Resources Compliance
(PL89-665, as amended; 36 CFR Part 800)
- Indian Trust Asset Policy and Guidance
Guidance for Implementing Indian Sacred Sites
(EO 13007)
- Environmental Justice
(EO 12898)
- Quality of Information
(PL 106-554)

1.1.2 Resource Management Plan (RMP)

1.1.3 Reclamation Policies

1.2 When is Environmental Documentation necessary

Environmental documentation is needed if a maintenance or other project includes one of the following:

- Ground disturbance
- Change in capacity
- Change in purpose
- New construction – Reclamation must receive notification in advance of modifications to determine whether environmental documentation is required.

Routine maintenance not involving one of the above criteria does not require environmental documentation.

1.3 How to choose the appropriate documentation

Consultation with Reclamation at the earliest planning stages and throughout the planning process is necessary to ensure the appropriate level of environmental documentation and to avoid unnecessary delay. The Managing Partner will analyze the project as a whole; the evaluations should not be compartmentalized.

1.4 Categorical Exclusions

Reclamation will prepare Categorical Exclusion Checklists (CEC) for minor projects, which involve one of four criteria listed in Section 1.2 above and satisfy one of the following criteria under Interior 516 DM 2, Appendix 2.

1.4.1 Categories

Reclamation's current categories for CEs, as of the date of execution of this agreement, are listed below.

The project:

- Has no significant effect on the quality of the human environment (should be answered last);
- Has no highly controversial environmental effects and does not involve unresolved conflicts concerning alternative uses of available resources;
- Has no significant impacts on public health or safety;
- Has no significant impacts on natural resources or unique geographic characteristics such as historic or cultural resources; park, recreation or refuge lands; or other ecologically significant or critical areas;
- Has no highly uncertain or potentially significant environmental effects and does not involve unique or unknown environmental risks;
- Does not establish a precedent for future action and does not represent a decision in principle about future actions with potentially significant environmental effects;
- Has no direct relationship with other actions with individually insignificant but cumulatively significant environmental effects;
- Has no significant impacts on properties listed or eligible for listing in the National Register of Historic Places (National Register);
- Has no significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, and has no significant impacts on designated Critical habitat for these species;
- Does not threaten to violate Federal, state, local, or tribal law or requirements imposed for protection of human environment;
- Does not effect Indian Trust Assets (ITAs);
- Does not have a disproportionately high or adverse effect on low income or minority

- populations,
- Does not limit access to or ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners and does not significantly or adversely affect the physical integrity of such sacred sites; or
- Does not contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area and does not contribute to actions that may promote that introduction, range, or growth of such species.

1.4.2 Preparing the CE

In determining whether the action qualifies for a CE, fill out the Categorical Exclusion Checklist (CEC). This checklist is required on all Reclamation actions whose impacts are small that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is not required. If all answers on the CEC are “no” then the action meets the requirements of a CE. If any answers are marked “yes,” then an EA is required to determine the significance of the action. If any items on the checklist are marked “unknown,” then the project requires additional knowledge from research or consultants. If the impacts are already known or expected to be significant, then prepare an EIS.

The State will work Reclamation to incorporate the following elements:

- The project description and purpose
- Photos and maps (including a topographic map)
- The CE checklist
- Impacts, Minor Mitigation, Avoidance Strategy, Constraints

1.5 Environmental Assessment/FONSI

1.5.1 Environmental Assessment

In the event that a Finding of No Significant Impact (FONSI) is the appropriate Environmental documentation, the State will work with Reclamation to prepare a combined Environmental Assessment (EA), addressing the issues significant under NEPA.

The draft EA will be approved by Reclamation and the State prior to circulation to the public or agencies outside Reclamation and the State. After public circulation has been completed and Reclamation as has agreed to the responses to comments received, a draft FONSI will be developed for the final EA and signature by Reclamation.

