

Ferryboat Service from Tiburon to Angel Island

Angel Island State Park

Proposer Questions and DPR Responses RFP/Contract Errata

April 17, 2008

STATE OF CALIFORNIA – RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
CONCESSIONS AND RESERVATIONS DIVISION
1416 NINTH STREET, ROOM 1442-13
SACRAMENTO, CA 95814



Ferryboat Service from Tiburon to Angel Island SP
Proposer Questions and DPR Responses

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1. Is there a maximum boat size in the contract? What is it?

DPR Response: *Per RFP Page 1 and Sample Contract Paragraph 11, there is no maximum vessel size. Sample Contract Paragraph 36 requires compliance with all laws, rules, regulations and ordinances.*

2. Will you do an EIS if there is an increase in environmental impact of wake from the boat?

DPR Response: *RFP Page 15, proposals must define a Conservation and Recycling Program which includes "environmental protection" and commit operator to a program that "minimizes negative impacts on the environment". Sample Contract Paragraph 36 requires compliance with all laws, rules, regulations and ordinances.*

3. Is there more than one ferry from Angel Island to Tiburon in this RFP when you say non-exclusive? Or from a nearby location i.e. Larkspur Landing.

DPR Response: *No, it is the State's intent to provide one ferry service from Marin County to Angel Island as sufficient to meet visitor demand at this time. Sample Contract Paragraph 1 considers nonexclusive operation as it relates to the State's ferryboat transportation of passengers to Angel Island SP as may be deemed necessary.*

4. Why are you requiring tax returns?

DPR Response: *Sample Contract Paragraph 13 references the Public Resource Code 5080.18(b)(c) states "Every concessionaire shall submit to the department all sales and use tax returns" and "Every concession shall be subject to audit by the department", and this serves as the legal basis for the requirement.*

Mark Byrne of Triano & Byrne law Offices
Representing Angel Island-Tiburon Ferry, Inc.

1. Would the Department of Parks and Recreation (hereinafter Department) Consider a proposal thru Level I analysis that does not meet the criteria beyond Level I?

DPR Response: *No, RFP Page 22 states "Proposer must pass Level II to qualify for further consideration".*

2. If there are no proposals which meet Level II criteria, will the Department negotiate with a proposed concessionaire that only meets Level I criteria?

DPR Response: *RFP Page 22 states "Proposer must pass Level II criteria for further consideration. If there is no qualified bidder under the RFP, the contract may be rebid, or Public Resources Code Section 5080.16(a) authorizes the Director of Department of Parks and Recreation to negotiate a contract when "the bid process . . . fails to produce a best responsible bidder".*

3. If there are no proposals which meet Level III criteria, will the Department negotiate with a proposed concessionaire that only meets Level I criteria, when there is a proposed concessionaire that meets Level II criteria?

DPR Response: *Same as Question 2 above.*

4. Will the Department consider during its Level II analysis any proposal, which includes an amount for rent less than the minimum rent?

DPR Response: *No, proposals which do not meet Level II will be disqualified from further consideration of a contract award under this RFP.*

5. Do the premises described in the RFP and Sample Contract agreement include any equipment, facilities, or vessels located outside of Angel Island State Park?

DPR Response: *The Premises shall be the dock at Ayala Cove on Angel Island State Park. Sample Contract Paragraph 1 and Exhibit A will be modified to clarify the Premises through an RFP Errata included with the Proposer Questions and DPR Responses.*

6. Will the Department consider any proposal that does not provide for the concessionaire maintaining the dock on Angel Island?

DPR Response: *RFP Page 5, Sample Contract Paragraphs 15,19 and 21 references to Premises intend to apply to the operator's Mainland Dock, facilities and ferryboats. RFP and Sample Contract references will be modified to distinguish between State Premises and Operator's facilities through an RFP Errata included with the Proposer Questions and DPR Responses.*

7. Under the RFP, it is unclear whether the concessionaire needs to maintain the dock or just fund maintenance of the Dock. Please explain.

DPR Response: *See response to Question 6 above. Concessionaire's responsibility for Angel Island dock maintenance is limited to provisions described on RFP Page 4, #6 and Page 17 Rental Offer.*

8. Can you confirm that the minimum boat capacities as outlined in the Level I requirements are rounded numbers and that the existing ferry service with 396 passengers and 112 passengers are acceptable?

