



June 27, 2011

Vehicle Day Use Fee Collections – Interested Parties

Dear Interested Parties,

California State Parks (CSP) was unsuccessful in securing signed contract(s) for Vehicle Day Use Concessions at Carlsbad, South Carlsbad, San Elijo, Cardiff, Torrey Pines State Beach, and Silver Strand State Beaches through the Request for Proposal (RFP) process. Per Public Resources Code (PRC) §5080.16(a), CSP may seek a qualified entity to negotiate the contract(s). The final negotiated contract must closely parallel the essential terms of the original RFP. You have been identified as an interested party in the opportunity to negotiate the concession contract for Silver Strand SB and/or the other remaining units combined.

The RFP included minimum terms of five (5) years with the option to extend for an additional five (5) years; installation and maintenance of equipment to facilitate a park-and-pay fee collection system at each unit; and remittance of either 80% of parking fees collected, or a minimum annual fee guarantee to CSP of \$510,000 for Silver Strand and \$1,554,000 combined for Carlsbad, South Carlsbad, San Elijo, Cardiff and Torrey Pines State Beaches, whichever is greater.

CSP made minor modifications to the advertised Sample Contract, which is attached for your convenience. For reference purposes, a copy of the original RFP is available on-line at www.parks.ca.gov/concessions at no charge. If interested in the negotiated contract, please provide your best offer to CSP on the attached DPR 398 Concession Proposal. Such offers will be evaluated, in part, based on their conformance to the advertised RFP. It is also in the State's interest for the parking fee collections to commence operation as soon as possible during the current summer season.

Interested parties must complete and return the attached DPR 398 Concession Proposal by 4:30 p.m. on July 11, 2011 to Concessions Specialist Donna Renner at 4477 Pacific Highway in San Diego. Regular office hours are Monday through Friday from 8:30 a.m. to 4:30 p.m., excluding Holidays.

If you have questions, please call Ms. Renner at (619) 688-3343 or Concessions Program Manager Teresa Montijo at (916) 653-7733.

Thank you for your interest in the California State Parks Concession Program.

Sincerely,

James A. Luscutoff, Chief
Concessions, Reservations, and Fees Division

Attachment(s)

cc: Clayton Phillips, Acting District Superintendent, San Diego Coast District
Brian Ketterer, North Sector Superintendent, San Diego Coast District
Donna Renner, Concession Specialist, San Diego Coast District

PROPOSER QUESTIONNAIRE

San Diego Coast District Vehicle Day Use Collections

An electronic version of this questionnaire may be requested.

This Concession Proposal is submitted for the following Concession Contract:

(Please check the concession contract for which you are proposing. Choose only one. A separate Concession Proposal form must be submitted to bid on each contract.)

| |
|--------------------------|
| <input type="checkbox"/> |
| <input type="checkbox"/> |

Carlsbad, S. Carlsbad, San Elijo, Cardiff, & Torrey Pines

Silver Strand

This questionnaire provides information for the Department of Parks and Recreation to consider qualifications and feasibility for a negotiated or assigned concession contract.

The Proposer Questionnaire consists of the following sections:

I PROPOSER INFORMATION

- A. Proposer Identification
- B. Business Information
- C. Individual Information
- D. Statement of Financial Capability

II PROPOSAL INFORMATION

Note: *Each section of the Proposer Questionnaire, including all items within each section, must be answered fully. You may include additional pages as needed and furnish additional information. However, you should not delete, leave blank, or fail to answer any items in the Proposer Questionnaire. Questions that are not applicable should be so indicated.*

PROPOSER INFORMATION

A. PROPOSER IDENTIFICATION

GENERAL INFORMATION

BUSINESS NAME: _____
(Exactly as it is to appear on the Concession Contract)

ADDRESS: _____

CITY/STATE/ZIP CODE: _____

PHONE NUMBER: _____ FAX NUMBER: _____

EMAIL ADDRESS: _____

CONCESSION MANAGER: _____

SMALL BUSINESS: No Yes S/B #: _____

FEDERAL ID NUMBER: _____

CONTACT PERSON

All correspondence from the Department of Parks and Recreation to the proposer will be with ONE Contact Person. The individual designated as the Contact Person will be responsible for disseminating information to the other members of the proposing entity.

