

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

## **Request for Proposals**

# **City and Fallon Hotel Complexes**

Including the City Hotel, City Hotel Restaurant, What Cheer Saloon,  
Fallon Hotel, Fallon Ice Cream Parlor, Fallon Theatre,  
Jenny Lind Restaurant and Angelo's Hall



## **Columbia State Historic Park**

Tuolumne County, California

# **REQUEST FOR PROPOSALS**

FOR

**City and Fallon Hotel Complexes**

AT

**Columbia State Historic Park**

Opening Date  
January 21, 2009

Closing Date  
April 16, 2009

STATE OF CALIFORNIA – RESOURCES AGENCY  
DEPARTMENT OF PARKS AND RECREATION  
CONCESSIONS 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:	City and Fallon Hotel Complexes
Park Unit:	Columbia State Historic Park
Proposal Closing Time & Date:	2 p.m. on April 16, 2009
Proposal Submission Location:	Concessions, Reservations, and Fees Division 1416 Ninth Street, #1442-13 Sacramento, California 95814
Concession Type:	Hotels, restaurants, ice cream parlor and theater
Contract Term:	Twenty (20) years
Minimum Annual Rent Bid:	Twenty-five thousand dollars (\$25,000) or two and a half percent (2.5%) of annual gross receipts up to one million dollars and three percent (3%) of annual gross receipts over one million dollars, whichever is greater
Facility Improvements:	Two hundred fifty thousand dollars (\$250,000)
Conservation/Restoration Fund to State:	Five thousand dollars (\$5,000) annually
Proposal Bond (due at time of proposal submission):	Fifteen thousand dollars (\$15,000)
Performance Bond (due at time of Contract submission):	One year's rent as bid
Proposer's Minimum Years of Relevant Experience:	Five (5) years
Optional Pre-Proposal Meeting:	February 4, 2009

For more information or to purchase a copy of the complete RFP for \$25, contact Cathryn Milner at Calaveras Sector, (209) 536-2017 or the Concessions, Reservations, and Fees Division, (916) 653-7733.

  
Ruth Coleman, Director



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## **SECTION 1 - PROJECT SUMMARY**

### **1.1 GOAL & OBJECTIVES**

#### **Department Mission**

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

#### **Park Mission, Goals and Objectives**

The mission of Columbia State Historic Park (SHP) is to interpret the early days of Columbia from 1850-1870 during the California Gold Rush and of the years immediately following with a variety of innovative, interpretive and educational services, to facilitate a safe, enjoyable and high quality learning experience for visitors.

The goals and objectives of Columbia SHP are to provide visitors with opportunities to learn about and experience California during and after the California Gold Rush, which took place from 1848 to 1854, through the preservation, restoration, reconstruction and interpretation of the original historic landscape, features, buildings, objects, people, customs and activities.

Columbia SHP, within the limits of the historic gold mining town of Columbia, is the best-preserved historic Mother Lode town in California, and is operated by California State Parks as a combination of government and private business collaborations.

The park explains and involves visitors in Columbia's past, whether by panning for gold or taking a wagon ride. Visitors are invited to step back in time, to experience what life was like for the everyday person, and to bring to the present a personal understanding of that history.

Concessions operating in this environment are an essential part of its interpretation. Their activities complement the historic park and engage visitors through historic business activities, quality interpretive programs and activities to increase visitor knowledge and appreciation for the past in personally meaningful ways. Therefore, individuals wishing to become involved as a concessionaire in the historic park must have or be willing to develop, the special knowledge, skills and abilities to interpret the early days of Columbia during and immediately following the California Gold Rush.

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

The goal of this RFP is to award a twenty (20) year contract to a qualified operator to develop, operate, and maintain in accordance with the appropriate historic interpretive period the City and Fallon Hotel complexes including the two hotels, two restaurants, a saloon, ice cream parlor, and theater.

## **Objectives of this Concession**

The objectives of this concession opportunity are to:

- Assist in and complement the re-creation of the historic ambiance of the gold mining town of Columbia;
- Provide for the restoration and maintenance of the State's furnishings, fixtures, equipment, objects, and artifacts for the use and enjoyment of the public;
- Where appropriate, add to the historic ambiance with furnishings suitable to the style of business and its interpretive period, as well as activities that reinforce the nature of the historic business.
- Assist the Department in the provision of accessible concession facilities and services;
- Contribute to Department's mission to "provide for the health" of Californians by promoting the importance of healthy, locally and sustainably grown, organic foods.
- Provide quality products and services at reasonable prices to park visitors;
- Promote and complement safe, enjoyable, and high-quality recreational experiences for all park users.

## **1.2 GENERAL INFORMATION**

### **Site Description**

Columbia is located in the western foothill region of California's south central Sierra Nevada. It is in Tuolumne County, approximately four miles north of Sonora, the county seat, and is two miles east of State Highway 49, the scenic route that connects many Mother Lode communities. By automobile, Columbia is slightly more than a two-hour drive from Sacramento, and a four-hour drive from the San Francisco Bay Area. With ideal spring and fall weather, this location experiences warm to hot summer days, cool to cold winter days with small amounts of snow.

Columbia SHP, within the limits of the historic gold mining town of Columbia, is significant for being the best-preserved historic Mother Lode town in California. It is listed as a National Historic Landmark, the highest Federal designation in the United States, and is considered an exceptional heritage resource worthy of protection and preservation. Columbia is also California Historic Landmark No. 123. It is operated by California State Parks as a combination of government and private business collaborations.