DPR Response: *The ferryboat passenger sizes references in RFP Pages 1, 4 and Sample Contract Paragraph 11 are rounded numbers. RFP and Sample Contract references will be modified to reference ferryboat sizes to minimum capacities of 350 and 100 passengers through an Errata included with the Proposer Questions and DPR Responses.*

9. Will the Department consider modifying the vessel capacity requirements set forth in the agreement after the award, if the Coast Guard determines that it will measure vessel capacity differently such that their determination reduces the capacity of boats resulting in the concessionaire no longer being able to meet the vessel capacity requirements set forth in the agreement?

DPR Response: *Sample Contract Paragraph 36 requires compliance with all applicable laws, regulations and ordinances; and Paragraph 51 provides for contract modification following contract execution. If new laws, rules and ordinances impact vessel size following contract award, the contract may be formally amended to comply with the new requirements.*

10. Will any gross income resulting from business conducted by the concessionaire other than ticketed ferry services between Tiburon and Angel Island be included in the calculation of Gross Income?

DPR Response: *Per Sample Contract Paragraph 14 gross receipts include all business related to the ferry service between Tiburon and Angel Island, including all business connected to the Premises, Angel Island SP. This may include more than "ticketed ferry services".*

11. If the Department proposes any changes after the award of the contract to either the Tiburon Dock Facility Plan or the Operations Plan, which require capital expenditures will the successful applicant awarded the contract be able to withdraw their proposal?

DPR Response: *The parties may not make “material changes” to the contract following award. This would include a requirement for capital expenditures beyond those described in the State approved Facility and Operations Plan and Sample Contract.*

12. Is there any need for an electronic cash register, if no sales occur on any ferry ride to/from Angel Island State Park?

DPR Response: *Sample Contract Paragraph 13 requires cash register “or other accounting equipment acceptable to State”. Sale of ferry service tickets including park entrance fees must “supply an accurate recording of all sales on tape and produce a receipt for each transaction”.*

13. In light of the CPI increases for minimum rent, would the Department consider a Proposal to institute CPI increase for measuring the threshold when the percentage rent becomes 30% (Example: \$400,000 per month threshold would increase by the CPI at the same rate as the minimum rent)?

DPR Response: *Yes, Sample Contract Paragraph 6 has been modified to apply the CPI adjustment to the \$400,000 gross receipt threshold within the Rent structure. Changes reflected in the Errata included with the Proposer Question and DPR Responses.*

14. Would the CPI increase occur even if there were no increases in fees for either the ferry ride or for park use?

DPR Response: *No, Sample Contract Paragraphs 6, 15 and Exhibit B have been modified to link CPI adjustments to rate/fee increases. Changes reflected in the Errata included with the Proposer Question and DPR Responses.*

15. What does the Department consider a material change to the Contract that will not be allowed after the award of the Contract?

DPR Response: *Material changes would include any contract provisions described under the Contract Summary on RFP Pages 4-5.*

16. Can the proposer reduce Gross Income because of increased costs due to Federal Homeland Security requirements instituted during periods of increase security?

DPR Response: *The State does not actually control the operator's "gross income" and "expenses". Sample Contract Page 5 contains a provision for rent abatement by reason of "natural disaster or other reasons beyond Concessionaire's control" when requested and approved in writing.*

17. Is CPS on Page 14 of the sample Contract a typographical error that should read CPA?

DPR Response: *This correction will be reflected in Errata included with the Proposer Questions and DPR Response.*

18. What is the definition of a concession facility in paragraph 21 B of the sample contract?

DPR Response: *See response to Question 6 above. Concession facilities would include the mainland dock facilities, equipment and vessels.*

19. Will logos or other intellectual property rights developed and used prior to any revised contract agreement with the Department belong to the Department as a result of any award of the contract?

DPR Response: *No, any trademark logos obtained by the Concessionaire prior to the contract would not belong to the Department.*

20. What is the current and projected carrying capacity or saturation point of Angel Island State Park in terms of the number of visitors allowable at one time, and is it a flexible number dependent on specific facility and/or activity enhancement?

DPR Response: *The capacity of Angel Island State Park is flexible dependent on the specific facility and/or activity.*

21. How is paragraph 49 regarding eminent domain applicable to this contract?

DPR Response: *It is not applicable to this operation and will be removed as part of the Errata included with this Proposer Question and DPR Responses.*

22. In the event of a sale or assignment of the contract, what are the specific standards to be applied for determining the best responsible bidder?