NAME _____

ADDRESS _____

CITY/STATE/ZIP CODE _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

I. PROPOSER INFORMATION

B. BUSINESS INFORMATION

Check the one box below that describes your type of business and complete/attach the associated information requested. Also attach an organization chart if appropriate.

SOLE PROPRIETORSHIP:

PARTNERSHIP: Attach a complete copy of the Partnership Agreement. To qualify as a responsive proposer, the Partnership Agreement shall be executed and binding upon each of the parties.

1. Date partnership established _____

2. Is the Partnership Agreement recorded? Yes. Date _____ No

3. Has the partnership done business in California? Yes. Dates _____ No

| | NO. OF | GENERAL (G) |
|-------------------------|----------------------------|----------------------------|
| 4. <u>PARTNER NAMES</u> | <u>TITLES</u> | <u>ADDRESSES</u> |
| | <u>SHARES</u> | of <u>LIMITED (L)</u> |
| | <input type="checkbox"/> G | <input type="checkbox"/> L |
| | <input type="checkbox"/> G | <input type="checkbox"/> L |
| | <input type="checkbox"/> G | <input type="checkbox"/> L |

JOINT VENTURE: Provide a complete copy of the Joint Venture Statement/Agreement. To qualify as a responsive proposal, the Joint Venture Statement/Agreement must be executed and binding upon each of the parties.

1. Date joint venture established _____

2. Is the Joint Venture Statement/Agreement recorded? Yes. Date _____ No

3. Has the joint venture done business in California? Yes. Dates _____ No

4. Joint Venture Names and Share Allocations Addresses

LIMITED LIABILITY COMPANY (LLC): Attach a copy of Articles of Organization with the California Secretary of State seal and the Statement of Information, identifying the managing members(s) of the Organization. To qualify as a responsive proposer, the LLC shall be in good standing and qualified to do business in the State of California.

1. Date LLC was established _____

2. Is the LLC authorized to do business in California? Yes No

3. Has the LLC done business in California Yes. Dates _____ No

CORPORATION: Attach a Corporate Resolution indicating the officers authorized to contract on behalf of corporation. The Corporate Resolution shall contain the corporate seal and be certified by the Secretary of the corporation. To qualify as a responsive proposer, the corporation shall be in good standing and qualified to do business in the State of California.

1. Date incorporated _____

2. Place Incorporated _____

B. BUSINESS INFORMATION. Continued

(CORPORATION - Continued)

3. Complete the information below:

AUTHORIZED ISSUED OUTSTANDING

Number of voting shares
Number of non-voting shares
Number of shareholders

Value per share of common stock: Date _____ Par _____ Book _____ Authorized _____

4. Complete the information below for each officer and director of the corporation, the shareholder who is not a corporation officer or director but owns the largest number of voting shares of corporation stock, and the shareholder who is not a corporation officer or director but owns the largest number of non-voting shares of corporation stock.

| <u>NAME</u> | <u>TITLE</u> | <u>ADDRESS</u> | <u>VOTING SHARES</u> | <u>NON-VOTING SHARES</u> |
|-------------|--------------|----------------|--------------------------|------------------------------|
|-------------|--------------|----------------|--------------------------|------------------------------|

5. Has the corporation ever been adjudicated bankrupt or involved in pending bankruptcy matters?

Yes. Below, enter dates, court jurisdiction and amounts of liabilities and assets. No

6. Is the corporation presently a party to any pending litigation, liens or claims?

Yes. Below, enter detailed information for each legal action. No

7. Is the corporation subject to any outstanding claims, liens, or judgements?

Yes. Below, enter detailed information for each claim, lien or judgement. No

8. Has the corporation defaulted on, been terminated for non-performance or breach of contract, or voluntarily abandoned or forfeited rights under a contract for services or concession contract?

Yes. Below, enter an explanation of the circumstances and outcomes of each event. No

C. INDIVIDUAL INFORMATION

Legal Name _____ Social Security Number _____
Business Address _____ Phone Number _____
Residence Address _____ Phone Number _____

PERSONAL HISTORY

1. Have you, individually, as a partner, joint venturer or as officer of a corporation had a bond or surety canceled or forfeited within the last ten (10) years?

