

# REQUEST FOR PROPOSALS

For

Bidwell Canyon Marina

At

Lake Oroville State Recreation Area

Opening Date – May 1, 2009

Closing Date – August 4, 2009



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





**NOTICE OF REQUEST FOR PROPOSALS**

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

Concession Name:	Bidwell Canyon Marina
Park Unit:	Lake Oroville State Recreation Area
Proposal Closing Time & Date:	August 4, 2009
Proposal Submission Location:	Concessions, Reservations, and Fees Division 1416 9 <sup>th</sup> Street, Room 1442-13 Sacramento, California 95814
Concession Type:	Reservoir Marina
Contract Term:	Thirty (30) years
Annual Minimum Rent Bid:	The greater of \$300,000 or 8.5% of gross sales up to \$1,000,000; plus 10% of annual gross sales in excess of \$1,000,000; plus 2% of fuel and oil sales.
Minimum Concessionaire Capital Outlay:	Three million five hundred thousand dollars (\$3,500,000)
Equipment to Support Proposed Facilities:	Seven hundred thousand dollars (\$700,000)
Proposal Bond (due at time of proposal submission):	Ten thousand dollars (\$10,000)
Performance Bond (due at time of Contract execution):	One year's current minimum annual rent as bid
Proposer's Minimum Years of Relevant Experience:	Five (5) years
Optional Pre-Proposal Meeting:	May 11, 2009

For more information or to purchase a copy of the complete RFP for \$25, contact Laurie Blankenship at (916) 653-7733, or interested parties may download a complimentary copy at [www.parks.ca.gov/concessions](http://www.parks.ca.gov/concessions).



Ruth Coleman, Director



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## SECTION 1 - PROJECT SUMMARY

### 1.1 GOAL & OBJECTIVES

#### Department Mission

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

#### Goal of this Request for Proposals (RFP)

The goal of this Request for Proposal (RFP) is to award a thirty (30) year concession contract to a qualified entity to provide a high-quality marina operation, promoting safe and enjoyable recreational goods and services at reasonable prices for a variety of park users.

#### Objectives of this RFP

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

- Construct new marina facilities to comply with the Americans with Disabilities Act and related laws;
- Provide and maintain a full-service, high-quality marina with a variety of boating, recreational goods, and services at reasonable prices;
- Maintain concession facilities and premises in good condition in accordance with DPR standards as set forth in the contract; and
- Be responsive to the needs of the local community as well as the needs of statewide constituencies.

### 1.2 GENERAL INFORMATION

#### Site Description

Lake Oroville State Recreation Area contains the largest State Water Project reservoir in Northern California. Kelly Ridge and Bidwell Canyon areas are approximately five miles northeast of the City of Oroville. Kelly Ridge is the site of a visitor center to interpret Lake Oroville and the State Water Project. Bidwell Canyon includes overnight campgrounds; camp store; snack bar; and the boat marina with over 800 boat moorings; a fuel station; sewage pump facility; and 300 trailer/dry boat parking spots.

#### Current Concession Operation

The gross sales and rent for the last five years as reported by the current concessionaire is as follows:

<u>Fiscal Year</u>	<u>Visitation</u>	<u>Gross Receipts</u>	<u>Rent to State</u>
2003/04	1,155,048	\$3,087,254	\$307,351
2004/05	1,364,348	\$3,030,142	\$303,010
2005/06	1,058,533	\$3,324,311	\$327,233
2006/07	1,048,379	\$3,153,184	\$263,789
2007/08	756,124	\$3,208,225	\$327,684

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

### **Historical Significance**

For thousands of years, the area was home to the Northwest Maidu people. A typical village consisted of a few families to over 500 or more inhabitants. Often there was a “main” village with sweathouses and other common-use ceremonial buildings. The Maidu were hunters and gatherers. Acorns were their main food source, and nutritional variety came from large and small game, nuts, berries, seeds, and fish from what is now the Feather River. In 1820, Captain Luis Arguello was exploring the area and named the river *Río de las Plumas* (River of Feathers) because he saw what appeared to be large numbers of feathers floating on its surface.

The lives of the Maidu were stable and secure until the 1848 gold discovery. When the Feather River was found to be rich in gold, entrepreneurs and gold seekers flooded into the area from around the world. At first they used small-scale placer mining techniques to get to the gold. More aggressive methods followed, including relocating the river and streams with diversion walls and wing dams, hydraulic mining and dredging. John Bidwell’s success at mining at Bidwell Bar enabled him to develop his Rancho Del Chico. Several small mining towns were established and now many are under the lake. One of these towns—a tent city named Ophir—became the present city of Oroville. Newcomers also brought a host of diseases to which the native people had no resistance. Today about 2,500 Maidu people live in the area on rancherias, including those at Oroville and Chico.

Lake Oroville was created by the Oroville Dam in 1967 after five years of construction. The State Water Project distributes the water stored in Lake Oroville to homes, farms, and industries in the San Francisco Bay area, the San Joaquin Valley, and Southern California.

Oroville’s facilities provide flood control, smog-free generation of electric power, and recreation. At its maximum elevation of 900 feet above sea level, the lake includes some 15,500 surface acres for recreation and 167 miles of shoreline. Recreation areas around the lake allow boaters to land at any point.

### **Future Site Plans**

In conjunction with the Department of Water Resources' Recreation Management Plan for the Oroville Facilities approved by the Federal Energy Regulatory Commission, the General Plan update for Lake Oroville will establish a long-range vision for the park and provide guidelines to protect and improve the park’s natural, cultural, and recreational values. It is anticipated that the new General Plan will call for no significant changes to the current concession operation.

### 1.3 CONTRACT SUMMARY

It is critical that proposers be familiar with and understand all the terms and conditions of the Sample Concession Contract (included herein). Proposals must be based on the requirements of this contract in its entirety. If a proposer is awarded the contract, the successful proposer has 30 days to review and sign the awarded contract. The successful proposer is expected to accept the provisions of the Sample Concession Contract as written. If necessary, minor clarifications, approved by the Department of Parks and Recreation, the Department of General Services, and the Attorney General, may be made prior to contract execution. The intent of the contract is to provide the public with a high-quality, full-service marina with reasonably priced goods and services that enhances the visitor's experience and the educational, natural, and cultural resources of the park. The term of the contract is for a period of thirty (30) years.

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

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

1. Construct, furnish, equip, operate, and maintain a marina concession offering high-quality boating and recreational goods and services, including but not limited to boat slip and mooring rentals; equipment rentals; oil and fuel sales; marine repair services; boat towing services; shuttle services; fueling stations; sewage pump-out facilities; retail space for groceries and boating supplies; offices; and a restaurant allowing on-premises sale of beer and wine.
2. Invest a minimum of three million five hundred thousand dollars (\$3,500,000) in the development and rehabilitation of a marina concession complex including mooring for a maximum of 800 boats; facilities for boating-related services; and concession offices. NOTE: All floating facilities including docks; retail space; office space; floating public restroom, sewer pump-outs; courtesy dock; necessary connector floats and ramps; and marina cabling and anchoring systems shall be considered personal property and will vest with the concessionaire at the end of the contract. Title to all real property improvements will vest with the State at the end of the contract.
3. Invest a minimum of seven hundred thousand dollars (\$700,000) for equipment necessary to support the proposed marina facilities.
4. Pay as annual rent the amount presented in the proposal, which at a minimum, shall be the greater of three hundred thousand dollars (\$300,000) or eight and one half percent (8.5%) of the first one million dollars (\$1,000,000); plus ten percent (10%) of annual gross sales in excess of one million dollars (\$1,000,000); plus 2 percent (2%) of fuel and oil sales.
5. Provide an Operation Plan, Facility Improvement Plan, and Transition Plan as specified in Proposal Instructions that clearly demonstrates the proposer's plan to provide accessible services and facilities that comply with ADA guidelines and offer quality recreational experiences for visitors. The plans will become part of the contract subject to State review and approval.

6. Maintain the premises, facilities, furnishings, and equipment in good condition in accordance with Department standards and contract provisions.
7. Provide a continuing Performance Bond in the amount of one year's minimum annual rent, as bid.
8. Pay all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the contract.
9. Provide all insurance as required by the contract.
10. Obtain all necessary licenses, permits, and approvals as set forth in the contract and abide by all applicable health, safety, and environmental codes and regulations.
11. Comply with the letter and spirit of current and subsequent guidelines or plans, including General Plan amendments or updates, management and interpretive plans, historic structure reports, and others.
12. Demonstrate compliance with labor laws as specified in the RFP.
13. Establish rates based on comparable facilities and value added and in conjunction with the Consumer Price Index (CPI).