### **Historical Significance**

The Sierra foothill town of Columbia was founded during California's Gold Rush in 1850. It began as a small prospectors' camp and quickly turned into a town with thousands of placer miners. Columbia is in a unique geological setting. Gold deposits were found in limestone pockets and were removed using hydraulic mining technologies. Within two years, the town had formally laid-out streets with over 150 wood-framed buildings. Major fires in 1854 and 1857 destroyed most of the town. Fire-resistant brick was subsequently used to rebuild, and many of these structures exist today.

During the primary interpretive period the City Hotel was a small one story building with smaller brick and wood buildings later damaged by repeated fires. The What Cheer House began operation in 1857. Current records first mention the expanded building as a hotel in 1871. The majority of wallpaper, furnishing and décor represent the interpretive period 1870-1879. This reflects major changes in the structure that occurred following 1876 with addition of the second floor.

The Fallon Hotel and ice cream parlor were built and remodeled in 1859 by Owen Fallon who operated it as the Fallon Hotel beginning in 1863. The theatre was built by James Fallon in 1886. The façade of the ice cream parlor was significantly modified and the theatre improved in 1890. During a 1986 restoration, wallpaper, paint palates and wood finishes were made to reflect the 1890-1910 interpretive period.

Only a decade after it was founded, the town's population was on the decline. By the 1880s, prospectors were tearing down vacant buildings to mine the last remaining gold. Columbia was never abandoned and retained its historic character into the 20<sup>th</sup> century. The town was revitalized in the 1920s, with the rising popularity of tourists motoring to quaint, rural places. By 1945, at the community's request, the State of California acquired most of the town's historic buildings, and it was designated Columbia State Historic Park.

Columbia is distinguished by having the largest collection of Gold Rush-era structures in California. A major program emphasizing building restoration and rehabilitation began in the 1960s and continues to the present day. Scars on the landscape, created during the frenetic search for gold, including hydraulic and hard rock mining, are now covered by native vegetation that has reclaimed the area.

For more detailed history of the individual concession buildings, potential proposers may contact concession specialist Cathryn Milner at (209) 536-2917 or at [cmiln@parks.ca.gov](mailto:cmiln@parks.ca.gov).

### **Concessions in the Park**

Through concessions, much of the town's business district has been re-created, offering historic-style stores, saloons, restaurants, and two hotels. Visitors have the chance to time-travel to the 1850s, imagining life when gold miners rubbed shoulders with businessmen and businesswomen and Columbia residents and watching proprietors in period clothing conduct business. There are opportunities to tour the park with knowledgeable interpretive staff and docents, observe blacksmithing and candy making, ride a 100 year-old stagecoach, hire a "fine steed" for a horseback ride through the "diggings," pan for gold, or attend theater performances.

Concession businesses that currently operate in Columbia SHP include the following: Quartz Mountain Stage Line, St. Charles Saloon, Jack Douglass Saloon, Parrott's Blacksmith, Columbia Mercantile, Fancy Dry Goods & Clothing Store, Pioneer Emporium, Matelot Gulch/Hidden Treasure Gold Mine Tours, Umpqua Bank, Columbia

Candle & Soap Works, Brown's Coffee & Sweets Saloon, Towle and Leavitt, Columbia Candy Kitchen, Jenny Lind Restaurant, A. de Cosmos Daguerrean Studio, Columbia Booksellers and Stationers, Columbia City Hotel, Columbia City Hotel Restaurant, What Cheer Saloon, Fallon Hotel, Fallon Ice Cream Parlor, and Fallon House Theatre.

Recent visitor attendance reports indicate Columbia SHP attracts an average of 524,000 visitors each year. Visitor demographics indicate 72% of the visitors are from California, 18% from foreign countries, primarily the United Kingdom and Germany, and the remaining 10% are from throughout United States. Thousands of school children visit Columbia each spring primarily on weekday mornings to participate in educational/interpretive activities. Permanent residents in Columbia now exceed 2,500 and Tuolumne County has experienced considerable growth over the last ten years. The community of Columbia is also home to Columbia Community College, Columbia Elementary School, Tuolumne County's general aviation airport and the CAL FIRE'S Air Tanker Base. The local community frequents the park and brings guests to visit on a regular basis.

### **Current Concession Operation**

Within the City Hotel Complex are the City Hotel, City Hotel Restaurant, and the What Cheer Saloon. Within the Fallon Hotel Complex are the Fallon Hotel, Fallon Ice Cream Parlor, and Fallon Theatre. The theatre has been operated by a sub-Concessionaire. Currently each concession business operation is open year-round. The gross sales and rent for the last five years as reported by the current Concessionaire are included here.