DPR Response: *Per Sample Contract Paragraph 55, the same standards applicable to the best responsible bidder awarded the initial contract apply to a subsequent concessionaire under this contract based on information identified in the DPR 398 Concession Proposal.*

23. What data were used by the Department to determine that the specific times for the proposed minimum ferry service in the RFP would increase public usage of Angel Island State Park.

DPR Response: *The District Superintendent determined the proposed times would allow park visitors sufficient time to use the park and accommodate staffing needs on the island. The anticipated opening of the Immigration Station in 2009 will likely increase visitor usage and time on the island.*

ERRATA TO REQUEST FOR PROPOSALS (RFP)

FERRYBOAT SERVICE FROM TIBURON TO ANGEL ISLAND CLOSING DATE: JUNE 17, 2008

Changes to the RFP, Concession Proposal (DPR 398), and Sample Contract are highlighted and underlined on each respective page identified as follows:

- 1) RFP Page 1 Project Summary
- 2) RFP Page 4 Contract Summary
- 3) RFP Page 5 Contract Summary
- 4) RFP Page 6 RFP Process
- 5) RFP Page 15 Operation Plan - Prices and Pricing Policies
- 6) RFP Page 20 Rental Offer
- 7) Concession Proposal Page 11 Rental Offer
- 8) Sample Contract Page 2 Description of Premises
- 9) Sample Contract Page 4 Rental
- 10) Sample Contract Page 6 Use of Premises
- 11) Sample Contract Page 9 Bonds
- 12) Sample Contract Page 12 Ferryboat and Mainland Dock Facility Plan
- 13) Sample Contract Page 14 Records and Reports
- 14) Sample Contract Page 16 Rates, Charges and Quality of Goods
- 15) Sample Contract Page 18 Modifications, Additions, Title to Improvements
- 16) Sample Contract Page 19 Housekeeping, Maintenance, Repair
- 17) Sample Contract Page 20 Housekeeping, Maintenance, Repair
- 18) Sample Contract Page 27 Participation in State Park Marketing Program
- 19) Sample Contract Page 41 Eminent Domain
- 20) Sample Contract Exhibit A – Premises Map
- 21) Sample Contract Exhibit B - CPI

REQUEST FOR PROPOSAL (RFP) CHANGES

SECTION 1 - PROJECT SUMMARY

1.1 GOAL & OBJECTIVES

Department Mission

The mission of the California Department of Parks and Recreation 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.

Goal and Objective of this Request for Proposals (RFP)

The goal of this Request for Proposals (RFP) is to award a ten (10) year concession contract to a proposer who has access to dock facilities in Tiburon, CA who will operate a ferryboat service to and from Angel Island State Park. The proposer should have the experience, knowledge, enthusiasm, and the resources to successfully provide ferryboat service at reasonable prices by partnering with the California Department of Parks and Recreation in accordance with the following requirements:

- Have access to a dock facility in Tiburon to accommodate a ferryboat operation to transport passengers to Angel Island State Park. The facility shall have a passenger waiting area.
- Provide State use of docking facilities at no cost with a minimum of 60 feet of dock space.
- Have access to two (2) ferryboats, one with a minimum capacity of 350 passengers, and a vessel with a capacity of 100 passengers, for daily transportation of passengers to and from Angel Island.
- Optimize visitor experience and attendance by providing a marketing plan that includes outstanding and friendly service as well as information on Angel Island.
- Provide an area for an audiovisual presentation and space for a storage locker for use by the State.
- Provide reasonable financial compensation to the State of California, Department of Parks and Recreation.

Minimum Proposer Qualifications

The successful proposer must demonstrate the ability to implement a concession program that meets the goals and objectives as cited above and must possess the following qualifications.

- Five (5) years experience within the past ten (10) years as an owner, manager, operator, or managing partner of a ferryboat service.
- Have an acceptable history of compliance with all provisions of the National Labor Relations Act. To this end the successful proposer can have no more than one final, unappealable finding of contempt of court by a federal court issued against proposer

1.3 CONTRACT SUMMARY

It is critical that proposers be familiar with and fully understand all the terms and conditions of the Sample Concession Contract (included herein). Your proposal should be based on the requirements of this contract in its entirety. If a proposer is awarded the 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. The intent of the contract is to provide the public with high-quality, reasonably priced goods and services in an authentic manner and atmosphere that enhances the visitor's experience and the educational, natural, and cultural resources of the park. The term of the contract is for a period of ten (10) years.