**The successful proposer will not:**

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

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

## SECTION 2 - THE RFP PROCESS

### 2.1 PROPOSAL PROCESS

#### Tentative Proposal Dates

May 1, 2009 .....	Opening Date - Publication of the RFP
May 11, 2009 .....	Optional Pre-Proposal Meeting
June 1, 2009 .....	Questions - Last date for proposers to submit written questions
June 9, 2009 .....	Answers - DPR written responses to questions
August 4, 2009 .....	Closing Date - Deadline for proposal submission
August 2009 .....	Investigation and evaluation of Proposals
September 10, 2009.....	Notification of "Intent to Award Contract"
October 13, 2009 .....	Award, preparation, and execution of contract
October/November 2009 .....	Agreement of Disposition of Facilities, if necessary
November/December 2009 .....	Removal of Existing Facilities, if necessary
January 2010 .....	Thirty (30) year contract begins

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

#### Optional Pre-Proposal Meeting

It is strongly recommended that the proposer or designated representative attend the optional pre-proposal meeting on May 11, 2009 at 5:30 p.m., at the Bidwell Canyon Recreational Hall. The Hall is located at the Bidwell Canyon Recreation Area off of Arroyo Drive on Kelly Ridge. An optional site tour will occur after the meeting. The meeting provides an equitable forum for all proposers to:

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

#### RFP Content Questions

Questions regarding this RFP must be submitted in writing and received no later than 5 p.m. on June 1, 2009. To ensure fair competition, all proposers will receive the same information and materials. No telephone or personal inquiries about this RFP will be answered. Questions will be submitted in writing to the Department by mail, or fax at the address and phone numbers listed below. A written compilation of all questions and answers, and any RFP addenda, will be posed at [www.parks.ca.gov](http://www.parks.ca.gov) and will be sent by

first-class mail to all identified potential proposers. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the proposals. Proposers should send their questions addressed to:

California Department of Parks and Recreation  
Concessions, Reservations, and Fees Division, Room 1442-13  
P.O. Box 942896  
Sacramento, California 94296-0001  
Attn: Laurie Blankenship  
Fax: (916) 657-1856  
[lblan@parks.ca.gov](mailto:lblan@parks.ca.gov)

### **Proposal Bond**

Proposals must be accompanied by a Proposal Bond or cashier's check payable to the State of California, Department of Parks and Recreation, in the amount of ten thousand dollars (\$10,000). By submitting a proposal bond the proposer agrees that the bond may be cashed and retained by the State. If a cashier's check is submitted, it will be cashed by the State. In the event the proposer fails to execute the contract, the bond or cashier's check will be retained by the State. Further, by submitting a proposal, proposer agrees that the State will suffer costs and damages not contemplated otherwise should proposer be awarded the contract but fail to execute and proceed with the contract, the exact amount of which will be difficult to ascertain. Accordingly, it is agreed that such retained sums shall not be deemed a penalty, but, in lieu of actual damages, shall represent a fair and reasonable estimate of damages to the State for failure of the proposer to execute and proceed with the contract upon notification of award by the State. Bonds will be returned to all proposers once a contract is signed by the best responsive bidder.

### **Proposal Submission**

The proposal, including the Proposal Bond, must be received by 2:00 PM on August 4, 2009 at:

California Department of Parks and Recreation  
1416 9<sup>th</sup> Street, Room 1442-13  
Sacramento, California 95814

### **Proposal Format & Content**

The proposal package must be sealed and clearly marked on the outside with "Proposal for Bidwell Canyon Marina at Lake Oroville State Recreation Area". Please submit an original plus **eight (8)** copies of the proposal in 8.5" x 11" three-ring binders. All material should be presented in an 8.5" x 11" portrait format with tabs for each section. Larger formatted graphic exhibits are acceptable if folded to fit within the 8.5" x 11" three-ring binder.

### **Confidentiality of Proposals**

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

are exempt from disclosure under the Public Records Act. Proposers claiming exemption must include the following statement in their proposal:

*The proposer agrees to indemnify and hold harmless the State, its officers, employees, and agents from any claims, liability, or damages against the State, and to defend any action brought against the State for Proposer's refusal to disclose such material, trade secrets, or other proprietary information to any party.*

Failure of a proposer to include this statement and/or identify in writing the claimed exempt material shall be deemed a waiver of any exemption from disclosure under the Public Records Act. Requests to review proposal submissions will not be allowed until after an "Intent to Award Contract" notice is published by the State.

### **Withdrawal of Proposals**

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

## **2.2 EVALUATION PROCESS**

### **Verification of Proposal Information**

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

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

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

### **Supplemental Information**

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

**Proposal Evaluation**

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

**Contract Award Board**

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

**Contract Award**

If an award is made, the award for a concession contract will be to the "Best Responsible Proposer" in accordance with Section 5080.23 of the Public Resources Code. The "Best Responsible Proposer" will be the bidder whose proposal passes each of the required elements and receives the highest total score as determined by the Contract Award Board and approved by the Director. Execution of the awarded concession contract is subject to approval by controlling agencies of the State, which include the Department of General Services and the Attorney General, and will not be binding on the State or the successful proposer until such approval is obtained.

**Protest of Award**

Based on Title 14, California Code of Regulations, Chapter 3, Section 4400 and Department policy, other than a contract negotiated under Section 5080.16 of the Public Resources Code, when a concession in excess of two years is proposed to be let at public bid (or RFP), any proposer protesting or objecting to the same, or desiring to protest or object, may file within ten days of the awarding of the contract (publication of the "Notice of Intent to Award") with the Director of the Department his/her verified petition, setting forth his/her objections, the reasons therefor, and points and authorities in support thereof. Failure to file a verified petition within the ten-day period shall constitute a waiver of the right to protest. Protests must be sent to:

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

A copy of such petition also must be served upon the Attorney General within such ten-day period by the protesting entity. Serve the Attorney General at:

California Department of Justice  
Office of the Attorney General  
Natural Resources Law Section  
1300 I Street, 11<sup>th</sup> Floor  
Sacramento, California 95814  
Fax: 916-327-2319

At the time of filing said petition, the protestor may demand in writing a hearing thereon. If a hearing is so demanded, or if the Director on his/her own motion orders a hearing, proceedings shall be taken under the Administrative Procedure Act, and the said petition shall be treated as a statement of issues. Any recommendation or proposed decision of the hearing officer shall be submitted to the Director for approval, adoption, modification, disapproval, or other interlocutory or final action thereon by the Director. If a hearing is not so demanded or ordered, the action of the Director on said petition shall be final.

## **2.3 CONTRACT EXECUTION**

### **Preparation of Contract**

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

### **Performance Bond and Insurance**

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

### **Failure to Sign/Deliver Contract**

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

## SECTION 3 - THE PROPOSAL

### 3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL

A completed Concession Proposal form (also known as DPR 398) and a Proposal Bond will constitute the proposal. Proposer must complete all sections, respond to all questions, and fill in all blanks of the form. Inapplicable questions or blanks must be marked "N/A" or "Not Applicable". Failure to properly complete the form may disqualify the proposal.

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

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

## I. PROPOSER INFORMATION

### A. Proposer Identification

#### Incumbent Factor

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

#### Small Business Status

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

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

Certification will verify that the business is independently owned and operated; not dominant in its field of operation; has its principal office located in California; has officers domiciled in California; and together with affiliates is either a service, construction, or non-manufacturer with 100 or fewer employees and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three (3) years, or a manufacturer with 100 or fewer employees.

### **B. Business Information**

Select the type of business that describes the proposing entity (Sole Proprietorship, Partnership, Joint Venture, or Corporation) and provide the requested information. The type of business must be established prior to submitting a proposal and must not be a condition of receiving the contract. Limited Liability Companies (LLC) must include a copy of their Articles of Organization with the California Secretary of State seal (LLC-1 or LLC-5) and the Statement of Information (LLC-12) to identify the managing member or members of the Organization.

### **C. Individual Information**

Each individual, partner, member of joint ventures, officer of corporations, concession manager, and holders of 25% or more of the company's shares (as applicable) must complete a copy of the Individual Information form and complete and sign the Authorization to Release Information in Section IV. For an LLC, the managing member or members of the Organization identified on the LLC-12 must complete this section.

#### Experience

Provide a narrative describing in detail the duration, extent, and quality of the proposer's education and business experience with special emphasis on the experience related to the subject concession. Be specific with respect to the type and dates of experience, the proposer's role in the management and specific duties, type and size of operation, quality of operation, public agency involvement, contractual relationships, and other factors that demonstrate an ability to successfully operate the proposed concession. Be sure to demonstrate how proposer meets the required proposer qualifications, if applicable. Attach additional information as needed.

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

### **D. Statement of Financial Capability**

Proposers must present evidence satisfactory to the State demonstrating their ability to finance, construct, operate, and maintain the concession facilities as proposed. For the purposes of this RFP, proposers must have the ability to access a minimum of three million five hundred thousand dollars (\$3,500,000) for facility development and an additional seven hundred thousand dollars (\$700,000) for equipment necessary to support the proposed marina facilities. The proposer's statement of financial capability must include the source of funding and detailed information including:

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

Business Financial Statement: Use the Business Financial Statement to describe the current and true condition of the business' assets, liabilities, and net worth. Round figures to the nearest dollar. If the business is a partnership or joint venture, each general partner or joint venturer must individually submit a Business Financial Statement. Proposer may provide copies of forms filed with the Internal Revenue Service, where applicable.

#### **E. Credit Worthiness**

Proposers must present evidence of credit worthiness. At a minimum, evidence should include a credit report issued by a nationally recognized credit bureau within 60 days of the proposal due date and include the FICA score. Any derogatory information listed on said reports must be explained. Below average FICA scores, outstanding debts, delinquent payment history on current concession contracts, and any other derogatory information may disqualify a proposal.