### **City Hotel Complexes Sales & Rents Paid History – by Fiscal Year**

*(As reported by the current Concessionaire)*

<b><u>Gross Sales</u></b>	<b><u>2003/04</u></b>	<b><u>2004/05</u></b>	<b><u>2005/06</u></b>	<b><u>2006/07</u></b>	<b><u>2007/08</u></b>
Lodging	324,297	313,562	222,338	281,021	256,098
Restaurant Food	501,643	476,529	267,397	324,179	338,810
Restaurant Wine	93,151	98,273	54,188	26,736	23,446
Bar-Wine/Beer/Other	164,598	154,859	125,553	146,346	134,755
Fallon Ice Cream Parlor	122,545	110,166	96,692	135,076	122,046
Merchandise	803	770	463	390	1,211
Entertainment	23,375	24,320	2,911	18,072	20,508
Fallon Theatre Rent	8,901	7,885	7,421	8,663	9,247
WT Tickets/Tours	22,986	36,069	20,416	3,572	3,293
<b>Gross Sales Total</b>	<b>1,262,297</b>	<b>1,222,433</b>	<b>797,378</b>	<b>944,055</b>	<b>909,414</b>
<b>Rent Paid to State</b>	<b>32,330</b>	<b>31,015</b>	<b>20,420</b>	<b>16,229</b>	<b>23,541</b>

**Columbia House/Jenny Lind Restaurant Sales & Rent Paid History – Fiscal Year**

	<u>2003/04</u>	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
<b>Gross Sales Total</b>	<b>256,995</b>	<b>224,574</b>	<b>258,420</b>	<b>213,823</b>	<b>157,633</b>
<b>Rent Paid to State</b>	<b>10,340</b>	<b>8,984</b>	<b>9,701</b>	<b>8,621</b>	<b>4,931*</b>

\* Pending contract allows up to \$30,000 rent abatement during contract term for facility improvements. Facility closed during contract transition January-April 2008.

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

**Future Site Plans**

The State is currently restoring the Angelo's Hall facility with an anticipated completion date of February 2009. Projects including street drainage improvement, ADA walkways and doorways installation, the restoration of the Candle and Soap building, the Tibbett's House, and the Wilson-McConnell House are each in the planning phase, subject to funding availability.

### 1.3 CONTRACT SUMMARY

It is critical that Proposers be familiar with and understands all the terms and conditions of the Sample Concession Contract (included herein). Your proposal should be based on the requirements of this contract in its entirety. If a Proposer is awarded the contract, the successful Proposer has 30 days to review and sign the awarded contract. The successful Proposer shall be expected to accept the provisions of the Sample Concession Contract as written. If necessary, minor clarifications, approved by staff counsel, the Department of General Services, and the Attorney General, may be made prior to contract execution. The intent of the contract is to provide the public with high-quality, reasonably priced goods and services in an authentic manner and atmosphere that enhances the visitor's experience and the educational, natural, and cultural resources of the park. The term of the contract is for a period of twenty (20) years.

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

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

1. Develop, operate, and maintain the City Hotel complex including the City Hotel, City Hotel Restaurant, and the What Cheer Saloon as businesses of the period 1870-1879 as described in Section 7, Use of Premises, of the Sample Contract.
2. Develop, operate, and maintain the Fallon Hotel complex including the Fallon Hotel, Fallon Ice Cream Parlor, and Fallon Theatre as businesses of the period 1890-1910 as described in Section 7 Use of Premises, of the Sample Contract.
3. Develop, operate, and maintain the Jenny Lind Restaurant and Angelo's Hall as a restaurant business of the period 1855-1870 as described in Section 7 Use of Premises of the Sample Contract.
4. At a minimum, adhere to the interpretation requirements as outlined in Section 7, Use of Premises of the Sample Contract including use of period costume, appropriate furnishings, décor, exterior signage and goods for sale. In addition, the Interpretive Plan presented in the successful proposal and modified by State as necessary to achieve the intent of this RFP and the mission of the Department will become part of the contract.
5. Provide Operation, Facility and Interpretive Plans as specified in Proposal Instructions that clearly demonstrate the Proposer's plan to provide accessible services and facilities that comply with ADA guidelines. The plans will become part of the contract subject to State review and approval.
6. Maintain, conserve, and restore, as necessary, the State's objects and artifacts on loan to the Concessionaire. Establish a "Conservation and Restoration Fund" in an interest bearing savings account upon receipt of executed contract. And annually

deposit a minimum of five thousand dollars (\$5,000) into the account each year of the contract as described in Section 5 Financial Requirements of the Sample Contract.

7. Maintain, repair, and/or replace as necessary the State's artifacts, furnishings, fixtures, and equipment in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SOI Standards) and maintain a current inventory of all items to ensure all facilities retain their turn-key condition. Provide any additional furnishings, fixtures, and/or equipment required for a high-quality operation as described in Section 25 Equipment and Furnishings and Exhibit K of the Sample Contract.
8. Pay as Annual rent the amount presented in the proposal, which, at a minimum, shall be the greater of twenty-five thousand dollars (\$25,000) or two and one-half percent (2.5%) of annual gross receipts up to one million dollars (\$1,000,000) and three percent (3%) of annual gross receipts in excess of one million dollars (\$1,000,000), whichever is greater.
9. Invest a minimum of one hundred thousand dollars (\$100,000) to plan, design, permit, construct, and install two shower facilities in the City Hotel balcony guest rooms and an ADA compliant restroom in the Fallon Theatre facility, as set forth in the Concessionaire's Facility Improvement Plan as submitted by the successful Proposer, approved by the State, and in accordance with Sample Contract provisions.
10. Establish a "Facility Development Fund" by depositing \$150,000 into an interest-bearing account within 30 days of receipt of an executed contract. These funds shall be used solely for approved projects identified in the Facility Improvement Plan submitted by the successful Proposer and approved by the State. The State has identified two projects to be funded by this account: purchase of a minimum of twenty (20) new banquet tables for Angelo's Hall by the end of contract year one and purchase of one hundred thirty-two (132) dining chairs for the City Hotel Restaurant by the end of contract year five.
11. To the extent possible, participate in the State's Healthy Foods Initiative through the provision of healthy, locally, and sustainably grown organic foods and related educational programs and materials.
12. Maintain the premises in good condition in accordance with Department standards and contract provisions as described in Section 21 and Exhibit K of the Sample Contract.
13. Provide a continuing Performance Bond in the amount of one year's rent as bid.
14. Pay for all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the contract.