Summary descriptions of some of the important contract provisions are described below.

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

1. Provide dock facilities to accommodate a ferryboat service in Tiburon. The facilities shall have a passenger waiting area and an area for a bulletin board.
2. Provide State a minimum of 60 feet of dock space and a 6 ft. by 3 ft. by 3 ft. storage container at no cost to State. The boarding dock shall provide an accessible ramp, meeting current local, state, and federal safety standards, from the pier to the dock and from the dock to the vessel.
3. Equip, operate and maintain a ferryboat service to transport State Park passengers to and from Tiburon and Angel Island State Park. A minimum of two ferryboats, one with a minimum capacity for 350 persons and for 100 persons must be available at all times.
4. Ferryboat service shall be provided daily year round unless authorized by the Marin District Superintendent or designee. Services may be suspended on the third Thursday of November, December 25 and January 1.
5. The minimum hours of operations shall be from 7:00 a.m. to 6:00 p.m. or as authorized by the Marin District Superintendent or designee. At a minimum, three (3) round trips from Tiburon are required daily unless otherwise authorized by the District Superintendent or designee.
6. Pay as annual rent the amount presented in the proposal, which, at a minimum, shall be the greater of thirty-two thousand dollars (\$32,000) annually or eight percent (8%) of monthly gross receipts up to four hundred thousand dollars (\$400,000) and thirty percent (30%) of monthly gross receipts over \$400,000, whichever is greater. If the winning proposal exceeds the minimum rent requirements the difference up to 2% will be provided to the State for maintenance of the State's dock facility.
7. Collect Angel Island State Park use fees with its collection of ferryboat fares from all fare paying park visitors. Each visitor shall receive a cash register receipt.

Concessionaire will remit 100% of all day use fees collected with their monthly rental submission as stated above.

8. Provide an Operation Plan and Ferryboat and Mainland Dock Facility Plan, Marketing Plan, and Interpretive Plan as specified in Proposal Instructions that clearly demonstrates the proposer's plan to provide fully accessible services and facilities that comply with ADA guidelines. The plans will become part of the contract subject to State review and approval.
9. Maintain the premises, facilities, ~~Tiburon dock restroom facilities~~, furnishings, and equipment in good condition in accordance with contract provisions. All ferryboat equipment and furnishings, as required, shall be maintained at Concessionaire's own cost and expense.
10. Provide a continuing Performance Bond in the amount of thirty-two thousand dollars (\$32,000) or one year annual rent, whichever is greater.
11. Pay for all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the contract.
12. Provide liability insurance as required by the contract.
13. 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.
14. 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.
15. Demonstrate compliance with labor laws as specified in the RFP.
16. Provide space on the dock and/or ferry boats for an audiovisual presentation.

The successful proposer will not:

1. Provide or sell items 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.

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

March 17, 2008.....	Opening Date - Publication of the RFP
March 26, 2008.....	Optional Pre-Proposal Meeting
April 8, 2008.....	Questions - Last date for proposers to submit written questions
April 17, 2008.....	Answers - DPR written responses to questions
June 17, 2008.....	Closing Date - Deadline for proposal submission
July-August 2008.....	Investigation and evaluation of Proposals
September 2008.....	Notification of "Intent to Award Contract"
October 2008.....	Award, preparation, and execution of contract
November 2008.....	Ten 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 Meetings

It is strongly recommended that you or your designated representative attend the optional pre-proposal meetings on March 26, 2008.

At 4:00 p.m. potential proposal may meet at the Tiburon dock for a tour of the State dock facilities on Angel Island. The boat will return at 5:00 p.m.

At 7:00 p.m. interested parties may meet at the Reed Elementary School in Tiburon, 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;
- 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 be transmitted electronically or postmarked no later than 5 p.m. on April 8, 2008. To ensure fair competition in which all proposers receive the same information and materials, no telephone or personal inquiries about this RFP will be answered. Questions should be submitted in writing to the Department by mail or fax at the address and phone numbers listed below. A written compilation of all questions and answers, and any RFP addenda, will be sent by first-class mail to all identified potential proposers. Questions

the special skills, knowledge, and resources needed and available to implement your plan.