#### **F. References**

Financial, client, and vendor references are used to confirm information provided by proposers and to evaluate the proposer's quality of experience and past performance. Proposers should submit one reference for each reference type required below. However, to adequately substantiate the claims made in the proposal, proposers are encouraged to provide three references that are familiar with the individual or business as appropriate. Proposers should notify their references in writing that a representative from the State will be contacting them.

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

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

## **II. PROPOSAL INFORMATION**

Provide an Operation, Facility Improvement, and Interpretive Plan (as required) that addresses each of the checked elements in the Concession Proposal form (DPR 398). Proposers may submit additional information to describe and enhance their proposal.

### **A. Operation Plan**

As a condition of the contract award, the successful proposer may be required to revise or further develop the Operation Plan to the satisfaction of the State and prior to the execution of the contract. If and when it is accepted, the final plan will be incorporated as an exhibit to the contract and become an obligation of the concessionaire thereunder. In addition to the Operations Plan, the successful proposer also must adhere to the operational requirements as described in the contract. The Operation Plan should address each of the following elements:

#### Vision/Mission Statement

The Vision/Mission Statement should capture both the State's and proposer's goals and objectives for the concession business and provide a clear philosophy.

#### Organizational Structure

Provide an organization chart and staffing plan that can guide the operation and ongoing management of the concession business. The plan should identify and define all job classifications to be used and the required job skills and qualifications. Describe the assignments, duties, and schedules for each staffing level considering contract requirements, the proposed hours of operation (see Sample Concession Contract), and any unique seasonal and peak use circumstances.

#### Interpretation

Provide plans detailing how the concession operation will enhance the visitor's understanding of the natural, cultural and recreational resources at Lake Oroville State Recreation Area and support a quality park experience. The successful proposer should develop an interpretive approach for presenting pertinent information through specific media, i.e., exhibit panels, brochures, live interpretation, etc. Part of the community involvement within the Operation Plan, involving interpreting the park resources and recreational safety, may be included in the Interpretive Plan. The special skills, knowledge and resources needed and available to implement the plan should be included. All interpretive development must be approved by State prior to implementation.

#### Customer Service

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

#### Employee Staffing and Training

Employee policies and training program should include, but are not limited to, personnel policies; hiring practices, including working with local school groups or agencies to establish career related programs; health, safety, and grievance policies and

procedures; uniform policies and requirements, including but not limited to employees maintaining a clean and neat appearance with standardized clothing that specifies the marina and employee's names; business orientation; job training; and park orientation training, including the State Park System and local points of interest. Such programs must provide sufficient staffing with the skills, capabilities, and training to ensure the provision of uninterrupted, high-quality services to all park visitors. Training also should include job or task-specific training necessary to ensure high-quality job performance in a manner consistent with the protection of the State Park System and its visitors.

#### Maintenance and Housekeeping

Provide a comprehensive plan to maintain the concession facilities in a first-class condition throughout the term of the contract. The maintenance plan criteria should include budget allocations, staff skills and qualifications, staffing patterns, and housekeeping and maintenance schedules.

#### Marketing and Advertising

The marketing program should include, but is not limited to, proposed approaches, methodologies, media, advertising materials, schedules, and budget allocations.

#### Community Involvement

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

#### Products, Merchandise, and Services

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

#### Prices and Pricing Policies

Provide a price schedule for a representative sample of the products and services proposed. The plan should include a definitive description and explanation of the policies to be used to establish prices for food, beverages, products, and services. The policies should clearly demonstrate the relationship of pricing to product quality and portions. Implementation of these policies should provide park visitors with quality products at reasonable prices considering the competition of comparable markets for similar products, services and cost of doing business. Pricing policies should consider Sample Contract section 5 Rent; and section 16 Rates, Charges and Quality of Goods and Services.

#### Conservation and Recycling

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

program that will minimize negative impacts on the environment and encourage park visitors to do the same.

#### Accessibility

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

#### Healthy Foods Initiative

An important goal for this contact is the promotion of a healthy lifestyle in an environmentally-sustainable manner. Proposers should consider providing traditional menu items either updated to conform to the Department's healthy food requirements, or the addition of healthy food menu options, per Sample Contract section 6, Use of Premises.

### **B. Facility Improvement Plan**

After the State's review and approval, the Facility Improvement Plan from the successful proposal shall be included as an exhibit to the contract. The State shall be the sole judge as to the acceptability and value of proposed improvements. In addition to the Facility Improvement Plan, the successful proposer must adhere to the facility requirements as described in the contract.

#### Furnishings

Describe the intended physical facilities of the concession including furnishings, equipment, décor, and layout. Implementation of proposer's plan should provide first-class concession facilities that are consistent with park values and will enhance visitor services at the park. Proposals shall include a provision for lockers and/or storage facilities for mooring customers use.

#### Facility Development

Describe plans for capital improvements as required by the RFP. Include the resumes of the proposed architects and contractors to be used and descriptions and/or schematic drawings of the work to be accomplished and items to be installed. Proposer may submit lists, drawings, pictures, and diagrams to illustrate and clarify the plans. Building enhancements should be appropriate to the architecture of the park. Proposals should provide documentation supporting the quality of materials to be used.

#### Implementation

Describe the plan, method, and commitment to meeting the Facility Improvement Plan. Specify the timeline for completion of any capital improvements and installation of said décor and equipment prior to the commencement of operations.

#### Cost Estimates

Provide a cost breakdown for the Furnishings Plan and/or Capital Improvement Plan.

**C. Transition Plan A and B**

Proposer's are required to submit two Transitions Plan scenarios for planning, developing, and implementing the concession facilities and operations envisioned by the RFP and the Sample Contract. This element should provide a description of the key steps and timeline for providing a phased and seamless transition in customer service and the provision of goods and other services during concession start-up.

In the event marina floating facilities are not available for purchase from the incumbent Concessionaire, Transition Plan A should describe the proposer's ability and commitment to quickly provide high-quality marina services. Describe any temporary facilities that may be required and any anticipated, temporary reductions in existing concession facilities and services.

In the event marina floating facilities are available for purchase from the incumbent Concessionaire, Transition Plan B should describe up to a four (4) year, multi-phase plan with the first phase commencing within one (1) year from the contract execution date.

**D. Rental Offer**

The concessionaire will be required to pay as annual rent a guaranteed amount (Rental Guarantee) or a Percentage of Gross Sales, whichever is greater. Proposers shall bid both the Rental Guarantee and the Percentage of Gross Sales as specified in the Concession Proposal form (DPR 398). For the purposes of this RFP, the Rental Guarantee must be at least three hundred thousand dollars (\$300,000) and the Percentage of Gross Sales must be at least eight and one half percent (8.5%) of the first one million dollars (\$1,000,000); plus ten percent (10%) of gross sales greater than one million dollars (\$1,000,000); plus two percent (2%) of fuel and oil sales. Any offer below the minimum rent requirements will result in proposal disqualification.

**E. Concession Feasibility**

Document proposer's ability to successfully initiate the proposed concession in a financially responsible manner, in accordance with the terms and conditions of the sample contract and the Operation, Facility Improvement, and Transition Plans (as applicable). This information must substantiate proposer's ability to: develop, furnish, equip, operate and maintain the concession in a high-quality manner; provide the public with quality products and services at reasonable and competitive prices; pay the State the rental offered; and provide a reasonable return on the investment. Fiscal documentation that will be considered in awarding points includes a financial pro forma; statement of assets and liabilities; business, vendor, bank, and/or financial references; and similar documents.

**III. PROPOSAL SUMMARY**

The Proposal Summary should summarize relevant experience, knowledge, and expertise, and the Operation, Facility Improvement, and Transition Plans in 250 words or less.

#### **IV. CERTIFICATION OF PROPOSER INFORMATION**

##### **A. Labor Law Compliance Certification**

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

##### **B. Proposer Certification**

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

##### **C. Authorization to Release Information**

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

#### **V. PRIVACY NOTICE**

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

### 3.2 PROPOSAL EVALUATION CRITERIA

#### Incumbent Preference

**5 Points**

Incumbent proposals are awarded points based on annual Performance Evaluations (See DPR 531 in the Sample Concession Contract) performed by the State as follows:

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

#### Small Business Preference

**5 Points**

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

#### Experience

**15 Points**

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

#### Operation Plan

**20 Points**

Points will be awarded based upon the degree to which the proposal addresses each of the required elements of the Operations Plan (as identified in the DPR 398, Concession Proposal) and demonstrates an understanding of and commitment to achieving the objectives of this RFP. In addition, points will be awarded based upon the proposer’s demonstrated ability to implement the components of the plan and provide high-quality goods and services consistent with the RFP. More points shall be awarded for those proposals that provide the best pump-out services including, but not limited to services offered by appointment to boat owners.

**Facility Improvement Plan**

**20 Points**

Points shall be awarded based upon the degree to which the proposal addresses each of the required elements of the Facility Improvement Plan (as identified in the DPR 398, Concession Proposal) and meets or exceeds the objectives of this RFP in the provision of high-quality and accessible facilities. More points shall be awarded to proposals that utilize recycled materials where practical, exceed the minimum specifications through added enhancements that further the intent of this RFP and the mission of the park, and/or serve to benefit the public and the State. Examples of proposal enhancements that may be awarded more points include exceptional/creative use of space; commitment to high standards, craftsmanship and/or materials, and landscape.

