# REQUEST FOR PROPOSALS

FOR

Aerial Trail System

AT

Lake Perris State Recreation Area

Opening Date: April 14, 2015
AMENDED JUNE 8, 2015

Closing Date: August 4, 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: | Aerial Trail System |
| Park Unit: | Lake Perris State Recreation Area |
| Proposal Closing Time & Date: | 2:00 PM on August 4, 2015 |
| Proposal Submission Location: | California Department of Parks and Recreation<br>1416 Ninth Street, Room 1442-7<br>Sacramento, California 95814 |
| Concession Type: | Aerial Trail System |
| Contract Term: | Ten (10) years |
| Annual Minimum Rent Bid: | Guaranteed Annual Rent of Thirty-Five Thousand Dollars ($35,000) or Ten Percent (10%) of gross receipts, whichever is greater. |
| Concessionaire Capital Outlay: | Seven Hundred Fifty Thousand Dollars ($750,000) to plan, design, permit, construct, furnish, equip, operate and maintain a facility to provide an aerial trail with associated walking trails. |
| Proposal Bond (due at time of proposal submission): | ~~Five~~ Two Thousand Five Hundred Dollars ($2,500) |
| Performance Bond (due at time of Contract execution): | One year's minimum annual rent, as bid |
| Proposer's Minimum Years of Relevant Experience: | Three (3) years |
| ~~Mandatory~~ Pre-Proposal Meeting: | May 7, 2015 at 1:00 PM |

For more information or to purchase a copy of the complete RFP for $25, call Teresa Montijo, Concessions Program Manager at (916) 653-7733 or e-mail teresa.montijo@parks.ca.gov. You may download a complimentary copy of the RFP at www.parks.ca.gov/concessions.

Lisa Ann L. Mangat, Director

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# 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 of this Request for Proposals (RFP)

The goal of this RFP is to award a ten (10) year concession contract to a qualified individual or business entity to plan, design, permit, construct, equip, operate and maintain an aerial trail system to provide park visitors a unique recreational experience within Lake Perris State Recreational Area.

### Objectives of this RFP

- Develop, install, operate and maintain an aerial trail system with a minimum of two (2) launch towers and two (2) zip lines at Lake Perris State Recreation Area including associated infrastructure, trails, stairways and ramps;
- Optimize visitor experience by offering quality services with outstanding and friendly service;
- Promote safe, enjoyable, and high-quality recreational experiences for all park users;
- Improve the concession premises, including upgrades to ensure full compliance with the Americans with Disabilities Act (ADA) and all State and Local Government accessibility regulations prior to beginning operations;
- Provide reasonable financial compensation to support the State, including the park operations and interpretive activities.

## 1.2 GENERAL INFORMATION

### Site Description

Lake Perris SRA is a major Southern California recreational destination area (8,800 acres) that includes Department of Water Resources (DWR), a 2,300 surface acre reservoir and the end terminus of the State Water Project. Lake Perris was acquired from DWR in 1974 through a Real Property Transfer under the 1962 Davis-Dolwig Act for all recreation and resources management. Lake Perris SRA has the largest operated campground within the Department with 432 family campsites, six group campsites, horse camping, 10 miles of paved bicycle path around the lake, 15 miles of equestrian trails, and five miles of hiking trails. Lake Perris also has a concession operated marina, a stand-up paddle boarding concession, bike rentals, jet ski rentals, waterfowl hunting, rock climbing, and sailing. The lake has four launch ramps, 422 vehicle/trailer spaces, eight boarding docks, ADA fishing dock, two swim beaches with eight lifeguard towers, a special event center, and the Regional Indian Museum. The park offers many recreational activities including boating, swimming, camping, fishing, picnicking, hiking, mountain climbing, bicycling and hunting.

The Department has identified an area within the park that was once the site of a waterslide concession in the 1980s and 1990s. Parts of that facility remain (a fenced area, stairway to the top of the ridge, office, and restrooms) and may be renovated and utilized as part of the new aerial trail system concession.

**NOTE:** The proceeding is for general information only; the State does not guarantee its accuracy. It is recommended that proposers personally investigate the premises and park environs.