Products, Merchandise, and Services

Provide a detailed description of the proposed menu and other products, merchandise, and services to be provided by the concession operation. Food and other sales items must be high quality and the selection varied. The products and services offered should meet or exceed the needs of the park users, and be compatible with and complimentary to the mission of the park.

Prices and Pricing Policies

Provide a price schedule for a representative sample of the products and services proposed. Your plan must include a definitive description and explanation of the policies to be used to establish prices for food, beverages, products, and services. The plan shall include provision for special discounts for families and large groups. The policies shall clearly demonstrate the relationship of pricing to CPI adjustment and/or enhanced visitor services as described in the sample contract. Implementation of these policies must provide park visitors with quality products and/or services at reasonable prices considering the competition of comparable markets for similar products and services.

Conservation and Recycling

Outline your 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. Your plan should clearly commit you to a program that will minimize negative impacts on the environment and encourage park visitors to do the same. Additional points will be granted to those proposals that include clearly-defined clean emissions efforts within this section.

Accessibility

Provide a plan for and commitment to ensuring disabled visitors will have access to all of the services provided through the concession operation in accordance with the American's with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250.

B. Ferryboat and Mainland Dock Facility Plan

After the State's review and approval, the Ferryboat and Mainland Dock Facility Plan from the successful proposal shall be included as an exhibit to the contract. The Ferryboat and Mainland Dock Facility Plan shall include, but not be limited to:

- Proof of ownership or long-term lease agreement of dock facility.
- A detailed description, location, dimension and layout of the proposed dock facility, including accessible elements.
- A detailed description, size, capacity, amenities of the ferryboat, including accessible elements.
- An estimate of the cost to plan, design, construct, equip and furnish the concession mainland dock facility and ferryboat, including accessible elements

Proposal) and meets and exceeds the objectives of this RFP. More points will be awarded to proposals that provide high-quality and fully accessible facilities.

Interpretive Plan

5 Points

Points will be awarded based upon the degree to which the proposal demonstrates an understanding of the park’s interpretive programs and contributes to the overall interpretive messages of the park. More points will be awarded to proposals that integrate the park’s interpretive theme into the daily operation of the concession.

Rental Offer

30 Points

For the purpose of assigning points in the Proposal Evaluation, the highest acceptable* rental offer for each category of rent required (Percentages of monthly 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 \$32,000)

$$\frac{(\text{Bid Amount}) \text{ minus } (\$32,000)}{(\text{Highest Bid Amount}) \text{ minus } (\text{GuaranteedRent})} \times 15 \text{ points} = \text{_____ points}$$

Percentage of Gross Sales (Minimum bid is 8% up to \$400,000)

$$\frac{\text{Tier 1(Bid Percentage)}}{(\text{Highest Bid Amount})} \times 10 \text{ points} = \text{_____ points}$$

Percentage of Gross Sales (Minimum bid is 30% over \$400,000)

$$\frac{\text{Tier 2(Bid Percentage)}}{(\text{Highest Bid Amount})} \times 5 \text{ points} = \text{_____ points}$$

*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.

Concession Feasibility

Pass/Fail

Proposals will receive a pass or fail based on documentation of your ability successfully initiate the proposed concession in a financially responsible manner. Fiscal documentation that will be considered in awarding points includes a financial pro forma; statement of assets and liabilities; business, vendor, bank, and/or financial references; and similar documents

II. PROPOSAL INFORMATION

(Attach separate pages as necessary)

A. OPERATION PLAN

- Vision/Mission Statement
- Organizational Structure
- Transition/Business Start-up
- Customer Service
- Employee Staffing & Training
- Marketing and Advertising
- Community Involvement

- Products, Merchandise, and Services
- Prices and Pricing Policies
- Conservation and Recycling
- Accessibility
- Other: _____
- Other: _____
- Other: _____

No Operation Plan Required

B. FERRYBOAT AND MAINLAND DOCK FACILITY PLAN

- Equipment and Furnishings
- Capital Improvement
- Maintenance and Housekeeping
- Other: _____

- Implementation
- Cost(s) estimates.
- Other: _____

No Facility Plan Required

C. INTERPRETIVE PLAN

- Business' Interpretive Theme
- Diversity Outreach
- Other: _____
- Other: _____
- Other: _____

- Primary Education
- Business' Ambiance

No Interpretive Plan Required

D. RENTAL OFFER

- Minimum Rental Guarantee: _____ (minimum bid is \$32,000 annually)
- Percentage Rent: _____ (minimum 8% of gross receipts up to \$400,000)
- Percentage Rent: _____ (minimum 30% of gross receipts over \$400,000)

SAMPLE CONTRACT CHANGES

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 ferryboat concession operation from Tiburon to Angel Island State Park at the location(s) as set forth in **Exhibit "A"**, attached hereto and made a part of this Contract (the "Premises"). The Premises includes the State dock at Ayala Cove, and may include other docks on Angel Island developed during the term of this Contract.