**Transition Plan**

**10 Points**

More points shall be awarded to the Transition Plans with the clearest program for implementing concession facilities and operations in the shortest amount of time and least disruption in the provision of marina-related goods and services to the public consistent with the intent of this RFP.

**Rental Offer**

**25 Points**

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

*Rental Guarantee* (Minimum bid is \$300,000)

$$\frac{(\text{Bid Amount}) \text{ minus } (\$300,000)}{(\text{Highest Bid Amount}) \text{ minus } (\text{Guaranteed Rent})} \times 10 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales <\$1,000,000 (Minimum bid is 8.5%)

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

Percentage of Gross Sales >\$1,000,000 (Minimum bid is 10%)

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

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

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

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

**3.3 PROPOSAL EVALUATION SHEET**

**LEVEL I COMPLIANCE WITH RFP REQUIREMENTS**

**PROPOSER QUESTIONNAIRE**

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

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

**LEVEL II RENT PROPOSED/CREDIT WORTHINESS & ABILITY TO FINANCE**

- A. Rent Proposed Met/Exceeded Minimum Requirement \_\_\_\_\_ (pass/disqualified)
- B. Ability to Finance \_\_\_\_\_ (pass/disqualified)
- C. Credit Worthiness \_\_\_\_\_ (pass/disqualified)
- D. Compliance with National Labor Relations Act \_\_\_\_\_ (pass/disqualified)

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

**LEVEL III PROPOSAL EVALUATION**

- A. Proposer Information
  - Incumbent Preference \_\_\_\_\_ / 5 Points
  - Small Business Preference \_\_\_\_\_ / 5 Points
  - Experience \_\_\_\_\_ /15 Points
  
- B. Proposal Information
  - Operation Plan \_\_\_\_\_ / 20 Points
  - Facility Improvement Plan \_\_\_\_\_ / 20 Points
  - Transition Plan \_\_\_\_\_ / 10 Points
  - Rental Offer \_\_\_\_\_ / 25 Points
  - Financial Feasibility \_\_\_\_\_ / Pass/Fail \*
  
- GRAND TOTAL** \_\_\_\_\_ / 100 **Points**

Comments:

Board Member: \_\_\_\_\_ Date: \_\_\_\_\_

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

### 3.4 CONCESSION PROPOSAL, DPR 398

If interested in submitting a proposal, please request the DPR 398 Concession Proposal forms from Laurie Blankenship, Concessions Specialist at (916) 654-8924 or e-mail [lblank@parks.ca.gov](mailto:lblank@parks.ca.gov). This will provide the Department with potential proposer contact information in the event there are changes to the RFP documents. Proposal forms will also be available at the Pre-Proposal meeting.



### 3.5 SAMPLE CONCESSION CONTRACT

DRAFT

CONCESSION CONTRACT

FOR

Bidwell Canyon Marina

AT

Lake Oroville State Recreation Area

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



Bidwell Canyon Marina  
CONCESSION CONTRACT  
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SAMPLE

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

**CONCESSION CONTRACT**

For

**Bidwell Canyon Marina**

Located In

Lake Oroville State Recreation Area

Butte County

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

**RECITALS**

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

**WHEREAS**, 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 marina concession in Lake Oroville State Recreation Area at the location(s) as set forth in **Exhibit A**, attached to and made a part of this contract (the "Premises").

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

### 2. **CONDITION OF PREMISES**

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

### 3. **TERM**

The term of this contract shall be for a period of thirty (30) years, commencing on the first day of the month following approval by the California Department of General Services, but no sooner than January 1, 2010. Should Concessionaire hold-over after the expiration of the term of this contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this contract in Section 34, "Surrender of Premises; Holding Over", of this contract, with continuous Consumer Price Index

adjustment, as defined below, subject otherwise to all the terms and conditions of this contract.

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. FINANCIAL REQUIREMENTS**

Without cost to State, Concessionaire shall fund and manage implementation of concession development as set forth in the "Facility Improvement Plan", attached hereto as **Exhibit D**, at a minimum expense of three million five hundred thousand dollars (\$3,500,000) and an additional seven hundred thousand dollars (\$700,000) for equipment necessary to support the proposed marina facilities. The total value of improvements made by Concessionaire toward the implementation of the "Facility Improvement Plan" shall be calculated in accordance with Section 12, Construction and Completion of Improvements. Any balance remaining from the required \$4,200,000 expenditure following complete implementation of the "Facility Improvement Plan" or January 1, 2014, whichever comes first, shall be allocated and expended on other facility development projects as determined by State or remitted to State as a supplemental rental payment, as determined at the sole discretion of State. Any penalties, lien charges, and/or costs to resolve construction related disputes shall not be included in the minimum expenditure amount.

#### **5. RENT**

Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Annual Rent" the sum of three hundred thousand dollars (\$300,000) [or as bid] or the following percentage(s) of gross receipts, whichever sum is greater:

Eight and one half percent (8.5%) [or as bid] of the first one million dollars (\$1,000,000) of Gross Receipts (excluding fuel and oil sales);

plus

Ten percent (10%) [or as bid] of Gross Receipts over one million dollars (\$1,000,000) (excluding fuel and oil sales);

Plus

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

Beginning with Contract Year Six (6) and on the first day of each fifth contract year thereafter, the Minimum Annual Rent (\$300,000 or as bid) shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit B**, attached to and made a part of this contract.

Concessionaire shall make payment of Minimum Annual Rent and other payments to State in lawful money of the United States. However, if any payment made by a check, draft, or money order is returned to State due to insufficient funds or otherwise, State shall have the right, at any time after the return, upon written notice to Concessionaire, to require Concessionaire to make all subsequent payments in cash or by cashier's or certified check.

Beginning with the fifteenth (15<sup>th</sup>) day of the month following the execution of the contract, and on or before the fifteenth (15<sup>th</sup>) day of each month thereafter, Concessionaire shall furnish to State a verified statement of the concession's gross receipts for the preceding month. Such statement shall be submitted on Form DPR 54, "Concessionaire's Monthly Report of Operation", attached hereto as **Exhibit F**, or in a format previously approved by the State, and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current contract year. Concurrent with such monthly statement, the Concessionaire shall pay to State the appropriate rental fee for the preceding calendar month as prescribed above. Payments to State shall be made to the order of the Department of Parks and Recreation and delivered to the District Office identified herein below or at such other location as may from time to time be designated by State. If, at the end of the contract year, the total of monthly percentage rental payments made (or due) during that contract year is less than the Minimum Annual Rent required for that contract year, the difference shall be remitted to State with the last monthly sales statement for the contract year. Payments must be received by State on or

before the fifteenth (15<sup>th</sup>) day of the month as described above. Any late payment shall constitute a breach of contract, giving rise to State's remedies as set forth below.

Further, any late payment will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or portion thereof. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of Concessionaire's default for the overdue amount, nor prevent State from exercising the other rights and remedies granted under this contract. Concessionaire shall pay the late charge as additional rent with the next monthly rent payment.

\_\_\_\_\_ **[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 or, if a higher rate is legally permissible, at the highest rate legally permitted. However, interest shall not be payable on late charges incurred by Concessionaire, nor on any amounts on which late charges are paid by Concessionaire, to the extent this interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse or cure any default by Concessionaire.

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

If this contract is terminated by State because of Concessionaire's default, and if Concessionaire becomes liable for any deficiency in rent and/or fees by way of damages or otherwise, or if at any time during the contract term Concessionaire ceases to conduct in the Premises the business referred to herein below, then from and after the time of the breach causing this termination, or from and after the time of the

cessation of business, all unpaid rent and/or fees prior to the breach causing termination or cessation of business shall become due and payable. The amount due shall be deemed to be the greater of: (a) the Minimum Rent provided herein, or (b) an amount based upon the average of the payments that have accrued to State as percentage rent during the twenty-four (24) months preceding the termination or cessation of business, unless the termination or cessation occurs within three (3) years of the beginning of the contract term, in which event the previous twelve (12) (or fewer, if applicable) months shall be used as the basis of this average.

## 6. USE OF PREMISES

A. The Premises shall be used by the Concessionaire to construct; furnish; equip; operate; and maintain a high-quality, full-service marina concession. The Use of Premises will be consistent with the State approved "Operation Plan", "Facility Improvement Plan", and "Transition Plan" as proposed by Concessionaire and modified by State as is reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department. The approved "Operation Plan", "Facility Improvement Plan", and "Transition Plan" are incorporated herein, and made part of this contract as **Exhibits C, D, and E**, respectively.