**Future Site Plans**
In 2005, the Department of Water Resources (DWR) identified potential seismic safety hazards in the foundation of the dam. In the interest of ensuring public safety, DWR lowered the reservoir water level while preparing an Environmental Impact Report (EIR) and designing repairs. Dam repairs began in the summer of 2014 and are expected to take three years to complete.

Visitation to Lake Perris SRA for the last five fiscal years is as follows:

**2012/13** - 658,026; **2011/12** - 617,463; **2010/11** - 545,777; **2009/10** - 609,544; and **2008/09** - 646,850

## 1.3 CONTRACT SUMMARY

This *ten (10) year* contract will provide for the development, operation, and maintenance of an aerial trail system (zip line) to provide both a unique recreational experience and an alternate way to access Alesandro Island. The intent of the contract is to provide the public with a safe, enjoyable, high-quality, and reasonably priced service that provides an 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. At concessionaire's sole cost and expense, concessionaire must fund, plan, design, permit, construct, equip, operate and maintain an aerial trail network with a minimum capital investment for construction of seven hundred fifty thousand dollars ($750,000).

2. Aerial trail network system construction proposes a minimum of four (4) zip lines and two (2) launch towers from the point of land adjacent to Moreno Swim Beach to Alesandro Island, which is located in the middle of the reservoir. Aerial trail system to include deck takeoff/landing structures with associated support poles secured with guy wires, walking trails, stairways, and the provision of accessibility code compliant features that ensure the activity is programatically accessible to people with disabilities.

3. Inspect zip line structures, including platforms, on a daily basis.

4. Perform safety orientation to visitors and ensure all participants meet non-discriminatory essential eligibility criteria.

5. Ensure a staff person with nationally recognized certifications for advanced first aid and CPR training is on-site at all times operation is open for business and appropriate medical response gear is immediately available.

6. Ensure annual safety inspections of zip line structures and equipment are performed by a qualified safety inspector certified through the Association for Challenge Course Technology (ACCT).

7. Maintain the Premises, facilities, equipment and trails, including features that provide accessibility to people with disabilities, in good condition in accordance with Department standards and Contract provisions.

8. Pay as annual rent the amount presented in the proposal, which, at a minimum, shall be the greater of thirty-five thousand dollars ($35,000) or ten percent (10%) of gross sales.

9. Provide a continuing Performance Bond in the amount of one years' Minimum Annual Rent, as bid.

10. Pay for all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the Contract.

11. Provide commercial general liability insurance as required by the Contract.

12. 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.

13. Demonstrate compliance with all applicable laws, rules and regulations including, but not limited to providing accessible services in accordance with ADA guidelines, including the 2010 ADA Standards for Accessible Design and the Final Guidelines for Outdoor Developed Areas contained in the Architectural Barriers Act Accessibility Guidelines.

14. Provide an Operation Plan and Facility Plan as specified in Proposal Instructions that clearly demonstrates the proposer's plan to provide fully accessible services and facilities that comply with state and federal accessibility codes and guidelines. The plans will become part of the contract subject to State review and approval.

15. Demonstrate compliance with labor laws as specified in the RFP.

**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.

4. Develop and administer a program that denies persons with disabilities an equal opportunity to benefit from and participate in the provided activity.

**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

April 14, 2015 .....Opening Date - Publication of the RFP

May 7, 2015 .....~~Mandatory~~ Pre-Proposal Meeting

May 21, 2015 .....Questions - Last date for proposers to submit written questions

June 4, 2015 .....Answers - DPR written responses to questions

August 4, 2015 .....Closing Date - Deadline for proposal submission

August 2015 .....Investigation and evaluation of Proposals

August 2015 .....Notification of "Intent to Award Contract"

September 2015.....Award, preparation, and execution of contract

October 1, 2015 .....Ten (10) 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.