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

Concessionaire agrees to accept Premises in their present 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 Ten (10) years, commencing on the first day of the month following approval by the Department of General Services. However, this Contract shall not be effective until any required approvals are provided by State, the Office of the Attorney General and the Department of General Services, as shown below. 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, with continuous

6. RENTAL

Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Annual Rent" the sum of (amount as bid) or the following percentage(s) of annual gross receipts, whichever sum is greater:

(per proposal)% of monthly gross receipts or (per proposal) annually

Beginning with Contract Year Two (2), the \$ _____, "Minimum Annual Rent", the \$400,000 gross receipts threshold, and Concessionaire rates described in Paragraph 15 shall be adjusted to reflect increases in the Consumer Price Index (CPI). Such CPI adjustments shall be made annually thereafter in accordance with the procedure set forth in **Exhibit "B"**, attached hereto and made a part of this Contract.

Concessionaire shall make payment of 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 commencement of the Contract as set forth in Paragraph "3", 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 in a format provided by State, equal or similar to **Exhibit "C"** attached hereto and made part of this Contract, and such statement 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. Park Use Fee Sales shall be reported separate from the Gross Receipts on the monthly statement. Concurrent with such monthly statement, the Concessionaire shall pay to State the appropriate rental fee for the preceding calendar month as prescribed above. Payments to State shall be made to the order of the Department of Parks and

natural disaster 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 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, then from and after the time of the breach causing this termination, or from and after the time of the cessation of business, the rent shall be deemed to be the combined total of the Minimum Rent provided herein, plus 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.

7. USE OF PREMISES

The Concessionaire shall operate and maintain a ferryboat concession in Tiburon. The Premises relevant to this Contract shall be deemed to be the docks on Angel Island State Park. Concessionaire may use the premises and other docking locations as designated by the Marin District Superintendent or designee for loading and unloading ferryboat passengers.

All premises and Concessionaire facilities described in Paragraph 11, must be accessible as per the Americans with Disability Act of 1990 (ADA). ADA, Subchapter 11 – Public Services, Sec. 12132 states: “Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

from the date of State's notice to the date of cure of Contract termination, whichever comes first.

B. If default activity is not cured within thirty (30) days after receiving the written notice from the State of State's designated representative, the State may terminate this Contract for cause in accordance with the dictates of Paragraph 30 (Default by Concessionaire), and may seize and execute the performance bond/deposit.

8. BONDS

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.

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) equal to the minimum annual rent as proposed 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.

Beginning with Contract Year Two (2), and on the first day of every Contract Year thereafter, the required bond amount shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance

Within fifteen (15) days of State's request, Concessionaire shall furnish State with a signed and complete copy of the required policy.

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. FERRYBOAT, AND MAINLAND DOCK FACILITY PLAN

Concessionaire shall provide ferryboats and mainland docking facilities along with all appropriate equipment, furnishings, fixtures, and decor necessary for the purposes and uses set forth in Paragraph 7 entitled "Use of Premises" and in accordance with the requirements set forth below. All equipment and facilities shall conform to Concessionaire's "Ferryboat and Mainland Dock Facility Plan", attached hereto as Exhibit "H" and hereby made a part of this Contract.

Ferryboat Operation: At Concessionaire's sole cost and expense, Concessionaire shall own, rent or lease two (2) ferryboats for the purpose of transporting passengers to and from Tiburon and Angel Island. One ferryboat shall be used as the primary service vessel. The first ferryboat shall have a capacity for 350 passengers, and the second shall have a minimum capacity to carry 100 passengers.

Mainland Dock Facility: At Concessionaire's sole cost and expense, Concessionaire shall acquire, rent or own a mainland docking facility in Tiburon, California to be used by the Concessionaire to provide a ferryboat service for transportation of the public to and from Angel Island and Tiburon. The Mainland Dock Facility shall include a minimum of 60 feet of State dock space and a 6 ft. by 3 ft. by 3 ft. storage container at no cost to State. The State dock space shall accommodate the State vessel and an accessible boarding ramp. The Mainland Dock Facility Plan, marked **Exhibit H**, attached hereto and made part of this Contract, sets forth a detailed description and plans for the location, dimensions,

acceptable to State. Concessionaire shall keep all records for a period of at least four years.