B. At a minimum, Concessionaire shall provide the following services:

- 1) Boat slip and mooring rentals, including 15 temporary use slips for boats that are 25' or less. The temporary use slips shall be rented using a lottery-type system from Memorial Day to Labor Day and for a maximum of 30 days.
- 2) Daily boat and equipment rentals including a minimum of six (6) house boats, one (1) of which, shall meet all ADA requirements for public rentals;
- 3) Floating public restroom and sewer pump-out facilities;
- 4) Pump-out and fueling services available by appointment to boat owners;
- 5) Oil and fuel sales;

- 6) Fueling stations;
- 7) Camper and boater supply store offering camping; picnicking; boating; fishing supplies; beverages; packaged foods; boating safety equipment and fire extinguishers;
- 8) Marine repair services;
- 9) Dry boat storage;
- 10) Boat shuttle services;
- 11) Boat towing services;
- 12) If a boat is moved, damaged, or loose, Concessionaire shall provide notification to the boat owner within 24 hours.
- 13) Provide to the State, for the Superintendent's approval, a 24/7 marina emergency response plan by January 1 of each year, including but not limited to, installation of a public phone.
- 14) Concessionaire shall make communications available to lake visitors over marine band 2-way radio during posted hours of operation; and;
- 15) When walk-way access is unavailable, the Concessionaire shall provide shuttle service from parking lot to the marina facilities on the lake.

C. Concessionaire area of control as defined in **Exhibit A**.

- 1) All marina facilities;
- 2) Fuel delivery system;
- 3) Water and sewer systems and other utilities;
- 4) Fuel storage tank in parking lot above marina; and
- 5) Marina service and storage yard;

D. Annual Passes: Concessionaire shall require mooring renters, as part of their mooring agreement, to hold an Annual Boat Use Pass, or other boat use pass as may be authorized by State. Concessionaire may sell Annual Boat Use and Annual Day Use Passes when purchased in advance from State at 90% of pass value.

E. State Use: Concessionaire shall provide for use by State and at no cost to State, eight (8) covered boat slips, two (2) buoys; and three (3) parking lot

spaces in the marina service area. Covered boat slips, buoys, and parking lot space locations shall be selected by State.

F. Shuttle Service: Concessionaire shall provide a transportation link (shuttle service) between a designated point or points of the Middle Fork of Lake Oroville to the Bidwell Canyon Marina. Concessionaire may charge a fare sufficient to cover the cost of providing the service. Such fare must be approved in writing by the District Superintendent or designee. The service may be reservation-based (charter arrangement) but must be available a minimum of four (4) days per week, including all weekends and holidays, during periods when all of the following conditions occur:

- 1) Lake Oroville is below 800' water surface elevation;
- 2) Flow in the Middle Fork Feather River, immediately upstream from Lake Oroville, exceeds or is predicted to exceed 300 cfs;
- 3) During the months of April through July, inclusive; and
- 4) Boat shuttle service shall be ADA accessible and shall have the means to accommodate a wheel chair by a roll on manner. Other details of service provision, such as frequency and scheduling of the service and designation of pick-up points, may be determined by Concessionaire and approved by the District Superintendent or designee based upon user input and demand and reasonable use of Concessionaire resources. Future shuttle service is contingent upon demonstrated use and feasibility of the service, as determined by State every two (2) years.

G. Boat-Towing Service: Concessionaire shall provide boat-towing services to the entire area of Lake Oroville 24 hours per day; seven (7) days per week; 365 days per year; including all weekends and holidays. Concessionaire may charge a fee as approved in writing by the District Superintendent or designee and sufficient to recover the cost of providing the service. Concessionaire may decline to provide services when inclement weather creates unsafe conditions as determined by the Concessionaire.

H. Concessionaire shall provide a shuttle service for disabled visitors from designated Bidwell Canyon ADA parking locations to the marina.

- I. Buoys: Concessionaire shall be responsible for the installation and maintenance of regulatory and/or informational buoys within the Concessionaire's area of control. All concession mooring buoys shall be clearly marked and of adequate size.
- J. Hours of Operation: Concession schedule of operations shall be approved in advance by the State. However, restaurant hours shall be limited to 6:00 a.m. to 10:00 p.m., up to seven (7) days per week, as approved in writing by District Superintendent or designee. 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 in order to maximize public service. 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.
- K. Mooring Agreements:
- 1) Concessionaire shall develop a priority mooring assignment system that is approved in advance and in writing by the District Superintendent or designee.
  - 2) Mooring agreements are non-transferable upon the sale of the vessel.
  - 3) Concessionaire shall require all moored vessels to be currently registered. Vessels without proper registration shall be promptly removed by the vessel owner and the mooring agreement shall be terminated.
- L. Visitor Survey: Concessionaire shall send the visitor survey described in **Exhibit C, Operation Plan**, annually, to all customers mooring vessels in the Bidwell Canyon Marina, and Concessionaire shall also make this survey available to all other customers visiting the marina.
- M. Notification to State: Concessionaire shall notify State within 24 hours of any cable breaks, mooring system failures, injury to a park user, or damage to a park user's personal property.
- N. Healthy Foods Initiative: As the primary food providers in California State Parks, participation by concessionaires in the State's efforts to promote healthy and sustainable food practices is critical. To that end and in accordance with State's mission to "provide for the health" of Californians, Concessionaire shall

promote the importance of healthy, locally and sustainably grown, organic foods, and shall use sustainable practices, organic ingredients, and recycled products whenever possible. These practices shall include the following:

- 1) To the extent possible, Concessionaire shall develop a network of local farmers and ranchers who are dedicated to sustainable agriculture and can assure a steady supply of pure and fresh ingredients.
- 2) Concessionaire shall offer a selection of food and beverage items that conform to the definition of “healthy” foods as defined by the U.S. Department of Agriculture and the Food and Drug Administration in the Code of Federal Regulations, Title 9, Section 317 and Title 21, Section 101.
- 3) Concessionaire shall offer a selection of beverages with no sugar added, such as bottled water, natural fruit juices, and tomato juice.
- 4) To the extent possible, Concessionaire shall provide food products that are as pure and natural as possible, without synthetic additives, pollutants, or unnecessary packaging and marketing.

O. Security: Concessionaire shall require all concession employees and volunteers in positions of special trust as determined at the sole discretion of the District Superintendent or designee to undergo a background check, including references and fingerprints, to ensure that the individual has an acceptable record as a law-abiding citizen. The background check may be similar to the California Department of Justice’s Live-Scan Program. Concessionaire shall be responsible for covering all costs associated with said background checks. Any criminal offenses that have a nexus to said job should be considered as a basis for rejection from hire.

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

## 7. **FACILITY DEVELOPMENT**

Concessionaire shall plan, fund, manage, and complete development of concession facilities as described in the Accessibility and Facility Improvement Plans set forth in the "Operation Plan" and "Facility Improvement Plan", **Exhibits C and D**, respectively. At a minimum, improvements shall include:

- 1) Boat slips and mooring for 700 – 800 boats, including 15 temporary use slips. By attrition, boat slips/moorings shall be reduced to a maximum of 800 boats;
- 2) Separate service docks for rental boats; personal watercraft and short-term mooring;
- 3) Dry boat storage;
- 4) Retail space for groceries, boating supplies, and offices;
- 5) Six (6) stationary sewer pump-out stations and one (1) portable pump-out station with a minimum inflow of 25 GPM;
- 6) Six (6) fueling stations;
- 7) Floating public restroom;
- 8) Marina cabling and anchoring systems;
- 9) Associated utilities, including fuel delivery system, sewer lines, potable water, and electrical;
- 11) Courtesy dock;
- 12) Existing mini-storage units in the service yard shall be removed by Concessionaire;
- 13) Fuel sales and fuel storage facilities;
- 14) Necessary connector floats and ramps;
- 15) Floating restaurant;
- 16) Install and maintain pay phone for emergency access;
- 17) Provide security gates; and
- 18) Concessionaire shall periodically provide new marina information and/or updates to marina customers in a news letter format or by e-mail.

**8. LIABILITY WAIVER**

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

**9. BONDS**

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

been renewed or extended shall be filed with the State. Within 15 days of State's request, Concessionaire shall furnish State with a signed and complete copy of the valid bond or financial instrument.

C. Construction Performance Bond: Prior to the commencement of construction required hereunder, Concessionaire shall furnish the State with a bond, listing Concessionaire's contractor(s) as principals, in a sum not less than **one hundred percent (100%)** of the total cost of the construction. The bond shall guarantee faithful performance of the construction by Concessionaire.

D. Concessionaire acknowledges that allowing the Performance Bond or other security instrument(s) to expire or otherwise terminate and/or allowing the total secured amount to fall below the security required herein will cause State to incur costs and significant risks not contemplated by this contract, the exact amount of which will be difficult to ascertain. These costs include, but are not limited to, administrative costs and other expenses necessary to ensure continued performance of services for the public and protection of the Premises. Accordingly, if Concessionaire allows the Performance Bond or other security instrument to expire or otherwise terminate and/or allows the total secured amount to fall below the security required pursuant to this contract, Concessionaire shall pay to State an amount equal to five percent (5%) of the required security or five thousand dollars (\$5,000), whichever is greater. The parties agree that this charge represents a fair and reasonable estimate of the costs State will incur. Acceptance of this charge by State shall not constitute a waiver of Concessionaire's default, nor prevent State from exercising the other rights and remedies available to it under this contract or applicable law, including the right to terminate this contract and seek the payment of damages.