### ~~Mandatory~~ Pre-Proposal Meeting

Proposer or designated representative ~~must~~ may attend the ~~mandatory~~ pre-proposal meeting at 1:00 PM on May 7, 2015 at Lake Perris State Recreation Area, Lake View Pavilion, Parking Lot 9, 17801 Lake Perris Drive, Perris, California 92571. ~~Failure to attend the meeting will cause the proposal to be rejected. There will be no exceptions to this requirement.~~ 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 5:00 p.m. on May 21, 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
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~~ two thousand, five hundred dollars ~~($5,000)~~ ($2,500). 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**

Your proposal, including the Proposal Bond, must be received by 2:00 PM on August 4, 2015 at:

California Department of Parks and Recreation
Concessions Program
1416 Ninth 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 Aerial Trail System at Lake Perris State Recreation Area". Please submit an original plus **seven (7)** copies of your 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 will 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. The State may proceed with the contract award pending the outcome of a protest hearing. 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 and Facility Improvement 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 all sections of the form may disqualify the proposal. If the proposal does not satisfy Level I and 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

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 and must not be a condition of receiving the contract.

- 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.

<u>Experience</u>

For the purpose of this RFP, proposers must have a minimum of three (3) 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 seven hundred fifty thousand dollars ($750,000). 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.), provide documentation such as a recent bank statement or other supporting documents to demonstrate these funds are available and 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 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: Use the Business Financial Statement to describe the current and true condition of the business' assets, liabilities, and 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. A complete and accurate Business Financial Statement will reflect assets equal to the liabilities and net worth amounts. Proposer may provide copies of forms filed with the Internal Revenue Service, where applicable.

## E. Credit Worthiness

Proposers must present evidence of credit worthiness. At a minimum, evidence should include a complete credit report issued by a nationally recognized credit bureau 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 derogatory information 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 and Facility Development Plan (as required) 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 the 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 and any unique seasonal and peak use circumstances.

Business Start-Up

Provide a plan and timeline for starting concession operation.

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 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, capabilities, knowledge, and training to ensure the provision of safe, high-quality services to all park visitors. All employees shall receive training to include orientation on the State Park System and local points of interest including the cultural and natural history of the area.

Safety and Security

Describe plan to ensure a safe and secure environment for visitors, concession workers, State Park staff and the public. Proposal must also describe an Emergency Response and Evacuation Plan, security to prevent unauthorized access, and safety education and hands-on orientation program for each visitor that is consistent and age-level specific to maximize visitor safety and compliance. Plan must specify the guide-visitor ratio by age group. The proposal should consider and incorporate requirements presented in the Sample Concession Contract Section 7, Use of Premises.

Marketing and Advertising

Describe commitment to create added value and benefit to the surrounding community as well as park visitors. This may include coordination or participation in special events, educational programs, and community service activities; and recognition of local stakeholders and interest groups.

Community Involvement

Commit to creating 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 the 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 plan should include a definitive description and explanation of the policies to be used to establish prices for products, and services. The policies should clearly demonstrate the relationship of pricing to product quality and portions. Implementation of these policies should provide park visitors with quality products at reasonable prices considering the competition of comparable markets for similar products, services and cost of doing business. Pricing policies should consider Sample Contract, Section 4, Rent; and Section 9, Rates, Charges and Quality of Goods and Services.

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 Titles II and III of the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250. The plan shall include a description of the essential eligibility criteria required for program participation. 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
Describe the intended physical facilities of the concession including furnishings, equipment, décor, and layout. 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 facility improvements as required by the RFP or proposed. Include the resumes of the proposed architects and 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 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 that clearly indicates accessibility compliance prior to the commencement of operations.

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 one or both the Rental Guarantee and/or 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 Thirty Five Thousand Dollars ($35,000) and the Percentage of Gross Sales must be at least Ten Percent (10%). 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 the proposed concession in a financially responsible manner. The financial projections should consider the commitments made within the Operation and Facility Improvement Plans (as applicable). This information must substantiate proposer's ability to: develop, furnish, equip, operate and maintain the concession in a high-quality manner; provide the public with quality products and services at reasonable and competitive prices; pay the State the rental offered; and provide a reasonable return on the investment. 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.

## III. PROPOSAL SUMMARY

The Proposal Summary should summarize relevant experience, knowledge, and expertise, and the Operation and Facility Improvement 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

**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** **20 Points**
For the purposes of this RFP, proposers must have a minimum of three (3) 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 $35,000)

$$\frac{\text{(Bid Amount) minus \$35,000)}}{\text{(Highest Bid Amount) minus (GuaranteedRent)}} \times 15 \text{ points} = _____ \text{ points}$$

Percentage of Gross Sales (Minimum bid is 10%)

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

*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.