Yes. Provide information below. No

Bond Company Name _____

Bond Date _____ Bond Amount _____

Explain the reason for each cancellation or forfeiture:

2. Have you individually, as a partner, joint venturer, or officer of a corporation been convicted of a felony crime in the last ten (10) years?

Yes. Please explain No

3. Have you or your spouse or any business that you owned or in which you were an officer or had an interest ever declared bankruptcy, been declared insolvent or bankrupt, filed for bankruptcy, or reorganization under Federal or State laws?

Yes. Below, enter dates, court jurisdictions, and amounts of liabilities and assets. No

4. Are you individually or any partnership or joint venture in which you have been party currently involved in any pending litigation?

Yes. Below, enter dates, violations and locations. No

WORK EXPERIENCE

Attach a resume and narrative as necessary.

CERTIFICATION: *I hereby certify that all responses stated above regarding my personal history and experience are true to the best of my knowledge and belief, and I understand and agree that any misstatement or omission of any material fact may cause forfeiture on my part of all rights to the proposed agreement to be awarded by the State of California.*

SIGNATURE

DATE



D. STATEMENT OF FINANCIAL CAPABILITY

SOURCE OF FUNDING AND COST OF CONCESSION DEVELOPMENT

(Complete Page 7 and attach additional pages as necessary.)

CONCESSION CONTRACT

FOR

VEHICLE DAY USE

AT

CARLSBAD, SOUTH CARLSBAD, SAN ELIJO, CARDIFF, AND TORREY
PINES, (AND/OR SILVER STRAND) STATE BEACHES

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



VEHICLE DAY USE
CONCESSION CONTRACT
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SAMPLE

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

CONCESSION CONTRACT

For

VEHICLE DAY USE

Located In

**Carlsbad, South Carlsbad, San Elijo, Cardiff, and Torrey Pines, (and/or
Silver Strand) State Beaches within San Diego 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 of , hereinafter referred to as "Concessionaire";

RECITALS

WHEREAS, California Public Resources Code Section 5010.1 authorizes the Department of Parks and Recreation to enter into a contract with a concessionaire for the collection of fees for the use of any state park system; and

WHEREAS, the concession contract may provide for the retention of a portion of every fee as reimbursement for the cost of providing such service and;

WHEREAS, California Public Resources Code Section 5080.03 et seq. authorizes the Department of Parks and Recreation to enter into concession contracts and;

WHEREAS, it is appropriate that the following contract be entered into for the safety and convenience of the general public in the use and enjoyment of, and the overall enhancement of recreational and educational experience at units of the state park system;

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

1. DESCRIPTION OF PREMISES

The State for and in consideration of the agreements hereinafter stated, grants to Concessionaire for the purposes stated herein, the right, privilege, and duty to develop, equip, operate, and maintain a nonexclusive concession in Carlsbad, South Carlsbad, San Elijo, Cardiff, Torrey Pines, and Silver Strand State Beaches at the location(s) as set forth in **Exhibit A**, attached to and made a part of this Contract (the "Premises").

The Concessionaire's interest granted herein is for the purpose of acting as an agent for the State in the collection of parking fees through a park and pay system within the Premises for public benefit as directed and agreed upon by State. 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.

2. CONDITION OF PREMISES

The acceptance 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 Five (5) Years commencing on the first day of the month following approval by the California Department of General Services. At the option of Concessionaire, and with concurrence of State, this Contract may be extended for an additional Five (5) years by State, or extension may be denied by State without cause. Concessionaire must request such extension for State's consideration a minimum of one year in advance of Contract expiration. 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 fee as set forth in this Contract in Section 30, Surrender of Premises; Holding Over, of this Contract 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. FEE COLLECTION

Concessionaire shall act as an agent of the State in collection of fees, with a deduction of no more than (percentage of total fee collections retained by Concessionaire) as reimbursement for providing such service. Concessionaire will guarantee "Minimum Annual Fees" payable to the State in an amount of \$ _____, which may be achieved collectively for the state beach parking lots identified herein, or pay (successful proposal) percent (%) of all fee collections, whichever sum is greater. The Minimum Annual Fee \$\$ guarantee becomes effective for Contract Year 2, and each Contract Year thereafter.