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-reset able 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.

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 therefore. 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, an audited financial statement for the previous calendar year, including all management letters from that review. The date of submission may be changed by written consent of State if based upon a corporate tax year or tax return extension. However, audited financial statements must be submitted no less than annually. Any sub-concession agreements entered into by Concessionaire and approved by the State is subject to the same audit requirements. The Concessionaire shall be responsible for the timely submittal of all sub-concession reports to the State. Such statement shall be prepared by a Certified Public Accountant licensed by the State of California. The particular CPA must be

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.

15. 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. State reserves the right to prohibit the sale or use of non-recyclable containers or plastics. A competent person shall be at the Concessionaire's facilities 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.

All fees and charges will be reviewed and approved by the Marin District Superintendent or designee annually based on CPI adjustment described in Paragraph 6 and/or enhanced visitor services. No modification of fees shall be implemented without the prior written approval of the State and PUC if required.

16. 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 "E"**, 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

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.

19. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS

In the event that Concessionaire desires to make modifications, improvements, or additions to the Premises or facilities described in Paragraph 11, 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 for Premises.

Once any Alteration has been approved by State and the work has begun, Concessionaire shall complete all approved Alterations with reasonable diligence. 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 facilities described in Paragraph 11 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 their facilities or Premises to its condition prior to the installment of the Alterations.

20. PERSONAL PROPERTY

Except to the extent covered by **Paragraph 20, MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS**, title to all personal property provided by Concessionaire shall remain in Concessionaire. 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.

21. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the facilities described in Paragraph 11 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. 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, 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.

B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on Mainland Dock and Ferryboats in good condition and repair at Concessionaire's sole cost and

expense at all times during the term of this Contract. 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. (Based on proposal)

Concessionaire shall pay of monthly gross receipts as a fee for maintenance of the Premises. Such monthly payment shall be by separate check and shall be reported separate from the Gross Receipts, Rental Fee, and Park Use Fee Sales; and submitted in accordance with Section 6 of this Contract.

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 facilities described in Paragraph 11. 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.

~~Prior to initiating any maintenance, and no later than thirty (30) days from the start of each Contract Year, Concessionaire shall submit an annual maintenance plan and budget on the Concessionaire's Annual Maintenance Plan in a format previously approved by the State. Concessionaire shall within thirty (30) days after the end of each Contract Year submit to the State an itemized statement documenting expenditures for maintenance to State-owned concession facilities during the previous Contract Year.~~

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 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 in connection with securing State's registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Concessionaire 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 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 and damages, judgments and claims including reasonable attorney's fees, expert witness fees and other costs.

29. 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 cooperate in this program in the manner described below without compensation from the State for such cooperation.

- 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 Mainland Dock and Ferryboat 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.
- C. 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

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.

46. 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.

47. 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.

48. TIME OF ESSENCE

Time shall be of the essence in the performance of this contract.

~~49. 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.~~

50. 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.

State of California – The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
TIBURON FERRYBOAT OPERATION
AT
ANGEL ISLAND STATE PARK