1.5.1.1 Depending on the complexity of the project, the following actions may be appropriate:

- Joint environmental documentation with State, local, and tribal agencies
- Scoping (public, inter/intra-agency)
- News releases through newspapers, newsletters, and the Internet
- Sending the draft EA to the public for comments
- Public meetings
- Sending the final EA and FONSI to the public

- Consultation and coordination with other agencies
- Public meeting on the draft
- Supplementing previous EAs and FONSIIs
- Adoption of an EA

1.5.1.2 An EA should include the following:

- A Cover Sheet, Summary, Table of Contents, and list of Preparers
- Purpose and Need: a brief objective description
- Proposed Action and All Alternatives: must contain a “no action” alternative, present the action then discuss all reasonable alternatives in detail. Examples of details to include are: photographs; area to be disturbed; location with a legal description and map; amount of ownership lands to be affected; information on water and wastewater quantities, wastewater disposal plans, water conservation measures, and additional items as needed.
- Affected Environment and Environmental Consequences: shows the effects and consequences of the action, should show both beneficial and adverse impacts in the long- and short-run also irreversible and irretrievable impacts and the impacts that would occur under the no action
- Consultation and Coordination: includes coordination with other agencies who have any interest in or jurisdiction over the project; includes field reviews and public involvement activities, permits and approvals
- Attachments/Appendices as necessary: (a) compliance with environmental statutes, (b) list of environmental commitments, (c) list of preparers, (d) bibliography, (e) distribution list

1.5.2 FONSI

A FONSI is a document by a federal agency briefly presenting the reasons why an action, not otherwise categorically excluded, will not have a significant effect on the human environment and for which an EIS therefore will not be prepared (40 CFR 1508).

1.6 Environmental Impact Statement

An Environmental Impact Statement (EIS) will be prepared for projects which involve substantial or controversial impacts. An EIS is more detailed than an EA. It usually involves a more complex action or project that requires more extensive public involvement and review processes.

1.6.1 Environmental Impact Statement

The EIS process involves more formal notification to the public for public involvement. The environmental document discusses a full range of alternatives for accomplishing the proposed project.

1.6.1.1 The following notices must be associated with the EIS:

- Notice of Intent to prepare an EIS (NOI)-describe the action and alternatives; list proposed timeline, scoping meetings; and give contact information

- Notice of Scoping Meetings is given through publication in the Federal Register and in local newspapers
- Notice of Public Information Meetings will be noticed in local newspapers
- Notice of Availability and Public Hearing will be published in the Federal Register and in local newspapers

1.6.1.2 Content of the EIS:

- All requirements detailed in section 1.5.1.2
- Alternatives: Alternatives presented in the EIS must be reasonable. Reasonable alternatives include those that are practical or feasible from the technical or economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant. All reasonable alternatives must be rigorously explored and for alternatives that were eliminated from detailed study, include a brief explanation for the elimination.
- A preferred alternative should be identified and explained in such language that it may be extracted from the document to stand alone as a separate document.
- No Action Alternative-represents the projection of the future of the current situation. For O&M studies, the no action alternative assumes continuing current O&M activities with no change.

1.6.1.3 A minimum time line for the NEPA process is as follows (Reclamation may extend limits):

- The **minimum** period between the notice of a hearing and the actual hearing is 15 days (40 CFR 1506.6 (c)(2)).
- The **minimum** period for public review of the Draft EIS (DEIS) or any supplements is 45 days (40 CFR 1506.10 (c) and (d), 516 DM 4.26A).
- The **minimum** period between EPA's Federal Register notice and issuing the Record of Decision (ROD) is 30 days (40 CFR 1506.10 (b)(2)).

The recommended time line for the process is 30 days between the Notice of Availability and the Public Hearing and 15 days between the Public Hearing and the closing of comments.

1.6.2 Record of Decision

The Draft Record of Decision for Reclamation signature will contain:

- The decision, the alternatives considered, and the preferred alternative from the EIS
- The environmentally preferred alternative
- The factors considered for each alternative
- Whether or not all practicable means to avoid or minimize environmental harm for the alternative selected have been adopted, and if not, why. A summary of environmental commitments may be necessary.
- Any monitoring and enforcement program established to ensure that identified mitigation measures are accomplished

- A brief commentary on the Final EIS (FEIS)
- An explanation of how the community involvement in the NEPA process may have influenced the final decision.
- A statement that there will be no impacts to the Indian Trust Assets (ITAs), or a statement explaining the impacts and any unresolved ITA issues.

1.7 Supplemental Environmental Documentation

If a change in environmental status occurs, it must be addressed in subsequent documents. For example, if a new endangered species enters the area, the appearance and effects to a species must be added in subsequent documents.

1.6.3.1 Environmental changes affecting projects being developed under a programmatic EIS will be addressed using a project specific EA/IS with a FONSI or a Categorical Exclusion as appropriate.

1.6.3.2 Environmental changes affecting projects being developed under a project specific environmental document will be addressed in a Letter Supplement discussing the changes, impacts, and mitigation which may be required.