Concessionaire shall make payment of Minimum Annual Fees and other payments to State daily via wire or electronic transfer, identified by park unit, except weekends in which case transfers must occur the first business day following the weekend or holiday. However, if any payment made by a check, draft, or money order is returned to State due to insufficient funds or otherwise, State shall have the right, at any time after the return, upon written notice to Concessionaire, to require Concessionaire to make all subsequent payments in cash or by cashier's or certified check.

Beginning with the fifteenth (15th) day of the month following the commencement of Day Use concession collection activities, and on or before the fifteenth (15th) day of each month thereafter, Concessionaire shall furnish to State a signed statement of the concession's total fee collections for the preceding month including the corresponding remittance to State for the reporting period and an invoice for the amount retained by

Concessionaire. Such statement shall be submitted on Form DPR 54, Concessionaire's Monthly Report of Operation, attached hereto as **Exhibit C**, or in a format previously approved by the State, and shall specify the current period and cumulative total of fee collections for the concession through the end of the preceding month for the then current Contract Year. Concessionaire shall also provide such statement for periods of non-operation. If, at the end of the Contract Year, the total fee collection payments made (or due) during that Contract Year is less than the Minimum Annual Fee Guarantee required for that Contract Year, the difference shall be remitted to State with the last monthly sales statement for the Contract Year. Fee collection payments must be received by State daily via wire or electronic transfer, identified by park unit, except weekends in which case transfer must occur the first business day following the weekend or holiday. In addition, all credit card processing equipment must be compliant with the Payment Card Industry Data Security Standard (PCI DSS) or any subsequent technology recognized within the industry as the safest, most reliable and approved by the State. 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 with the next Concessionaire's Monthly Report of Operation, DPR 54.

_____ **[Initials of concessionaire(s)]**

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, nor on any amounts on which late charges are paid 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 Annual Fee Guarantee will be abated in proportion to the amount by which collected fees are reduced by the occurrence for such period of reduced or non-operation, as determined at the discretion of State.

If this Contract is terminated by State because of Concessionaire's default, and if Concessionaire becomes liable for any deficiency in 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 fees 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 Annual Fees provided herein, or (b) an amount based upon the average of the payments that have accrued to State as percentage fees 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. USE OF PREMISES

The Concessionaire shall operate paid parking day use lots within the Premises of Carlsbad, South Carlsbad, San Elijo, Cardiff, Torrey Pines, (and/or Silver Strand) State Beaches.

Concessionaire shall install and maintain, within each State-approved pay center area, at least one (1) pay parking machines ("APM") as a trade fixture to facilitate park and pay use by the visitor which shall remain the property of the Concessionaire. The Concessionaire shall respond to trade fixture breakdowns and make any repairs or remove and replace any necessary components to provide for a fully operational

machine within twenty-four (24) hours of notification by way of voice contact or verified receipt by way of electronic mail ("e-mail"), and provide any necessary staffing on site to facilitate a smooth operation and collection of fees pending equipment repairs; or pay damages to the State as additional fees at the rate of Two Hundred Dollars (\$200) per hour per affected parking lot location.

Any proposed alternative fee collection that does not utilize a pay machine will require State's prior approval.

Concessionaire shall honor the State Park fee schedule when establishing the fee structure for hourly and full day use not to exceed the maximum day use fee for a beach park. State shall notify Concessionaire of any fee changes in writing, and Concessionaire agrees to implement such changes within seventy-two (72) hours. Any State-mandated fee decrease is subject to a decrease in minimum annual fees in proportion to the amount by which gross fee collections are reduced.

Concessionaire shall enforce payment of parking fees, including the issuance of citations in accordance with California Department of Parks and Recreation policies and procedures.

Concessionaire shall honor State Park Passes which include VIP Statewide, VIP District, Annual Day Use, Golden Poppy Annual Day Use, Disabled Veteran/POW, Disabled Discount, Golden Bear, Limited Golden Bear, Complimentary Day, and the California State Parks Foundation Day passes which may be verified by telephoning State Parks Southern Communications ("SURCOM") at (951) 443-2969.

Concessionaire shall also honor passes specific to Torrey Pines including the Torrey Pines Association annual pass (north Torrey State Park lot use only), and the Torrey Pines Docent Society member pass (State Reserve lots use only). State Park employee passes are issued to visitor service field staff for parking in the day use lots. Concessionaire agrees to work with State to develop a mutually agreeable system to track the usage of State Park Passes honored within the Premises.