## 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 _____ (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)

D. Compliance with National Labor Relations Act _____ (pass/disqualified)

*Proposer must pass LEVEL II to qualify for further consideration.*

## LEVEL III PROPOSAL EVALUATION

A. Proposer Information

| | | |
|---|---|---|
| Small Business Preference | 5 | / XX Points |
| Experience/Quality of Experience | 20 | / XX Points |

B. Proposal Information

| | | |
|---|---|---|
| Operation Plan | 25 | / XX Points |
| Facility Improvement Plan | 25 | / XX Points |
| Rental Offer | 25 | / XX Points |
| Financial Feasibility | _____ | / Pass/Fail * |

**GRAND TOTAL** 100 /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 form, from Teresa Montijo, Concessions Program Manager at (916) 653-7733 or email 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

**Aerial Trail System**

AT

**Lake Perris 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

Aerial Trail System
CONCESSION CONTRACT
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SAMPLE

STATE OF CALIFORNIA

DEPARTMENT OF PARKS AND RECREATION

**CONCESSION CONTRACT**

For

**Aerial Trail System**

Located In

Lake Perris State Recreation Area

Riverside 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**, the California Legislature approved this concession operation as part of the Supplemental Budget of 2014/2015 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;

SAMPLE

**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 Aerial Trail System (zip line) concession in Lake Perris State Recreation Area at the location(s) as set forth in **Exhibits A1, A2, A3,** and **A4** 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 ten (10) years**,** 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 42, Surrender of Premises; Holding Over, of this



SAMPLE

Contract, with continuous Consumer Price Index adjustment, as defined below, subject otherwise to all the terms and conditions of this Contract.

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 guaranteed sum of Thirty Five Thousand Dollars ($35,000) [or as bid] **or** Ten Percent (10%) [or as bid] of gross receipts, whichever sum is greater.

The Minimum Annual Rent guarantee of $35,000 will begin during the first Contract Year of business operation following construction completion. Minimum Annual Rent guarantee will be prorated for a partial Contract Year.

Beginning with Contract Year Six (6) and on the first day of each fifth Contract Year thereafter, the Minimum Annual Rent 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 ($15^{th}$) day of the month following the opening of the concession for business, and on or before the fifteenth ($15^{th}$) 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



SAMPLE

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.

SAMPLE

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

Facility Development: Concessionaire shall plan, design, construct, permit, and complete all concession facility improvements as described in Concessionaire's Facility Development Plan, attached hereto as **Exhibit C**, without cost to State and in compliance with Contract Section 26, Guidelines for Construction and Completion of Improvements, with a minimum expenditure of Seven Hundred Fifty Thousand Dollars



SAMPLE

($750,000) [or as bid]. 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 development and acceptance by State, if there remains an unspent balance of the minimum expenditure of Seven Hundred Fifty Thousand Dollars ($750,000) [or as bid], 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.

## 7. USE OF PREMISES

At Concessionaire's sole cost and expense, the Premises shall be planned, designed, permitted, constructed, furnished, equipped, operated and maintained by the Concessionaire as a facility to provide an aerial trail system. Once opened for public use, the Premises shall be used by the Concessionaire to provide safe, enjoyable, disabled accessible, high-quality zip lines from the land adjacent to Moreno Swim Beach to Alessandro Island and back.

At a minimum, the Concessionaire will be required to:

A. Construct an aerial trail network system that consists of a minimum of four (4) zip lines and two (2) launch towers. Aerial trail system to include deck takeoff/landing structures with associated support poles secured with guy wires, walking trails, stairways, and the provision of accessibility code compliant features that ensure the activity is programatically accessible to people with disabilities.

B. Inspect zip line structures, including platforms, on a daily basis. Prior to initiating daily operation, Concessionaire shall ensure they are safe for operation, which shall include, but is not limited to ensuring platforms are not wet, icy or littered, carriage/trolley assemblies move freely on cables, and suspension harnesses are adequately secure and clean.