15. Provide liability and fire insurance as required by the contract.
16. 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.
17. 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.
18. Demonstrate compliance with labor laws as specified in the RFP.

**The successful Proposer will not:**

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

**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

January 21, 2009 .....	Opening Date - Publication of the RFP
February 4, 2009 .....	Optional Pre-Proposal Meeting
February 13, 2009 .....	Questions - Last date for Proposers to submit written questions
February 26, 2009 .....	Answers - DPR written responses to questions
April 16, 2009 .....	Closing Date - Deadline for proposal submission
April 2009 .....	Investigation and evaluation of Proposals
May 2009 .....	Notification of "Intent to Award Contract"
May 2009 .....	Award, preparation, and execution of contract
June 1, 2009 .....	Twenty (20) years 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 you or your designated representative attend the optional pre-proposal meeting at 11 a.m. on February 4, 2009 at Eagle Cotage, 11195 Washington Street, Columbia State Historic Park, Columbia, California. The meeting provides an equitable forum for all Proposers to:

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

#### RFP Content Questions

Questions regarding this RFP must be submitted in writing and received no later than 5 p.m. on February 13, 2009. To ensure fair competition in which all proposers receive the same information and materials, no telephone or personal inquiries about this RFP will be answered. Questions should be submitted in writing to the Department by email or fax at the address and phone numbers listed below. A written compilation of all questions and answers, and any RFP addenda, will be 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.

California Department of Parks and Recreation  
**Concessions, Reservations, and Fees Division**  
**1416 Ninth Street, #1042**  
**Sacramento, California 95814**  
**Attn: Cathryn Milner**  
**Cmiln@parks.ca.gov**  
Fax: 916-657-1856

### **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 fifteen thousand dollars (\$15,000). 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 executed.

### **Proposal Submission**

Your proposal, including the Proposal bond, must be received by 2 p.m. on April 16, 2009, at:

Concessions, Reservations, and Fees Division  
1416 Ninth 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 City and Fallon Hotel Complexes at Columbia State Historic Park". Please submit an **original plus seven (7)** copies of your proposal in 8.5" x 11" three-ring binders. All material should be presented in an 8.5" x 11" portrait format with tabs for each section. Larger formatted graphic exhibits are acceptable if folded to fit within the 8.5" x 11" three-ring binder.

### **Confidentiality of Proposals**

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

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

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

### **Supplemental Information**

At its sole discretion, the State reserves the right, but does not have the obligation, to seek supplementary information or clarification from any Proposer at any time between the dates of proposal submission/acceptance and the contract award. The State may obtain credit reports and/or make background inquiries to further establish the qualifications of any Proposer. Any Proposer may be subject to personal interview and inspection of his/her business premises prior to award. Any Proposer may be required to appear before 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 and 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 or designee. 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 calendar 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 therefore, 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:

Ruth Coleman, Director  
California Department of Parks and Recreation  
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, and Interpretation Plans, as required. Minor changes or modifications to the contract, proposal plans, and contract exhibits may be made prior to execution based on agreement between the State and concessionaire. However, no material change to the contract or its exhibits as presented in the RFP and in the selected proposal may be made.

### **Performance Bond and Insurance**

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

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

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

### **Return of Proposer's Bond**

The successful Proposer's bond or cashier's check will be refunded when the successful Proposer has executed the contract and provided the State with all bonds and evidence of all insurance required under the contract.

## SECTION 3 - THE PROPOSAL

### 3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL

A completed Concession Proposal form (DPR 398) and a Proposal Bond will constitute your proposal. You 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 your proposal.

The proposal must be clear, unambiguous, and unconditional. It should clearly commit you 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.

The submission of a proposal shall be deemed evidence that you are 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.

Please refer to the following information to complete the Concession Proposal form (DPR 398):

#### 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. If you want to claim this preference, include a copy of the Small Business Certification with your 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. You 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.

### Business Experience

Provide a narrative describing in detail the duration, extent, and quality of the business's previous work related to the subject concession. More points will be awarded to business entities that have experience owning, operating, and managing similar concession contracts and/or contracting for services with public agencies. More points will be awarded to business entities that have experience working with historic structures and with historic interpretation. Attach additional information as needed.

For the purpose of ensuring that all proposals are afforded an equal opportunity to compete for the contract, the Department may consult with the Department of Finance, Board of Equalization, or other experts as determined by State to obtain information necessary to estimate the amount of fees or taxes that would be paid to the State or local government by each Proposer if award the contract.

## **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 your education and business experience with special emphasis on your experience related to the subject concession. Be specific with respect to the type and dates of experience,

your 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 your ability to successfully operate the proposed concession. Be sure to demonstrate how you meet the required Proposer qualifications, if applicable. More points will be awarded to Proposers that have experience working with historic structures, historic interpretation, educational program development, and community outreach. 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 unconditionally access a minimum of two hundred fifty thousand dollars (\$250,000). Your 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 your business will use to undertake the project as you have 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, you 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 your business' assets, liabilities, and net worth. Round figures to the nearest dollar. If your business is a partnership or joint venture, each general partner or joint venturer must individually submit a Business Financial Statement. You 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 shall 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 national 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. Please submit one reference for each reference type required below. However, to adequately substantiate the claims you have made in your proposal, you are encouraged to provide three references that are familiar with you and your business. Proposers should notify their references in writing that a representative from the State will be contacting them.