Concessionaire shall partner with California State Parks to accommodate occasional special events utilizing the day use lots. Special event fees collected by State specific to group parking will be remitted to the Concessionaire. Concessionaire shall facilitate a park and pay system at each location and provide the park visitor a

smooth operation with minimum delays which may include concession staff to operate entrance station kiosk locations during operating hours on the heavy use weekends beginning the Saturday of Memorial Day Weekend through Monday of Labor Day Weekend. Any concession employees interacting with the public will be required to attend a State Park orientation as an ambassador for California State Parks and all operations are to be consistent with the Operations Plan attached hereto as **Exhibit B**.

The “Park, Pay, Display” and any other State Park signage shall remain posted within the lot. Any other signage is the responsibility of the Concessionaire including liability signage and must meet State approval and the current signage plan for the Park. All signage must be approved by the State in advance per Section 23 Signs and Advertising.

Concession services shall be provided between the hours of 6 AM and Sunset for the term of this Contract, or when the unit closes, whichever is later, 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. 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.

Optional: Concessionaire may utilize Seaside and North Cardiff parking lots after hours, or when parking spaces are not necessary to accommodate park visitors as determined by the State, for the purpose of valet parking. In the event Concessionaire utilizes the State parking lots for valet parking, Concessionaire shall pay the State the amount of (\$\$), whichever is greater, due by the 15th day of the month following completion of each Contract Year. Concurrent with submission of the Concessionaire's Financial Statement, Exhibit E, Concessionaire shall provide an annual report of the number of vehicles valet parked at the State parking lot. Concessionaire is responsible for opening and closing the lot for this purpose.

Concessionaire may remove space designations such as “Official Use Only” from parking spaces throughout the system and consolidate these into ten (10) lower

occupancy parking spaces in the Seaside lot and so designate or mark these for the exclusive occupancy of the Concessionaire.

6. **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 ninety (90) days of the guaranteed "Minimum Annual Fee" collections 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 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.

7. **INSURANCE**

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

- 1) **Commercial 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, 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.

B. 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, its officers, agents, employees and servants as additional insured. This endorsement 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

C. Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to State. 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.

D. 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.

8. ALCOHOLIC BEVERAGES

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

9. 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:

State at: Department of Parks and Recreation
San Diego Coast District
4477 Pacific Highway
San Diego, California 92110
(619) 688-3260

Copy to: Department of Parks and Recreation
Concessions, Reservations & Fees Division
P.O. Box 942896
Sacramento, California 94296-0001
916-653-7733

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

10. 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 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 signed profit and loss statement for the previous calendar year. Such statement shall be submitted on Form DPR 86, Concessionaire's Financial Statement, attached hereto as **Exhibit E**, or in a format previously approved by the State, and shall contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to the State. Within forty-five (45) days of the expiration or termination of this Contract, Concessionaire shall submit to the State a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

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

11. 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.

12. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES

Concessionaire shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. State reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety and/or to ensure that the public receives, in the State's view, fair pricing, proper service, and appropriate quality. State reserves the right to prohibit the sale or use of non-recyclable containers or plastics.

Any increased rates or charges to park visitors proposed by Concessionaire following contract approval shall be submitted in writing for the State's approval. Rate increases may not be imposed retroactively.

13. PERFORMANCE EVALUATIONS AND INSPECTION

As part of its administration of this Contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A Concessionaire Performance Rating (DPR Form 531) attached hereto as **Exhibit F**, or other similar format(s) as may be adopted by the State will be utilized for evaluation purposes. State further reserves the right of ingress and egress without notice to inspect concession

operations for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the State Park System. Concessionaire agrees to cooperate with State in all respects related to the implementation of State's Concession Performance Evaluation program and with State's activities on the Premises. State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State's entry in the Premises as provided herein, except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

14. HOLD HARMLESS AGREEMENT

Concessionaire hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Contract, except claims arising from, and to the extent of, the sole gross negligence or willful misconduct of the State, its officers, agents, or employees. Concessionaire shall protect, indemnify, hold harmless, and defend State, 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.