C. Perform safety orientation to visitors.

D. Ensure all participants meet non-discriminatory essential eligibility criteria.

E. Ensure a staff person with nationally recognized certifications for advanced first aid and CPR training is on-site at all times operation is open for business and appropriate medical response gear is immediately available.



SAMPLE

F. Ensure annual safety inspections of zip line structures and equipment are performed by a qualified safety inspector certified through the Association for Challenge Course Technology (ACCT). Inspection report shall state whether or not all system components are safe for use, specifically addressing cabling and anchoring connections, carriage assemblies, braking systems, platforms, accessible features, etc. Concessionaire shall provide a copy of the safety inspectors report to the State within seven (7) days following the safety inspection. Additional safety inspections by an ACCT qualified safety inspector shall be performed after any visitor accident caused by equipment malfunction or significant storm or earthquake. The Concessionaire shall not operate any components until the specified safety hazards/deficiencies are corrected to the satisfaction of the State.

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.

Concession services shall be provided, at a minimum, between the hours of 10:00 AM and 6:00 PM, seven (7) days per week, from the Friday prior to Memorial Day to Labor Day and from 10:00 AM to 4:00 PM, three (3) days per week including Saturday, Sunday, and holidays, excluding the fourth Thursday in November and December 25 weather permitting, during each year of the Contract. 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 observe longer hours, at Concessionaire's discretion with the concurrence of 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.

SAMPLE

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.

## 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 Department of Water Resources, their 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 to State 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

SAMPLE

restriction may be allowed through the special event permit process, as approved by State.

## 11. 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.

SAMPLE

C. 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.

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.

## 12. 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



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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.

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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.

## 13. 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;

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 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



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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.

## 14. 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.



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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).

## 15. 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, excluding water use. When installing facilities, no trees shall be trimmed or cut without permission of State. 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.

## 16. 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.

## 17. PERSONAL PROPERTY

Except to the extent covered by Section 24, 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 otherwise approved in writing by State, all Aerial Trail equipment that is attached to real property by Concessionaire, including but not limited to deck takeoff/landing structures and support poles, shall be removed by Concessionaire within thirty (30) days of Contract termination.

## 18. 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



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the internet, without prior written consent of the State and only consistent with the purposes of the Contract.

**19. 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.

**20. 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

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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



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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.

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## 21. 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.

## 22. 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.

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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.

## 23. CONSTRUCTION AND COMPLETION OF IMPROVEMENTS

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:

A. Facility Development: Concessionaire shall construct a minimum of four (4) deck takeoff/landing structures with associated support poles secured with guy wires to support a minimum of four (4) zip lines.

1) Plan Amendment: Concessionaire shall meet with State within 14 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 and should include a site plan, including the location of accessible parking and pedestrian routes of travel, 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



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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 and should include the necessary details of each element of the Schematic Design to adequately convey key conditions of major improvements including sufficient detail to enable state reviewers to verify compliance with accessibility codes and guidelines. In addition, the Design Development should include Grading Roadways/Trails, Parking, Stormwater Control, Paving, Traffic Circulation, Reflected Ceiling Plans, Schedules, Structural Requirements, Plumbing, Mechanical, and Electrical Plans, 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 six (6) 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 Improvement Plan 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



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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 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



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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.

C. 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.

D. 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,



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Concessionaire shall commence construction to the facility as described herein, and prosecute the same to completion with all due diligence and within twelve (12) months. 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 (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; (7) have work inspected by the Accessibility Section for compliance with ADA and (8) 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.

When Concessionaire has obtained lien releases, filed the Notice of Completion, received Certificate of Occupancy as required, and received written acceptance from the State, subject to all other provisions of this Contract,



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Concessionaire shall have the right to commence concession business operations.

## 24. 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. Plan approval process shall be dictated by Contract, Section 17, Construction and Completion of Improvements.

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.

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## 25. 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.

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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 thousand dollars ($5,000), 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.

## 26. 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 $1,000,000 per occurrence for bodily injury and property damage liability combined with $2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of Premises, operations,



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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) 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 Department of Water Resources.