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

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

## **II. PROPOSAL INFORMATION**

Provide an Operation, Facility, and Interpretive Plan (as required) that addresses each of the checked elements in the Concession Proposal form (DPR 398). For your information, each element of the Concession Proposal is described below. You may submit additional information to describe and enhance your proposal.

### **A. Operations 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. In addition to the Operations Plan, the successful Proposer also must adhere to the operational requirements as described in Section 7 of the Sample Contract. Your Operations Plan should address each of the following elements:

#### Vision/Mission Statement

Your Vision/Mission Statement should capture both the State's and your own goals and objectives for the concession business and provide a clear philosophy to guide you.

#### Organizational Structure

Provide an organization chart and staffing plan that can guide the operation and ongoing management of your concession business. Your plan should identify and define primary job classifications and the required job skills and qualifications.

### Transition/Business Start-Up

Describe your plan and timeline for starting concession operation and providing a seamless transition in customer service.

### Customer Service

Demonstrate your ability and clear commitment to successfully implement an effective customer service program. Your 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

Your employee policies and training program should include, but are not limited to, personnel policies; hiring practices; health, safety, and grievance policies and procedures; uniform policies and requirements; business orientation; job training; and park history and orientation, and accessibility training. Training shall also include orientation on the State Park system, Columbia State Historic Park's history, and local points of interest in order to reply adequately to inquiries from the visiting public. 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.

### Worker Retention

Many of the concession employees have worked at the City Hotel Complexes for considerable lengths of time. They are familiar with the many facets of the City Hotel Complexes' mission, the needs of guests and visitors, and the difficulties they sometimes face. These capabilities are of great value to City Hotel Complexes and Columbia State Historic Park. Retention of these employees means that these capabilities will be in place during a transition period. Your proposal should describe your commitment to worker retention. At a minimum, the proposal should address retention of employees in place at the time of a new contract, seniority considerations, and training opportunities for employees eligible for retention in another classification.

### Marketing and Advertising

Your marketing plan should include, but is not limited to, proposed approaches, methodologies, media, advertising materials that reflect the interpretive periods for each facility, schedules, and budget allocations.

### Community Involvement

Provide a plan for and commitment 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, you should identify the special skills, knowledge, and resources needed and available to implement your plan.

### Products, Merchandise, and Services

Provide a detailed description of the proposed menu and other interpretive period-appropriate products, merchandise, and services to be provided by the concession operation. Food and other sales items must be high quality, the selection varied and the majority should relate to Columbia's historic traditions. 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. Considering the contractual requirements for minimum hours and days of operation and the goals and objectives of this RFP, provide a description of the hours, days, and months of operation proposed for each profit center operated described in Section 7 of the Sample Contract.

### Healthy Foods Initiative

An important goal for this contract is the promotion of a healthy lifestyle in an environmentally-sustainable manner. Provide a plan for conforming to the healthy foods requirements of Section 7 of the Sample Contract. Your proposal should include a plan for educating customers and visitors about how to select healthy, locally, and sustainably grown foods. Educational programs may include cooking demonstrations, oral presentations, written information, or other forms of interpretation.

### Prices and Pricing Policies

Provide a price schedule for a representative sample of the products and services proposed. Your plan must include a definitive description and explanation of the policies to be used to establish prices for food, beverages, products, and services. The policies shall clearly demonstrate the relationship of pricing to product quality and portions. Implementation of these policies must provide park visitors with quality products at reasonable prices considering the competition of comparable markets for similar products and services.

### Conservation and Recycling

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

### Accessibility

Provide a plan for and commitment to ensuring disabled visitors will have access to all of the services provided through the concession operation in accordance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250. The Accessibility Plan should address all disabilities and should not be limited to those affecting mobility.

### Maintenance and Housekeeping

Provide a comprehensive plan to maintain the concession facilities in a first-class condition throughout the term of the contract consistent with park values, visitor services, and visitor experiences at the park, Section 21 and Exhibit K of the Sample Contract. This component of the Operations Plan should consider Section 21 and Exhibit K of the Sample Contract and address annual budget allocations, staff skills and qualifications, staffing patterns, and housekeeping and maintenance schedules.

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

As a condition of the contract award, the successful Proposer may be required to revise or further develop the Facility Improvement Plan to the satisfaction of the State and prior to the execution of the contract. After the State's review and approval, the Facility Improvement Plan from the successful proposal shall be included as an exhibit to the contract. In addition to the Facility Development Plan, the successful Proposer also must adhere to the facility requirements as described in the contract.

### Furnishings

Describe the intended physical facilities of the concession including period furnishings, equipment, décor including framed pictures and other furnishings (e.g. clocks, mirrors) that will be attached to walls, and layout. Implementation of Proposer's plan should provide first-class concession facilities that are consistent with the City Hotel Complex interpretive period 1870-1879, the Fallon Hotel Complex interpretive period 1890-1910, and the Jenny Lind Restaurant interpretive period 1855-1870, and enhance visitor experiences at the park. Proposers should include a plan and elevations for shelving, counters, décor, tables and chairs, and address circulation for accessibility access. Proposer's plan should include examples of proposed exterior period-style signage.