\_\_\_\_\_ **[Initials of concessionaire(s)]**

## 10. 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) **Liquor Liability.** Concessionaire shall include this coverage where alcohol sales are permitted, and liability assumed under an insured contract.
- 3) **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.
- 4) **Workers' Compensation Insurance.** Concessionaire shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this contract. Employer's liability limits of \$1,000,000 are required.
- 5) **Property Insurance:** Concessionaire shall provide property coverage for damage caused by fire, vandalism or natural disaster with limits based on the estimated replacement value of facilities occupied by Concessionaire.
- 6) **Protection and Indemnity Marine Liability:** Maintenance or use of any and all boats on the premises, whether owned, hired or non-owned shall be insured with extended coverage endorsements in the amount of \$2,000,000 per event.
- 7) **Marina Operators' Legal Liability:** To cover the Concessionaire, with extended coverage endorsements, for all sums the insured is legally required to pay as a result of physical damage to or loss of vessels in the

Concessionaire's care, custody and control on the premises. Minimum coverage shall be \$250,000 per vessel and \$1,000,000 per occurrence.

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

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

B. Beginning with contract year six (6) and on the first day of every fifth contract year thereafter, the minimum liability insurance shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit B**, attached to and made a part of this contract.

C. In the event of destruction, loss, or damage by fire or other cause of any of the State-owned buildings, improvements, or fixtures located on the Premises that the State determines (1) to be essential to the continued operation of the contract and (2) cannot be repaired within one-hundred-eighty (180) days of the occurrence, the State may terminate this contract. A decision by the State to terminate the contract under this provision shall be communicated in writing to Concessionaire as soon as practicable. If the contract is so terminated, State shall be entitled to the proceeds payable under any applicable insurance policies pertaining to the loss as its interest may appear. Receipt of such proceeds by State shall be in addition to the right of State to pursue whatever other remedies it may have to recover any losses due to the occurrence. If the State determines not to terminate the contract, then, in State's discretion, any buildings, improvements, or fixtures built in replacement of any damaged or destroyed property shall be subject to the terms and provisions of this contract as if they had existed at the onset. In no event shall the provisions of this Section be

deemed or construed to relieve Concessionaire from the requirement to repair or replace any damaged or destroyed property except as specifically excepted by express terms of this contract.

D. 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.

E. 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.

F. 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.

#### **11. ALCOHOLIC BEVERAGES**

Concessionaire may sell on-premises beer and wine with bona fide meals only, in the restaurant. The sale of beer and wine may be provided for off-premises consumption through the marina store. No other alcoholic beverages shall be sold. A competent adult person twenty-one (21) years of age or over shall be on the premises at all times to supervise the sale of alcoholic beverages. Further, the sale of alcoholic beverages shall be subject to any regulations established for the State Park System by

the Director of the Department of Parks and Recreation and the regulations established by the Department of Alcoholic Beverage Control.

## 12. **CONSTRUCTION AND COMPLETION OF IMPROVEMENTS**

- A. **Facility Improvement Plan:** At Concessionaire's sole cost and expense, Concessionaire shall be responsible for the design, construction, completion, and installation of facility improvements, décor, equipment, fixtures, and furnishings as described in the Concessionaire's "Facility Improvement Plan", incorporated herein and made part of this contract as **Exhibit D**. Implementation of the plan will be as follows:
- 1) **Plan Amendment:** Within thirty (30) days of the execution of this contract, Concessionaire shall meet with State to modify and amend the Facility Improvement Plan as is reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department.
  - 2) **Schematic Design:** Within four (4) weeks of amending the Facility Improvement Plan, Concessionaire shall provide to State for its review and approval a Schematic Design. The State shall not unreasonably withhold such approval. The objective of the Schematic Design is to clearly define the Facility Improvement Plan as amended and should include a site plan, building floor plans, all building elevations, outline specification, floor area usage, and Preliminary Statement of Probable Construction Cost. If the State disapproves any element of the program statement, Concessionaire shall promptly submit to State all necessary modifications and revisions.
  - 3) **Design Development:** Within four (4) weeks of State's approval of Concessionaire's Schematic Design, Concessionaire shall submit the Design Development for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Design Development is to define and describe all the important aspects of the Facility Development project and should include the necessary details of

each element of the Schematic Design to adequately convey key conditions of major improvements. In addition, the Design Development should include Reflected Ceiling Plans, Schedules, Structural Requirements, Plumbing, Mechanical, and Electrical Plans, Food Service Requirements, Color Boards, Material and Systems Specifications, and an updated Preliminary Statement of Probable Construction Cost. If the State disapproves any element of the Design Development, Concessionaire shall promptly submit necessary modifications and revisions.

4) Working Drawings: Within eight (8) weeks of State's approval of Concessionaire's Design Development, Concessionaire shall submit Working Drawings for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Working Drawings is to set forth in detail the requirements for construction of the Facility Improvement Plan including bidding and contracting. At a minimum, the drawings should include all Design Development elements plus: complete documentation of quantities, qualities, and relationships of all work required to construct the Facility Improvement Plan; documentation of decisions made in the Design Development phase; all documentation needed for obtaining regulatory and State approvals; and the final Statement of Probable Construction Cost. If the State disapproves any drawings, plans or specifications, Concessionaire shall promptly submit necessary modifications and revisions. Once approved, the Working Drawings will be made a part of the Facility Improvement Plan and incorporated as **Exhibit D** in this contract. No changes or alterations shall be made to the approved Working Drawings without prior written approval of State.

B. Use of Consultants: Concessionaire shall employ licensed contractor(s) in the completion of all required construction work. Additionally, Concessionaire shall utilize professional contractors and consultants, including architects(s) and engineer(s), acting in accordance with the latest American Institute of Architects'

standards of practice to develop comprehensive construction plans, including schematic design plans, design development plans, and working drawings, and to conduct independent inspections and monitoring of all construction.

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

C. State Approval/Acceptance of Plans and Work: State's approval of the work and plans shall be for the purpose of determining that such work conforms in scope and quality to State's policies and standards, and in no way shall relieve Concessionaire or its contractors or subcontractors of the responsibility to perform and complete the work (1) in accordance with generally accepted industry standards, (2) faithfully adhering to the approved plans, specifications, and drawings, and (3) in accordance with all applicable codes, laws, regulations, or other requirements, including but not limited to, the standards contained in this contract.

D. Permits: At its sole cost and expense, including mitigation costs, Concessionaire shall obtain all permits, licenses, and other approvals necessary for the construction and completion of the Facility Improvement Plan. Such permits may include, but are not limited to, those required under the California Environmental Quality Act (CEQA), Public Resources Code 5024, County Fire Department, California Coastal Act, California Building Code, and State Fire Marshal. Concessionaire shall reimburse State for all costs incurred by State on behalf of Concessionaire in association with acquisition of said permits. State will produce records of such costs for review by Concessionaire on a monthly basis. The State shall cooperate with Concessionaire with respect to securing said permits including the execution of documents required by a governmental authority to be initiated by State. In the event Concessionaire, having exercised

all due diligence in applying for and seeking all approvals, cannot secure all required permits within two (2) years from Concessionaire's taking possession of the premises, the State shall have the option to terminate this contract.

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

F. Completion of Improvements: Upon State approval of the Working Drawings and receipt of all required permits, licenses, and other approvals, Concessionaire shall commence construction to the facility as described herein, no later than January 1, 2011 and prosecute the same to completion with all due diligence and within two (2) years from construction commencement date. In the event Concessionaire is the owner of existing facilities or is able to acquire existing floating facilities from prior Concessionaire, Concessionaire shall be allowed to commence construction to the facility as described herein, no later than January 1, 2011 and prosecute the same to completion with all due diligence within three (3) years from construction commencement date. Such time shall be extended as reasonably necessary in the event of delays caused by fire, earthquakes, wars, strikes, adverse weather, or other calamity beyond Concessionaire's control. Concessionaire shall hold monthly or more frequent status meetings throughout the period of construction, which shall include representatives of the general contractor, appropriate subcontractors, a representative of Concessionaire, and a representative of the State.

Upon completion of construction, Concessionaire shall (1) file a Notice of Completion of Construction with State; (2) provide State with a complete set of "as-built" plans for all improvements in a format acceptable to State; (3) submit

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

The cost accounting as required by item (5) above shall include cost statements and substantiating invoices for all project expenses including labor and materials. After such accounting has been examined by State, State in its sole discretion will establish in a reasonable and fair manner the cost of facilities and improvements for the purposes of evaluating Concessionaire's compliance with the facility development expenditure requirements of this contract. In the event such accounting is not filed by Concessionaire at the time specified, State shall estimate the cost of the project and serve notice of same on Concessionaire in the manner provided herein.

When Concessionaire has received written acceptance from the State of the Notice of Completion, subject to other provisions of this contract, Concessionaire shall have the right to commence concession business operations.

### 13. **CONTRACT NOTICE**

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

Concessionaire at:	CT-ConcessionaireName
	CT-ConcessionContactAddress
	CT-ConcessionCityState CT-ConcessionZip
	CT-ConcessionairePhone
State at:	Department of Parks and Recreation
	Northern Buttes District
	400 Glen Drive

Oroville, California 95966-9222  
(530) 538-2200  
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.