15. TAXES

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.

16. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS

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

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

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

17. PERSONAL PROPERTY

Except to the extent covered by Section 16, Modifications, Additions, Title to Improvements, title to all personal property provided by Concessionaire shall remain with Concessionaire. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property will be considered a real property improvement and shall become property of State at the time this Contract is terminated.

18. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the areas in, on, or adjacent to a distance of not less than fifteen (15) feet, from the personal property and equipment within the Premises, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

A. Maintenance and Repairs: Concessionaire shall maintain 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. For the purposes of this Contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

Should Concessionaire fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to terminate the contract. 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.

B. 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.

19. UTILITIES AND SERVICES

Concessionaire shall be responsible for all costs associated with the installation and provision of additional utilities necessary to and used in connection with the Premises. 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.

20. HAZARDOUS SUBSTANCES

- A. Use of Premises: 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;
 - 3) Use or operate any machinery or apparatus that shall injure the premises or adjacent buildings in any way; or
 - 4) Do anything other than is provided for in this Contract.
 - 5) 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.

6) 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.

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

21. 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.

22. SIGNS AND ADVERTISING

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

23. 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.

24. INTELLECTUAL PROPERTY RIGHTS

Any names, logos, and/or trademarks developed during and/or pursuant to this Contract that will in any way associate with, identify, or implicate an affiliation with California State Parks shall be approved by State, but, whether or not so approved, shall be deemed to have been developed pursuant to this Contract and licensed hereunder to Concessionaire for the term of this Contract only; shall belong to State upon creation; and shall continue in State's exclusive ownership upon termination of this Contract, and all goodwill and other rights in said marks shall inure to the benefit of the State as the mark owner. Further, any original works of authorship in which copyright resides, and any other proprietary rights, including without limitation trade secrets and know-how, which are developed during and/or pursuant to this Contract, shall be deemed to be works made for hire in consideration of Concessionaire's rights and

benefits hereunder, or alternatively Concessionaire agrees to assign such copyrights to the State, and shall be owned by the State; shall belong to State upon creation; and shall continue in State's exclusive ownership upon termination of this Contract.

25. PARTICIPATION IN STATE PARK MARKETING PROGRAMS

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

A. Concessionaire agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.

B. Concessionaire agrees to place on the Premises any advertising that the State approves under this program. Any advertising approved by the State under this program will be placed at State's expense.

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

26. 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 Fees: Any failure of Concessionaire to timely pay any fees due or any other monetary sums required to be paid hereunder where such failure continues for a period of ten (10) consecutive days after such sums are due.

- 2) Absence from Premises: Any complete absence by Concessionaire or its agents and employees from the Premises for thirty (30) consecutive days or longer. The Premises shall be deemed abandoned after State has followed the procedures set forth in Civil Code Section 1951.3.
- 3) Nuisance: Should Concessionaire create or allow to be created a nuisance on the Premises, State may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Premises without notice to Concessionaire. For the purpose of this paragraph, "nuisance" consists of an egregious activity that threatens the health, welfare, and safety of the public. Concessionaire shall immediately vacate the Premises and remove all personal property within thirty (30) days after State's declaration of default.
- 4) Failure to Observe Other Provisions: Any failure by Concessionaire to observe or perform another provision of this Contract where such failure continues for twenty (20) consecutive days after written notice thereof by State to Concessionaire; this notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. However, if the nature of Concessionaire's default is such that it cannot reasonably be cured within the twenty (20) day period, Concessionaire shall not be deemed to be in default if it is determined at the sole discretion of State that Concessionaire has commenced such cure within the twenty (20) day period and thereafter continues to diligently prosecute such cure to completion to the satisfaction of State.
- 5) Involuntary Assignments, Bankruptcy: State and Concessionaire agree that neither this Contract nor any interest of Concessionaire hereunder in the Premises shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ

of attachment or execution on this Contract; (d) the appointment of a receiver with the authority to take possession of the Premises in any proceeding or action in which Concessionaire is a party; or (e) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a default by Concessionaire and State shall have the right to elect to take immediate possession of the Premises, to terminate this Contract and/or invoke other appropriate remedies as set forth below, in which case this Contract shall not be treated as an asset of Concessionaire.