### Facility Development

Describe your plans for facility improvements incremental to those 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, items to be installed and completion timetables. You may submit lists, drawings, pictures, and diagrams to illustrate and clarify your plans.

### Implementation Plan

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

### Cost Estimates

Provide a cost breakdown for the Furnishings and Facility Development components of the Facility Improvement Plan.

### **C. Interpretive Plan**

The Interpretive Plan is a critical element of a concession and, consequently, can be very influential in the selection of the successful proposal. The Interpretive Plan from

the successful proposal, after the State’s review and approval, shall be included as an exhibit to the contract. The State reserves the right to include or exclude any item or items in the Interpretive Plan that the State determines do not meet the intent of the RFP or the mission of the Department. In addition to the Interpretive Plan, the successful Proposer also will be required to implement the interpretive elements as described in Section 7 of the Sample Contract.

For a detailed history of the individual concession buildings, potential proposers may contact concession specialist Cathryn Milner at (209) 536-2917 or at [cmiln@parks.ca.gov](mailto:cmiln@parks.ca.gov). The following references are available for purchase at the Calaveras Sector office to help you develop your interpretive plan:

1. Gold Rush Merchant’s Manual (2 vols.) .....\$15.00
2. Old Town San Diego’s Retailer’s Reference.....\$15.00
3. Period Fashions for Men/Women.....\$ 5.00
4. The Baker’s Handbook.....\$10.00
5. Columbia SHP General Plan.....\$10.00
6. Old Sacramento Historic Sign Guidelines..... \$15.00
7. City & Fallon Hotel Complexes Building History ..... Free

Proposer’s Relevant Experience

Describe your experience, knowledge, skills, and abilities to develop and operate an interpretive programs related to the period hotels, restaurants, saloon, theatre and ice cream parlor.

Business’ Interpretive Theme

Describe the interpretive theme of your business and how it relates to Columbia SHP, including the specific years to be interpreted (“interpretive period”). Your business focus may be a narrower interpretation period, but should not extend beyond the dates intended by this RFP.

Interpretive Programs and Activities

Describe your plans for interpretive programs and activities. These activities should be conducted on a regular basis, integrating concession activities with the historic daily operations of the hotels, saloon, restaurants and theatre representing each building’s interpretive periods. Describe your methods to support State efforts in developing, operating, or providing interpretive programs of interest to multi-ethnic, multi-generational visitors.

Business’ Ambiance

Describe your plan to develop and implement historical ambiance including such things as historic characterizations, environment, period attire, furnishings, signs, wall treatment, advertising, window coverings, equipment, tools, display shelves, counters, tables, chairs, and cooking equipment.

### Primary Education

Describe your plan to provide an educational experience to school age (K-8) children.

### Restaurant

Provide a detailed description of the food type(s) and service, tableware/utensils, menu, and menu boards, and how the food and service will represent Columbia's historic dining traditions. Describe equipment that will be employed and how modern equipment will be disguised or camouflaged.

### **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 twenty-five thousand dollars (\$25,000) and the Percentage of Gross Sales must be at least two and one half percent (2.5%) for the first one million dollars (\$1,000,000) in annual gross receipts and three percent (3%) of annual gross receipts in excess of one million dollars (\$1,000,000).

### **E. Concession Feasibility**

Document your ability to successfully initiate the proposed concession in a financially responsible manner, in accordance with the terms and conditions of the sample contract and your Operation, Facility, and Interpretive Plans (as applicable). This information must substantiate your 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 your investment. Financial 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. You may provide information in addition to that required in the Concession Proposal form (DPR 398), but do not alter the format in any way. You must respond to each item in the order listed with the information requested or N/A.

## **III. PROPOSAL SUMMARY**

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

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

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

A request may be made to the National Labor Relations Board for information regarding Administrative Hearing decisions against each Proposer. You 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 your proposal will be disqualified.

**B. Proposer Certification**

A completed certification is required with your proposal or it will 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

**10 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.

#### Operations Plan

**25 Points**

Points will be awarded based upon the degree to which the proposal addresses each of the required elements of the Operation 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 Sample Concession Contract.

More points will be awarded to proposals that provide high-quality goods and services that are consistent with the intent of the Sample Concession Contract, RFP, and the mission of the park.

**Facility Improvement Plan 15 Points**

Points will be awarded based upon the degree to which the proposal addresses each of the required elements of the Facility Plan (as identified in the DPR 398, Concession Proposal) and meets and exceeds the objectives of this RFP. More points will be awarded to proposals that provide high-quality and accessible facilities.

**Interpretive Plan 25 Points**

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

**Rental Offer 15 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 twenty-five thousand dollars (\$25,000))

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

*Percentage of Gross Sales* (Minimum bid is 2.5% of \$1,000,000)

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

*Percentage of Gross Sales* (Minimum bid is 3% in excess of \$1,000,000)

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

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

### **Concession Feasibility**

Proposer must document and demonstrate that concession operations as proposed can be conducted in a fiscally responsible manner and in accordance with recognized business practices.