4) 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 February 11, 2015 is Six Hundred Fifty Thousand Dollars ($650,000). Property insurance shall include Business Interruption coverage on a Special Form basis with limits equal to the actual loss sustained for up to one (1) year.

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

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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 Department of Water Resources, 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.

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## 27. HOLD HARMLESS AGREEMENT

Concessionaire hereby waives all claims and recourse against the State and Department of Water Resources, 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, its 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.

## 28. 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 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.

## 29. 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



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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 at the onset of operations.

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.

## 30. 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.

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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.

## 31. 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.

## 32. 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



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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.

**33. 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.

**34. 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.

**35. 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



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new employees to the New Hire Registry maintained by the California Employment Development Department.

## 36. 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-resetable and shall supply an accurate recording of all sales on tape and produce a receipt for



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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.

**37. 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.

**38. 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



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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.

**39. 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.



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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.

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## 40. 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



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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



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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.



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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.

## 41. 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

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commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

## 42. 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



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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.

**43. 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.

**44. 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 shall be entitled to recover reasonable attorney fees and expenses incurred by Concessionaire and need not reimburse the State for any attorney fees and expenses incurred by the State.

**45. 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



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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.

**46. 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.

**47. 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.

**48. 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.

**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.

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## 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.

## 51. 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.

## 52. 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.

## 53. 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.



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C. Concessionaire's gross receipts shall include all receipts of the subconcessionaire.

## 54. 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.

## 55. 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.

## 56. 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.

SAMPLE

## 57. 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: | CT-ConcessionaireName<br>CT-ConcessionContactAddress<br>CT-ConcessionCityState CT-ConcessionZip<br>CT-ConcessionairePhone |
| State at: | Department of Parks and Recreation<br>Inland Empire District<br>17801 Lake Perris Drive<br>Perris, California 92571<br>951-443-2423 |
| Copy to: | Department of Parks and Recreation<br>Marketing and Business Development Division<br>P.O. Box 942896<br>Sacramento, California 94296-0001<br>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.

## 58. 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.

SAMPLE

**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:**

Signed: _____

Name:_____

Title: _____

Date:_____

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

Signed:_____

Name:_____

Title: _____

Date:_____

**APPROVED:**

**ATTORNEY GENERAL:**

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:_____

**APPROVED:**

**DEPARTMENT OF GENERAL SERVICES:**

SAMPLE

**EXHIBIT A1 – THE PREMISES**

Point #7 – 4.32 Acres

Restrooms (3) Approx. 350 sq. ft.