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

27. 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 Fees: 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 fees due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar State from bringing another suit for fees; 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 fees reserved under this Contract, to sue for, or to include in, any suit and judgment the fees then due, shall not serve as defense against, nor prejudice a subsequent action for, fees or other obligations due under the Contract. The

claims for fees 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 fees as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). The following do not constitute a termination of the Concessionaire's right to possession: (1) Acts of maintenance or preservation or efforts to relet the Premises; (2) The appointment of a receiver upon initiative of the State to protect State's interests under the Contract; (3) Withholding consent to a subletting or assignment so long as such consent is not unreasonably withheld.

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

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

- 1) the worth, at the time of the award, of the unpaid fees 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 fees 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 fees that Concessionaire proves could have reasonably been avoided;
- 3) the worth, at the time of the award, of the amount by which the unpaid fees for the balance of the term after the time of the award

exceeds the amount of the loss of fees that Concessionaire proves could have been reasonably avoided; and

4) any other amount necessary to compensate State for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Contract, which, without limiting the generality of the foregoing, includes any cost and expenses incurred by the State in recovering possession of the Premises, in maintaining or preserving the Premises after such default, in preparing the Premises for a new concessionaire, in making any repairs or alterations to the Premises necessary for a new concessionaire, in making any repairs or alterations to the Premises, and costs of clearing State's title of any interest of Concessionaire, commissions, attorneys' fees, architects' fees, and any other costs necessary or appropriate to make the Premises operational by a new concessionaire.

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

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

Any designated assignee, as provided for herein, shall take and operate the concession under the same terms and conditions as those set forth herein, except for requirements that have already been performed and are no longer

applicable. However, Concessionaire shall not be relieved of obligations incurred. An assignment of the Contract pursuant to the terms hereof shall not cause the Contract to terminate and shall not work a merger.

F. Receiver: If Concessionaire is in default of this Contract, State shall have the right to have a receiver appointed to collect fees 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 fees.

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

- 1) State's Obligations After Default: State shall be under no obligation to observe or perform any covenant of this Contract on its part to be observed or performed that accrues after the date of any default by Concessionaire. Such nonperformance by State shall not constitute a termination of Concessionaire's right to possession nor a constructive eviction.
- 2) No Right of Redemption: Concessionaire hereby waives its rights under California Code of Civil Procedure Sections 1174 and 1179 or any present or future law that allows Concessionaire any right of redemption or

relief from forfeiture in the event State takes possession of the Premises by reason of any default by Concessionaire.

3) Other Relief: All monetary obligations of the Concessionaire of any kind shall be considered fees. State shall have such rights and remedies for failure to pay such monetary obligations as State would have if Concessionaire failed to pay fees 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.

28. DEFAULT BY STATE

State shall not be in default of the performance of any obligation required of it under this Contract unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Concessionaire to State specifying the alleged default and the applicable contract provision giving rise to the obligation. However, if the nature of State's obligation is such that more than thirty (30) days is required for its performance, then State shall not be deemed in default if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion. State reserves the right to close any park and shall not be in default of performance. In the event of State-mandated park closures, the provisions for Minimum Annual Fees abatement described in Section 4 Fee Collection will apply.

29. 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 Fees shall be increased by Consumer Price Index adjustments required by this Contract in accordance with Section 4, Fee Collection, unless otherwise agreed to in writing by State. Concessionaire shall pay such fees 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. NONDISCRIMINATION

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

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

Further, as part of compliance with the foregoing, Concessionaire and Concessionaire's employees shall not discriminate by refusing to furnish any person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. Nor shall Concessionaire or Concessionaire's employees publicize the accommodation, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any such person.

Concessionaire shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations

promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a)-(f), are incorporated into this Contract by reference and made a part hereof as if set forth in full (California Code of Regulations, title 2, Section 7285.0 et seq.). Concessionaire shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Concessionaire shall include the non-discrimination and compliance provisions of this clause in all contracts 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.

35. DISABILITIES ACCESS LAWS

Without limiting Concessionaire's responsibility under this Contract for compliance with all laws, with regard to all operations and activities that are the responsibility of Concessionaire under this Contract, Concessionaire shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (ADA) [Public Law 101-336, commencing at Section 12101 of Title 42, United States Code (and including Titles I, II, and III of that law)], the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

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.