#### 14. **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 verified profit and loss statement for the previous calendar year. Such statement shall be submitted on Form DPR 86, "Concessionaire's Financial Statement", attached hereto as **Exhibit H**, or in a format previously approved by the

State, and shall contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to the State. Within forty-five (45) days of the expiration or termination of this contract, Concessionaire shall submit to the State a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

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

#### **15. 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.

#### **16. 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 marina operations 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 and shall not exceed CPI in accordance with the procedure set forth in **Exhibit B**, attached to and made a part of this contract. Any exceptions to the CPI rate must be made in writing by the District Superintendent. Rates shall be commensurate with the goods and services provided and comparable to marina operations in similar locations. Rate increases may not be imposed retroactively.

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

#### **17. 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 I**, 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.

**18. 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, attorneys 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.

**19. TAXES**

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

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

**20. 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.

**21. PERSONAL PROPERTY**

Except to the extent covered by Section 20, MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS, title to all personal property provided by Concessionaire shall remain in Concessionaire. For purposes of this contract, all marina floating facilities including docks; retail space; office space; floating public restroom, sewer

pump-out; courtesy dock; necessary connector floats and ramps; and marina cable and anchoring systems shall be considered personal property and will vest with the concessionaire at the end of the contract. Title to all real property improvements will vest with the State at the end of the contract term. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property will be considered a real property improvement and shall become property of State at the time this contract is terminated.

At the end of the contract term, Concessionaire shall have sixty (60) days from the date of the new contract to reach an agreement regarding the disposition of any and/or all marina personal property. In the event an agreement cannot be reached, Concessionaire shall have an additional sixty (60) days to remove all personal property from the Premises.

## **22. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL**

During the term of this contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the Premises including personal property, equipment, and areas in, on, and adjacent to the marina parking lot, all marina facilities, and all areas from the high water mark to the low water mark, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

- A. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks. Concession housekeeping shall conform to California State Park standards.
- B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition

and repair at Concessionaire's sole cost and expense at all times during the term of this contract. Such maintenance shall conform to State Park standards. For the purposes of this contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

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

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

C. Cable System Inspection: In an effort to ensure the marina cable system is maintained in good condition, Concessionaire, at its own expense, shall have an independent inspection of the cable system performed a minimum of every five (5) years by a marine certified business, with a minimum of three (3) years experience, licensed in the State of California and capable of installing, repairing, and inspecting mooring systems. A copy of the inspection report shall be provided to the District Superintendent.

D. Sewage Pump-Out Inspection: In an effort to insure all sewage pump-out facilities are maintained in a good and sanitary condition, Concessionaire, at its own expense, shall have an annual inspection of each sewage pump-out station

by the Regional Water Quality Control Board and a copy of the inspection report shall be provided to the District Superintendent.

D. 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.

At the end of the contract term, Concessionaire shall have sixty (60) days from the date of the new contract to reach an agreement regarding the disposition of any and/or all marina personal property. In the event an agreement cannot be reached, Concessionaire shall have an additional sixty (60) days to remove all personal property from the Premises.

### **23. UTILITIES AND SERVICES**

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

### **24. RESOURCE CONSERVATION**

A. Environmental Conservation Program: Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the State. Accordingly, Concessionaire shall prepare and execute a program, subject to the prior written approval of the State, designed to reduce environmental impacts that result from concession

operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, pest management, grease removal and disposal, hazardous materials handling and storage, and air quality. Specifically, the program must include the following:

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

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

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

3) **Erosion Control/Water Quality/Environmental Sensitivity:** The Concessionaire shall comply with all requirements set forth by various oversight agencies that have jurisdiction and oversight authority relating to

the Premises and surrounding properties, including, but not limited to, erosion control, water quality and environmental sensitivity standards.

B. Resource Management and Preservation: Concessionaire shall comply with State's resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include the Public Resources Code Sections 5024 and 5097 et seq. the Department's Resource Management Directives and the Secretary of the Interior's Guidelines for Historic Preservation.

C. Air and Water Pollution Violation: Under State laws, Concessionaire shall not be (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

## 25. **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.

D. Pest Control Activities: All pest control activities, chemical and non-chemical, shall be approved by the State prior to action by the Concessionaire.

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

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

**26. 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.

**27. 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.

**28. 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.

**29. 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. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, and other work developed in the performance of this contract. Further, Concessionaire shall deliver to the State upon request the disk or tape that contains the design or other such files containing such information, and shall specify the supplier of the software and hardware necessary to use the files of any work that is performed with the assistance of Computer Aided Design and Drafting Technology. Concessionaire intends and agrees to assign to State all right, title, and interest in and to such materials, as well as all related copyrights and other proprietary rights therein, unless otherwise agreed to in writing.

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

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

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

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

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

### **30. 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.

- 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.

### **31. DEFAULT BY CONCESSIONAIRE**

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

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

### **32. STATE'S REMEDIES**

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

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

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

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

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

Concessionaire's right to possession of the Premises. Upon such termination, State has the right to recover from Concessionaire:

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

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

E. Assignment at State's Direction: In the event of a default by Concessionaire, when cure is not received and acknowledged by State after having provided notice of the breach as provided herein above, Concessionaire shall, in addition to the damages provided for herein, be obligated to assign all

rights to occupy, possess, and operate on and in the Premises to State's designee within thirty (30) days of receipt of written demand by State. Concessionaire shall further remove itself and its personal property from the Premises within the same time frame. Concessionaire agrees to execute all documents necessary to effectuate and implement this provision. Upon such assignment, all rights of Concessionaire under the contract shall transfer to the assignee.

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

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

G. Right to Cure Concessionaire's Default: At any time after Concessionaire commits a default, State can cure the default at Concessionaire's cost. If State, at any time by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum, the sum paid by State shall be due immediately from Concessionaire to State, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by State until State is reimbursed by Concessionaire. Any such sum shall be due as additional rent.

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

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

### **33. 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.

#### **34. STATE BUY-OUT PROVISIONS**

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

It is expressly understood that this section does not apply to the situation where the State may terminate this contract for any breach on the part of the Concessionaire under Section 31, "Default By Concessionaire", or where the contract is terminated at Concessionaire's request. Where there has been a breach on the part of the Concessionaire, under any terms of this contract, the State shall not be obligated to pay the Concessionaire before or after taking possession of the Premises.

In the event of breach, bankruptcy, insolvency, abandonment, or the contract is determined at Concessionaire's request, the buy-out provisions contained herein are not to be considered as an obligation of the State. For the purposes of this section, such facilities shall be deemed to be the structures Concessionaire is expressly required to construct, create, or develop under Section 12, "Construction and Completion of Improvements", or later adds, including all real property improvements and Concessionaire's personal property as specified by State, which may include, but is not limited to docks; retail space; office space; fueling stations; floating public restroom, sewer pump-outs; courtesy dock; necessary connector floats and ramps; and marina cabling and anchoring systems. The cost of such facilities for the purposes of this section shall be those values established under Section 12(F), "Construction and Completion of Improvements", above.

Under this section, if contract is terminated during the first twenty-five (25) years, the amount to be paid as the then depreciated cost of the facilities shall

be based on a six percent (6%), thirty (30) year capital recovery schedule, which shall provide eight thousand four hundred dollars (\$8,400) for each one hundred thousand dollars (\$100,000) of beginning cost, multiplied by the remaining years of the contract. In the event State exercises the buy-out provision during the last five (5) years of the contract, buy-out shall be at fair market value as agreed upon by both parties. Should parties be unable to reach an agreement on fair market value, the fair market value shall be determined by hearing before the State of California, Office of Administrative Hearings ("OAH") and pursuant to the Administrative Procedures Act, California Government Code Section 11370 et seq. The decision of OAH shall be final and conclusive on the parties. Each party shall bear its own expenses and shall share equally in the fees and expenses of OAH for such hearing.

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

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

**35. SURRENDER OF THE PREMISES; HOLDING OVER**

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

1) Personal Property: All of Concessionaire's personal property remaining on the Premises beyond such time specified in this Section shall be dealt with in accordance with California Code of Civil Procedure Section 1174 and California Civil Code Sections 1980, or such other laws

as may be enacted regarding the disposition of Concessionaires' property remaining at the Premises. Concessionaire waives all claims against State for any damage to Concessionaire resulting from State's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to State for State's costs in storing, removing, and disposing of Concessionaire's personal property or trade fixtures.

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

B. Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Premises with State's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the Minimum Rent shall be increased by Consumer Price Index adjustments required by this contract in accordance with Section 5, "Rent", unless otherwise agreed to in writing by State. Concessionaire shall pay such rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this contract except those pertaining to the term shall apply to the month-to-month tenancy.

**36. 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.

**37. ATTORNEYS FEES**

Concessionaire shall reimburse the State on demand for all reasonable attorney fees (including attorneys 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.

**38. 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.

**39. 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 the Oroville Facilities Federal Energy Regulatory Commission (FERC) Relicensing Project No. 2100 and laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and State building codes and regulations.

**40. 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.

#### **41. 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.

#### **42. 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 J**, attached hereto and made a part of the contract.

#### **43. 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.

**44. 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.

**45. 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.

**46. 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.

**47. WAIVER OF CONTRACT TERMS**

Unless otherwise provided by this contract, no waiver by either party at any time of any of the terms, conditions, or covenants of this contract shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the State by this contract shall be deemed cumulative.