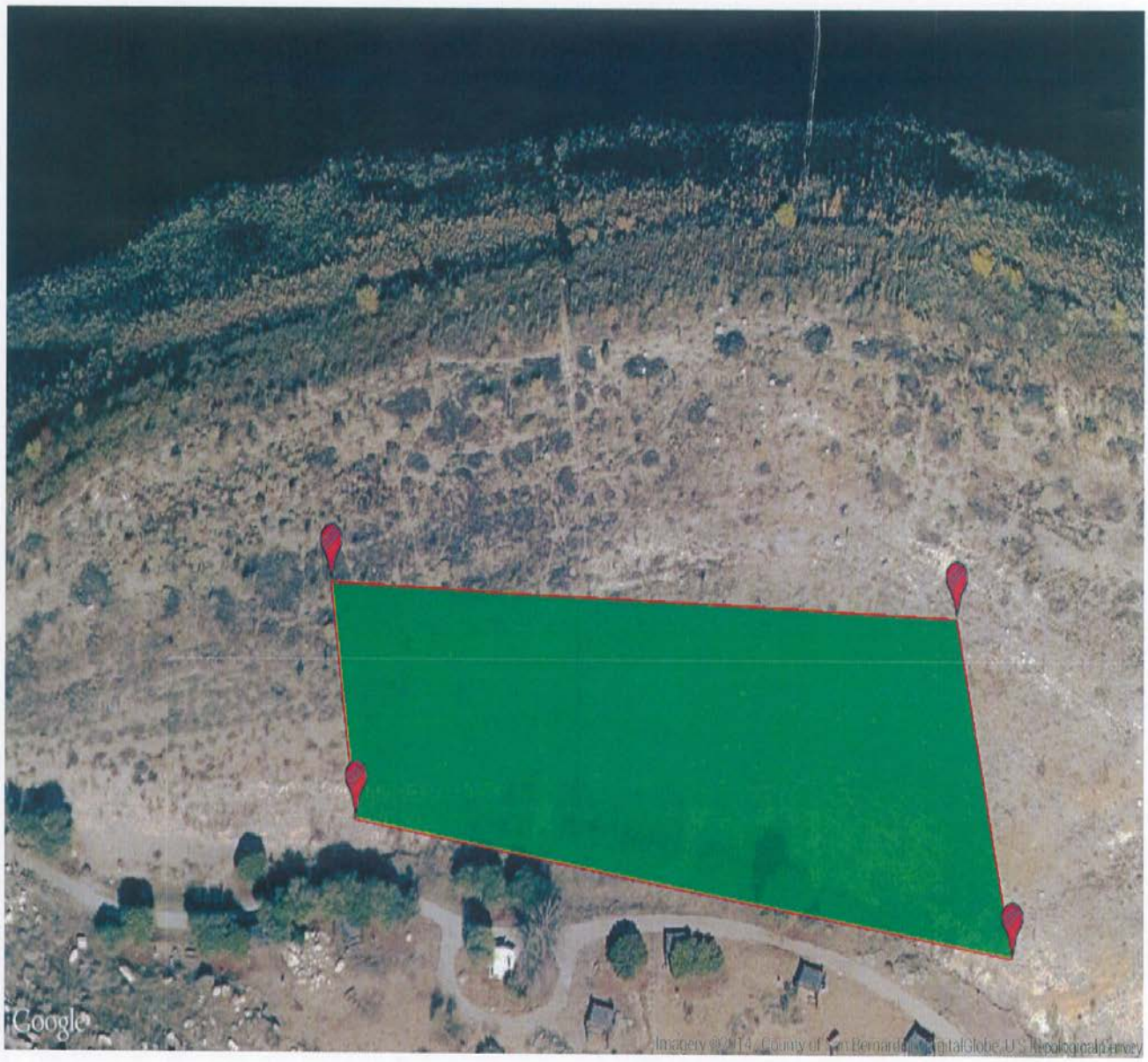
Ticket Sales Building

**EXHIBIT A2 – THE PREMISES**

.47 Acres

Platform for Return Line

**EXHIBIT A3 – THE PREMISES**




Island Landing and Exclusive Beach

1.75 Acres

## EXHIBIT A4 – THE PREMISES

## EXHIBIT B – CONCESSIONAIRE'S OPERATION PLAN

## EXHIBIT C – CONCESSIONAIRE'S FACILITY IMPROVEMENT PLAN

## 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 | CUMULATIVE MAINTENANCE FEE ALLOCATION YEAR TO DATE |
|---|---|
| _____ % x Monthly Gross Revenue = $ | _____ % x Cumulative Gross Revenue = $ |
| AMOUNT SPENT ON ELIGIBLE MAINTENANCE THIS MONTH<br>$ | CUMULATIVE AMOUNT EXPENDED ON ELIGIBLE MAINTENANCE YEAR TO DATE<br>$ |

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

**DECLARATION**

*I declare under penalty of perjury that the information on this form is accurate and complete to the best of my knowledge.*

| CONCESSIONAIRE'S SIGNATURE | PRINTED NAME | DATE |
|---|---|---|
| TITLE/POSITION | | PHONE NO. |

DPR 54 (Rev. 7/97)(Front)(Excel 11/17/2006) *Original - District; Copy - Northern Service Center*

## 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 dryers

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

## CONCESSIONAIRE FINANCIAL STATEMENT

Page B _____ of _____

| CONCESSIONAIRE NAME | CONCESSION NAME |
|---|---|
| PARK UNIT NAME | REPORTING PERIOD<br>From: _____ To: _____ |

### B. SCHEDULE OF DEPRECIATION

***Columns 5, 8, and 9 must add to the total shown in Column 4. If you need more space to list all equipment, use additional pages and number B-2, B-3, etc. Use reverse side for remarks.***

| DESCRIPTION OF EQUIPMENT (1) | DATE ACQUIRED (2) | CONDITION *(X)* (3) | | ACQUISITION COST (4) | PRIOR YEARS' DEPRECIATION (5) | RATE *(%)* (6) | LIFE YEARS (7) | DEPRECIATION THIS PERIOD (8) | BALANCE TO BE DEPRECIATED (9) |
|---|---|---|---|---|---|---|---|---|---|
| | | New | Used | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | |

# CONCESSIONAIRE FINANCIAL STATEMENT

| CONCESSIONAIRE NAME | CONCESSION NAME |
|---|---|
| PARK UNIT NAME | REPORTING PERIOD<br>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<br>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<br>*Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box.* | EXCELLENT (E) | SATISFACTORY (S) | NEEDS IMPROVEMENT (NI) | NONCOMPLIANCE/ UNACCEPTABLE (NON) | COMPLIANCE (COM) | NOT APPLICABLE (NA) | COMMENTS<br>*Explain items which are rated excellent, needs improvement or noncompliance/unacceptable. Make recommendations for correction for NI and NON rating. Attach additional sheets as necessary.* |
|---|---|---|---|---|---|---|---|---|
| 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 *PAGE 1 ONLY* | | | | 0 | | | |

| | 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 *(When Applicable)* | 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** ***PAGE 2 ONLY*** | | | | 0 | 0 | | |
| | **TOTAL POINTS PER COLUMN** ***PAGE 1 + PAGE 2*** | | | | 0 | | | |

TOTAL POINTS RECEIVED FROM ALL CATEGORIES ( _____ ÷ MAXIMUM POINTS POSSIBLE FOR RATED CATEGORIES _____ ) x 100 = **PERCENT RATING** #DIV/0!

ARE THERE ANY NONCOMPLIANCE OR UNACCEPTABLE RATINGS IN ANY CATEGORY?* ☐ Yes ☐ No

OVERALL RATING *(Based on percent rating)*

☐ **EXCELLENT***(90% to 100%)* ☐ **SATISFACTORY***(70% to 89%)* ☐ **NEEDS IMPROVEMENT***(60% to 69%)* ☐ **UNACCEPTABLE** *(less than 60%)*

RATER'S SIGNATURE TITLE DATE

RATER DISCUSSED REPORT WITH CONCESSIONAIRE? ☐ Yes. Date: _____ ☐ No

*In signing this report I do not necessarily agree with the conclusion of the rater.*

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 PKS, 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 _____ (DATE) (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."

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:

The State Park Logo Registration No. 2437051

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.

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.

This license shall authorize the use of the Mark and associated goodwill, in connection with only the following:

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.

Licensee shall not modify or alter the Mark in any way without prior written approval from State Parks.

All uses of the Mark must be accompanied by the trademark registration symbol (®) unless it is infeasible from a design standpoint.

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."

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.

Goodwill and Quality Control

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.

Third Party Infringement

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.

**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.**

**AGREED AND ACCEPTED**

| | | | |
|---|---|---|---|
| State of California<br>Department of Parks and Recreation | | LICENSEE | |
| BY<br>▷ | DATE | BY<br>▷ | DATE |
| | | PRINTED NAME AND TITLE OF PERSON SIGNING | |
| TITLE | DISTRICT/SECTION | ADDRESS | |
| PHONE NO. | EMAIL | PHONE NO. | EMAIL |

03/2005

## 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 |
|---|---|---|---|
| ▷ | | ▷ | |

03/2005

## 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, Los Angeles 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, Department of Parks and Recreation and the State of California, Department of Water Resources 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 THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES (DWR), 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 AND/OR DWR IS NEGLIGENT OR OTHERWISE AT FAULT. I ALSO AGREE TO PROTECT, HOLD HARMLESS, DEFEND AND INDEMNIFY CONCESSIONAIRE AND/OR STATE AND/OR DWR 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 and/or DWR or defects in equipment, (2) absolve and release Concessionaire and/or State and/or DWR 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, State, and DWR 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 and/or DWR or any other public or private entity.

I warrant that I am executing this agreement voluntarily and that neither Concessionaire nor the State nor DWR 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,State, and DWR 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: _____