**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 Development & Maintenance Plan \_\_\_\_\_ (pass/disqualify)
    - C. Interpretive 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 \_\_\_\_\_ / 05 Points
  - Small Business Preference \_\_\_\_\_ / 05 Points
  - Experience \_\_\_\_\_ / 10 Points
- B. Proposal Information
  - Operation Plan \_\_\_\_\_ / 25 Points
  - Facility Development & Maintenance Plan \_\_\_\_\_ / 15 Points
  - Interpretive Plan \_\_\_\_\_ / 25 Points
  - Rental Offer \_\_\_\_\_ / 15 Points
- C. Concession Feasibility \_\_\_\_\_ (pass/disqualified)

**GRAND TOTAL \_\_\_\_\_ / 100 Points**

Comments:

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

### **3.4 CONCESSION PROPOSAL, DPR 398**

**If interested in submitting a proposal, please request the DPR 398 Concession Proposal forms from Cathryn Milner, Concession Specialist (209) 536-2917 or by email at [cmiln@parks.ca.gov](mailto:cmiln@parks.ca.gov). This provides 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.**

**SAMPLE CONCESSION CONTRACT**

CONCESSION CONTRACT

FOR

**City and Fallon Hotel Complexes**

AT

Columbia State Historic Park

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



City and Fallon Hotel Complexes  
CONCESSION CONTRACT  
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STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

**CONCESSION CONTRACT**

For

**City and Fallon Hotel Complexes**

Located In

Columbia State Historic Park

Tolumne County, California

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 **City, State**, 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 nonexclusive concessions in Columbia State Historic Park in locations known at the City Hotel Complex, located at 22768 Main Street, which includes three profit centers known as the City Hotel, City Hotel Restaurant, and What Cheer Saloon; the Fallon Hotel Complex, located at 11175 Washington Street, which includes three profit centers known as the Fallon Hotel, Fallon Ice Cream Parlor, and the Fallon Theater; the Jenny Lind Restaurant located at 22738 Main Street including Angelo's Hall at 11209 State Street; storage space in The Tamale House at 22746 Broadway Street, and office space on the 2<sup>nd</sup> Floor of the Eagle Cotage at 11195 Washington Street as set forth in **Exhibit A**, attached to and made a part of this Contract (the "Premises").

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

## 2. **CONDITION OF PREMISES**

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

### 3. **TERM**

The term of this Contract shall be for a period of twenty (20) years, commencing on the first day of the month following approval by the California Department of General Services. Should Concessionaire hold-over after the expiration of the term of this Contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this Contract in Section 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. **OPERATION TRANSITION**

A. **Condition of Premises:** At the expiration or termination of this Contract, Concessionaire shall quit and surrender the Premises, including real property improvements, equipment, furnishings, supplies and materials inventory, reservation deposits, or equivalent thereof provided by State for Concessionaire's use, in a state of repair equivalent to the condition as received and sufficient for the purpose for which such property is intended and for the continuing operation of the concession, damage by matters for which Concessionaire is not obligated by this Contract to repair or replace excepted, provided that such exculpatory provision shall not extend to any risk that Concessionaire is required to insure against as herein provided.

B. **Transition Plan:** Concessionaire shall cooperate with State to provide a smooth, coordinated transition from operations under the prior contract to the implementation of operations by Concessionaire under this Contract. Concessionaire shall work with State and the previous concessionaire in good faith to execute a "Transition Plan" and any closing documents necessary to ensure the continued provision of quality goods and services to the visiting public and a seamless transition in

operations. Similarly, at the termination of this Contract, Concessionaire shall work in good faith to ensure a smooth transition to the next concession Contract.

C. Worker Retention: Concessionaire shall retain current and legally employed concession employees in the same or equivalent job classifications to the extent possible. If a position in the employee's classification under the previous concessionaire is not available, employee shall be offered any other available position for which the employee is presently qualified. Concessionaire shall provide a reasonable period to train any employee eligible for retention for which no position is available in the employee's previous classification in order to qualify employee for another position.

## 5. FINANCIAL REQUIREMENTS

A. Facility Improvement Account: Within thirty (30) days of the commencement of this Contract, Concessionaire shall establish and fund facility improvements as described in Concessionaire's Facility Improvement Plan, attached hereto as **Exhibit I**, without cost to State and in compliance with State's Guidelines for Construction and Completion of Improvements, with a minimum expenditure of two hundred fifty thousand dollars (\$250,000) (or as bid by successful proposer). Any penalties, lien charges, and/or costs to resolve construction related disputes shall not be included in the minimum expenditure amount. The account shall be interest-bearing, with all interest accruing to the account. The account shall be structured so that any withdrawal from said account shall require the approval signature of State's authorized representative. A duplicate bank statement for account described in this Section shall be mailed directly to the Calaveras Sector office. After completion of all concession facility improvements and acceptance by State, if there remains an unspent balance of the two hundred fifty thousand dollars (\$250,000) (or as bid by successful proposer), Concessionaire shall pay this unspent balance to State as an additional rental payment within thirty (30) days from State's acceptance of the concession facility improvements.

B. Conservation and Restoration Fund: At the start of each Contract Year, Concessionaire shall deposit five thousand dollars (\$5,000) into an interest bearing Conservation and Restoration Account for the purposes of conservation and/or restoration of State-owned objects and artifacts. State shall establish a priority list of objects to be conserved. Concessionaire shall be responsible for scheduling and completing all required conservation/restoration work limited to the funds available in this account. Any unspent portion of the annual contribution may be carried-over for conservation/restoration work in subsequent years. This account shall not be charged for the replacement of stolen or missing objects or conservation and/or restoration of an object when the need for conservation and restoration is a result of Concessionaire's negligence. At the end of the contract term, if there are remains an unspent balance of the Conservation and Restoration Fund, Concessionaire shall pay this unspent balance to the State.