36. 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.

37. 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.

38. CHILD SUPPORT COMPLIANCE ACT

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

- A. The Concessionaire recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall comply with all applicable state and federal laws provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- B. The Concessionaire to the best of its knowledge is complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

39. CONFLICT OF INTEREST

Concessionaire warrants and covenants that no official, employee in the state civil service, other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Contract; (b) will be employed in the performance of this Contract without the immediate divulgence of such fact to State. In the event State determines that the employment of any such official, employee, associated person, or business entity is not compatible, Concessionaire shall terminate such employment immediately. For breaches or violation of this Section, State shall have the right both to annul this Contract without liability and, in its discretion, recover from the Concessionaire the full amount of any compensation paid to such official, employee, or business entity.

40. WAIVER OF CLAIMS

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

41. 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 fee guarantee 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.

42. 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.

43. 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.

44. TIME OF ESSENCE

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

45. 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.

46. 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.

47. 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.

48. CONTRACT IN COUNTERPARTS

This Contract may be executed in counterparts, each of which shall be deemed an original.

49. 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.

50. ASSIGNMENTS AND SUBCONCESSIONS

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

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

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

51. 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.

52. 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.

53. APPROVAL OF CONTRACT

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

54. 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:

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

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED:

APPROVED:

ATTORNEY GENERAL:

DEPARTMENT OF GENERAL SERVICES:

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

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

By: _____
Deputy Attorney General

Dated: _____

EXHIBIT A – THE PREMISES

EXHIBIT B – OPERATIONS PLAN

EXHIBIT C – *continued*

DPR 54 COMPLETION INSTRUCTIONS

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

COMMENTS/EXPLANATIONS:

DPR 54 (Back)

EXHIBIT D – FACILITY PLAN

EXHIBIT E - DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

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

CONCESSIONAIRE FINANCIAL STATEMENT

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

A. CASH FLOW STATEMENT

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

CONCESSIONAIRE FINANCIAL STATEMENT

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

C. BALANCE SHEET

ASSETS

CURRENT ASSETS

| | |
|-------------------------------------|----------|
| Cash | \$ _____ |
| Accounts Receivable | _____ |
| Merchandise Inventory | _____ |
| Notes Receivable (Less than 1 year) | _____ |

TOTAL CURRENT ASSETS \$ _____

NONCURRENT ASSETS

| | |
|-----------------------------|----------|
| Equipment/Property | \$ _____ |
| Less Depreciation Reserve | _____ |
| Net Equipment/Property Cost | _____ |
| Prepaid Expenses | _____ |
| Other: _____ | _____ |
| Other: _____ | _____ |

TOTAL NONCURRENT ASSETS \$ _____

TOTAL ASSETS \$ _____

LIABILITIES

CURRENT LIABILITIES

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

TOTAL CURRENT LIABILITIES \$ _____

OTHER LIABILITIES

| | |
|--------------|----------|
| Other: _____ | \$ _____ |
| Other: _____ | _____ |

TOTAL OTHER LIABILITIES \$ _____

TOTAL LIABILITIES \$ _____

CAPITAL

OWNER'S EQUITY

| | |
|-----------------------|----------|
| Capital | \$ _____ |
| Less Personal Drawing | \$ _____ |
| Net Addition | \$ _____ |
| Stockholder's Equity | \$ _____ |
| Other: _____ | \$ _____ |

TOTAL CAPITAL \$ _____

TOTAL LIABILITIES AND CAPITAL \$ _____

EXHIBIT F - DPR 531, CONCESSION PERFORMANCE RATING

CONCESSION PERFORMANCE RATING

State of California - The Resources Agency
CALIFORNIA STATE PARKS

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

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

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

EXHIBIT G - DRUG FREE WORKPLACE CERTIFICATION

STATE OF CALIFORNIA

DRUG-FREE WORKPLACE CERTIFICATION

STD. 21 (Rev. 12/93)(CA ST 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 <i>(Authorized Signature)</i> | DATE EXECUTED |
| PRINTED NAME AND TITLE OF PERSON SIGNING | TELEPHONE NUMBER <i>(Include Area Code)</i> () |
| 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.