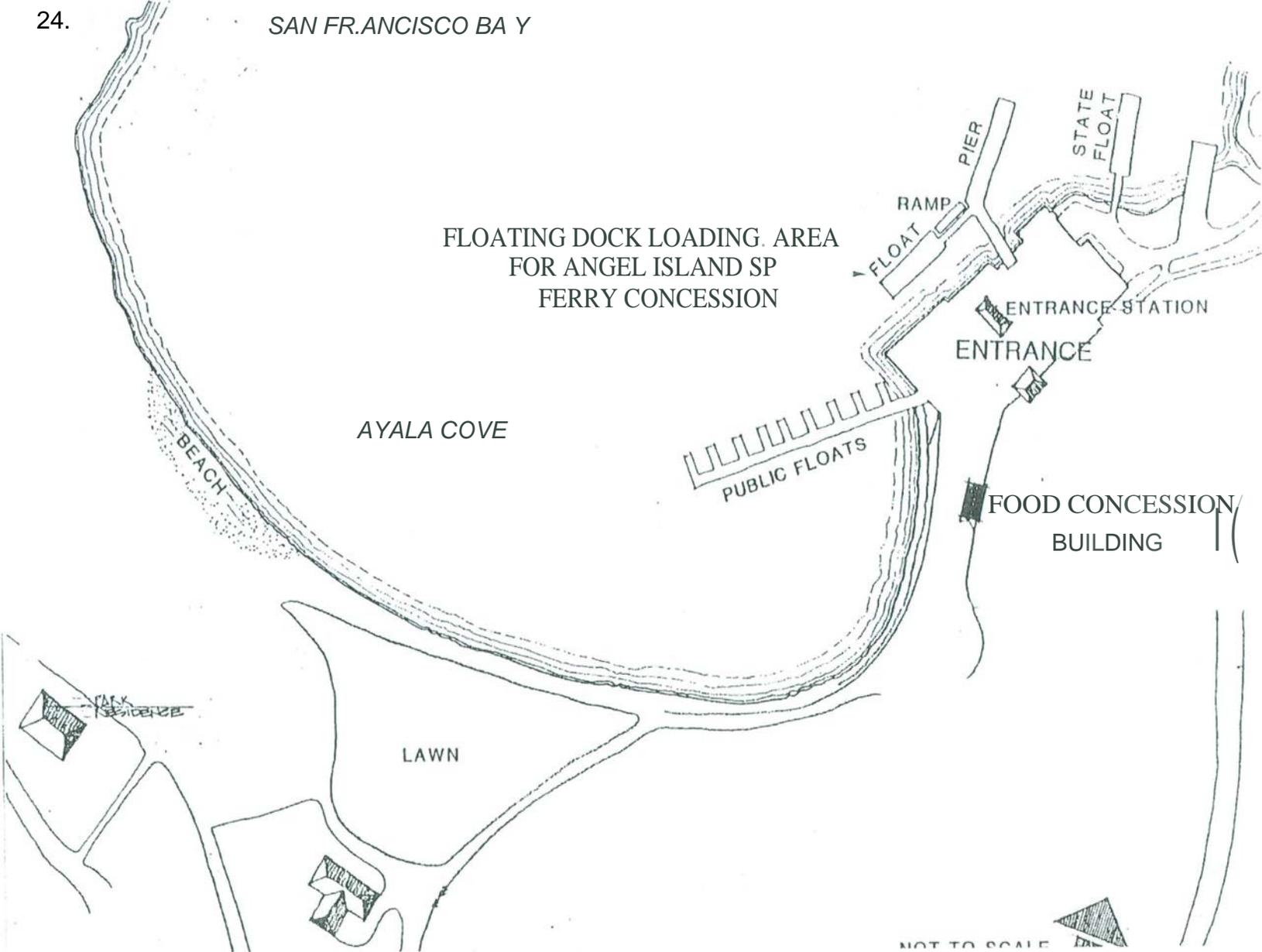
EXHIBIT “A”

SITE MAPS

EXHIBIT A

24.

SAN FRANCISCO BAY



State of California – The Resources Agency
 DEPARTMENT OF PARKS AND RECREATION
 TIBURON FERRYBOAT OPERATION
 STATE PARK

EXHIBIT “B”

In accordance with **Paragraph 6** of this contract, the “**Minimum Annual Rent**”, **gross receipts threshold, and Concessionaire rates** shall be adjusted at the beginning of **Contract Year Two (2)** and annually thereafter to reflect cumulative changes in the Consumer Price Index (CPI) since the commencement of the contract. Additionally, in accordance with **paragraph 8** of this contract, the performance bond shall be adjusted at the beginning of **Contract Year Two (2)** and annually thereafter to reflect cumulative changes in the Consumer Price Index (CPI) since the commencement of the contract. CPI calculations shall be based on changes in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) Selected areas, all items index (1982-84=100) for San Diego, California. Calculations shall employ the following formula:

"Base Index" = CPI Index published for the first full month preceding the commencement date of this contract.

"Year End Index" = CPI Index for the final month of the subject contract year.



- "Year End Index" - "Base Index"
- Step #1:** "Base Index" = % Change
- Step #2:** % Change x Year One (1) “Minimum Annual Rent”/Bond = Adjustment
- Step #3:** Year One (1) “Minimum Annual Rent”/Bond + Adjustment = New “Minimum Annual Rent”/Bond