**48. 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.

**49. 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.

**50. TIME OF ESSENCE**

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

**51. EMINENT DOMAIN**

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

**52. TEMPORARY TENANCY**

This tenancy is of a temporary nature and the parties to this contract agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

**53. SECTION TITLES**

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

**54. CONTRACT IN COUNTERPARTS**

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

**55. 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.

**56. 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.

**57. 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.

**58. 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.

**59. 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.

**60. STATE'S DISTRICT SUPERINTENDENT**

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

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

**CONCESSIONAIRE:**

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

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED:**

**APPROVED:**

**ATTORNEY GENERAL:**

**DEPARTMENT OF GENERAL SERVICES:**

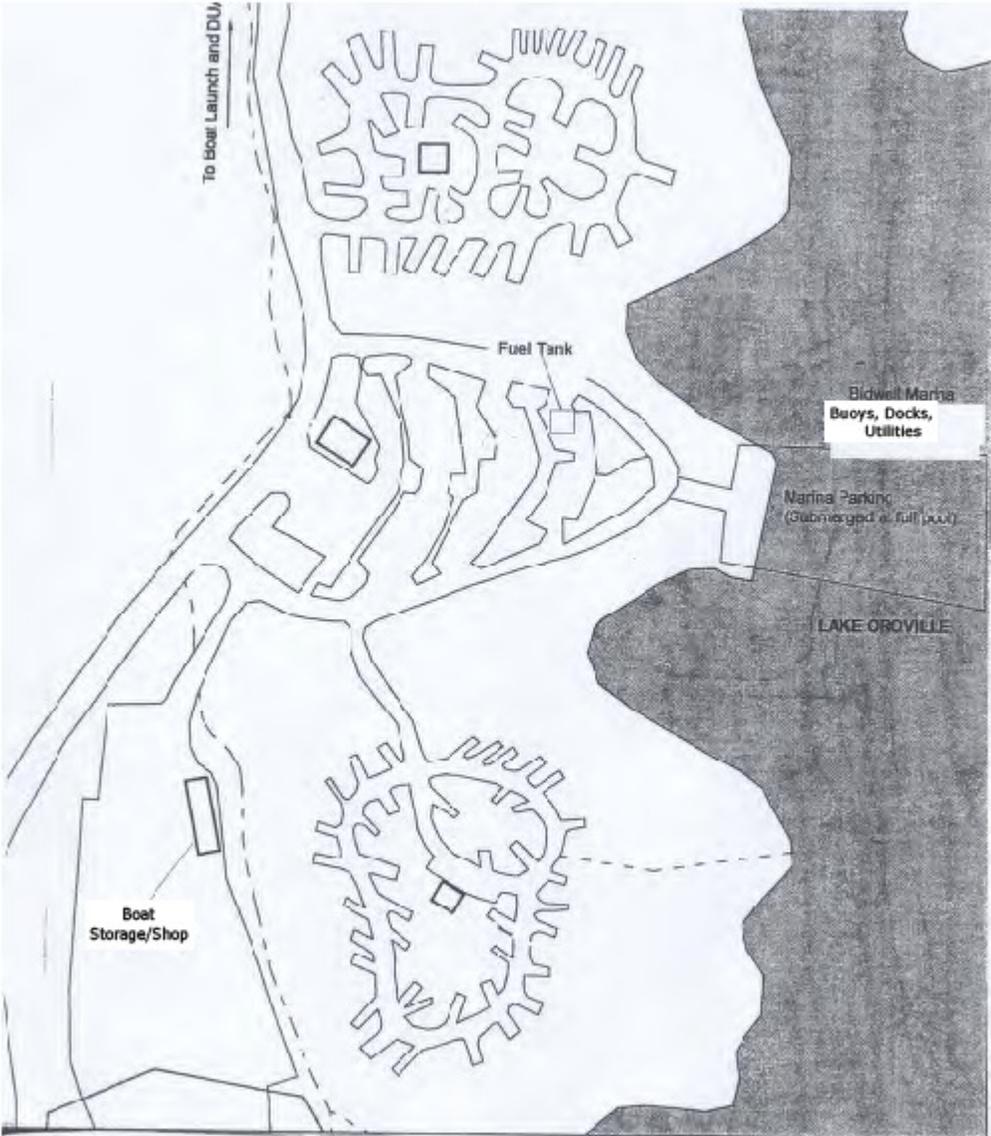
Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

**EDMUND G. BROWN JR., Attorney General  
of the State of California**

By: \_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

**EXHIBIT A – THE PREMISES**



**EXHIBIT B - CONSUMER PRICE INDEX ADJUSTMENT FORMULA**

Consumer Price Index (CPI) adjustments shall be based on changes in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for "All Urban Consumers, San Francisco/Los Angeles All Items, (1982-84=100)." Calculations shall employ the following formula:

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

"Base Rent" = Minimum rent during the first contract year.

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

**Step #1:**  $\frac{\text{"Year End Index"} - \text{"Base Index"}}{\text{"Base Index"}}$  = % Change

**Step #2:** % Change x Base Rent = Adjustment

**Step #3:** Base Rent + Adjustment = New Rent

**EXHIBIT C – CONCESSIONAIRE’S OPERATION PLAN**

SAMPLE

**EXHIBIT D – CONCESSIONAIRE’S FACILITY IMPROVEMENT PLAN**

SAMPLE

**EXHIBIT E – CONCESSIONAIRE’S TRANSITION PLAN**

SAMPLE

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

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

## CONCESSIONAIRE'S MONTHLY REPORT OF OPERATION

FOR THE MONTH OF \_\_\_\_\_, YEAR \_\_\_\_\_

*(Instructions on reverse.)*

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

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

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

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

SEASONAL CONCESSIONS <small>(COMPLETE THIS SECTION IF APPLICABLE)</small>	EXACT DATE YOU CEASED OPERATIONS	DATE YOU EXPECT TO RESUME OPERATIONS
--	----------------------------------	--------------------------------------

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

**EXHIBIT F – 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 G –WAIVER OF LIABILITY AND RELEASE**

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

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

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

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

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

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

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

Printed Name & Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of parent or guardian for participant under age 18: \_\_\_\_\_

Name & Telephone of person to contact for emergencies: \_\_\_\_\_

# EXHIBIT H - DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

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

## CONCESSIONAIRE FINANCIAL STATEMENT

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

### A. CASH FLOW STATEMENT

#### GROSS SALES/RECEIPTS

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

#### **GROSS PROFIT**

\$ \_\_\_\_\_

#### LESS EXPENSES

Salaries & Wages <i>(do not include Concessionaire salaries)</i>	\$ _____
Rent to State	_____
Insurance	_____
Materials & Supplies	_____
Maintenance & Repairs	_____
Utilities <i>(including telephone)</i>	_____
Advertising	_____
Taxes & Licenses <i>(other than income &amp; 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**

*(before income taxes)*

\$ \_\_\_\_\_



**EXHIBIT H - Continued**

**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 H - Continued**

**CONCESSIONAIRE FINANCIAL STATEMENT**

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

**D. STATEMENT OF MONTHLY GROSS SALES/RECEIPTS**

Jan 20	\$ _____	April 20	\$ _____	July 20	\$ _____	Oct 20	\$ _____
Feb 20	\$ _____	May 20	\$ _____	Aug 20	\$ _____	Nov 20	\$ _____
Mar 20	\$ _____	June 20	\$ _____	Sept 20	\$ _____	Dec 20	\$ _____
<b>TOTAL MONTHLY GROSS SALES/RECEIPTS \$ _____</b>							

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

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

AUTHORIZED SIGNATURE

DATE



PRINTED NAME OF PREPARER

# EXHIBIT I - 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						
<b>CATEGORIES</b>		EXCELLENT (E)	SATISFACTORY (S)	NEEDS IMPROVEMENT (NI)	NONCOMPLIANCE/ UNACCEPTABLE (NON)	COMPLIANCE (COM)	NOT APPLICABLE (NA)	<b>COMMENTS</b>
<i>Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box.</i>								<i>Explain items which are rated excellent, needs improvement or noncompliance/unacceptable. Make recommendations for correction for NI and NON rating. Attach additional sheets as necessary.</i>
<b>ACCOUNTING</b>	RENTAL PAYMENT	8	6	2	0			<div style="font-size: 4em; opacity: 0.1; transform: rotate(-45deg); position: absolute; top: 50%; left: 50%; pointer-events: none;">DRAFT</div>
	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	
<b>BONDS/INSURANCE</b>	PERFORMANCE BOND					0	4	
	LIABILITY INSURANCE					0	4	
	FIRE INSURANCE					0	4	
	AUTOMOBILE INSURANCE					0	4	
	OTHER:					0	4	
<b>CONSTRUCTION</b>	REQUIRED IMPROVEMENTS					0	4	
	TIME SCHEDULE					0	4	
	PAYMENT BOND					0	4	
	OTHER:					0	4	
<b>USE OF PREMISES</b>	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			
<b>QUALITY ASSURANCE</b>	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			
<b>TOTAL POINTS PER COLUMN</b>					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			
<b>TOTAL POINTS PER COLUMN</b> <i>PAGE 2 ONLY</i>					0	0		
<b>TOTAL POINTS PER COLUMN</b> <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?*	
$\left( \frac{\quad}{\quad} \right) \times 100 = \#DIV/0!$						<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 J - 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 \_\_\_\_\_ (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.