## 6. RENT

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

\_\_\_\_\_ percent (\_\_\_\_%) of the first \_\_\_\_\_ dollars (\$xxxx) of Gross Receipts

plus

\_\_\_\_\_ percent (\_\_\_\_%) of Gross Receipts over \_\_\_\_\_ dollars (\$xxxx)

Beginning with Contract Year Six (6) and on the first day of each fifth Contract Year thereafter, the Minimum Annual Rent shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit 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 C**, 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.

## 7. **USE OF PREMISES**

The Premises herein described in Section 1, Description of Premises, shall be used by Concessionaire as follows:

A. **City Hotel Complex**: Concessionaire shall operate and maintain for use and enjoyment by the public the City Hotel Complex, including the hotel, restaurant, and saloon, consistent with the City Hotel's interpretive period 1870-1879.

B. **Fallon Hotel Complex**: Concessionaire shall operate and maintain for use and enjoyment by the public the Fallon Hotel Complex, including the hotel, ice cream parlor, and theater, consistent with the Fallon Hotel's interpretive period, 1890-1910. Operation of the Fallon Theatre shall include the production of plays, musicals and melodramas which complement the park's interpretive period

C. **Jenny Lind Restaurant**: Concessionaire shall operate and maintain for use and enjoyment by the public the Jenny Lind Restaurant, for a family-oriented eating establishment furnished to portray the interpretive period 1855 to 1870. Contingent on completion of the State's renovation project, the Premises at 11209 State Street, Columbia, known as Angelo's Hall, shall be used by the Concessionaire for a banquet facility. Concessionaire agrees to cooperate with State concerning the use of Angelo's Hall as a "community hall" free of charge for Columbia events free and open to the public. Such events include the annual Town Holiday Potluck in December, Chamber of Commerce and Town Hall meetings. State shall also have use of Angelo's Hall for State staff meetings and workshops without charge. All such use free of charge will require advance reservations through Concessionaire. When use of the banquet facility impacts facilities outside the Premises described in this Contract, a Special Event Permit issued by the Central Valley District Office under State guidelines may be necessary.

D. **The Tamale House**: Concessionaire is authorized to use this building solely for equipment and supplies storage, as well as a repair shop for furnishings and equipment.

E. **Eagle Cotage 2<sup>nd</sup> Floor**: Concessionaire is authorized to use this facility solely for office space.

A primary consideration to State under this contract is the re-creation and perpetuation as closely as possible of the experience and ambiance of the above identified interpretive periods. The lobby of each hotel and unoccupied rooms shall be open for public viewing during normal business hours. All concession staff and personnel in contact with or visible to the public shall wear appropriate historic clothing representative of the buildings' interpretive periods and occupation. All modern equipment shall be hidden from public view. All signs, posters, or other public displays that will be seen by the public on the Premises shall be appropriate to the interpretive period and shall be pre-approved by State.

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

Concession services shall be provided seven (7) days per week from Memorial Day through Labor Day, and a minimum of six (6) days per week from April 1 to Memorial Day and from Labor Day through September 30, and five (5) days per week beginning October 1 through March 31, during each calendar year of the contract. In the event State deems the hours of operation inadequate for proper service to the public, State may require Concessionaire to adjust the days and/or hours of operation to a schedule provided by State. Concessionaire may remain open on other dates, observing same (or longer) hours, at Concessionaire's discretion with the concurrence of State. In the event of adverse weather or other operating conditions, State may permit the concession to close at any time during the term of this Contract. Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as herein set forth without the prior written consent of the State.

F. 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.
- 5) To the extent possible, Concessionaire shall develop interpretive materials and programs that demonstrate the vital role of food in human culture, and how food affects quality of life.
- 6) To the extent possible, Concessionaire shall offer interpretive demonstrations regarding the sound and sustainable production of food and healthful and traditional cooking methods.

## 8. **BONDS**

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

- A. **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 year's 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.

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

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 **fifty percent (50%)** of the total cost of the construction. The bond shall guarantee faithful performance of the construction by Concessionaire.

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)]**

## 9. **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**. Where alcohol sales are permitted, Concessionaire shall include liquor liability with limits no less than \$1,000,000.
  - 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. Replacement value shall be approved by State.

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

B. 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.

C. Each policy of liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Concessionaire's limit of liability. The policy must include the State of California, Department of Parks and Recreation, 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

D. 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.

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

#### **10. ALCOHOLIC BEVERAGES**

Concessionaire may sell beer, wine, and distilled spirits with bona fide meals only in the restaurants, saloon and ice cream parlor for on-premises consumption only, except for the sale of wine for "off-premises" at the City Hotel Restaurant only. Sale of alcohol at the ice cream parlor is also limited to theatre intermission times. 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.

Upon termination of this contract or the cessation of business whichever occurs last, Concessionaire shall cooperate with State to accomplish the transfer of alcoholic beverage license(s) granted to the City and Fallon Hotel Complexes) to the next operator at no cost to Concessionaire.

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

A. Facility Development: At Concessionaire's sole cost and expense, Concessionaire shall be responsible for the scheduling and securing of all environmental permits, design, construction permits, construction, construction mitigation measures, completion, and installation of facility improvements, décor, equipment, fixtures, and furnishings as described in the Concessionaire's "Facility Improvement Plan", incorporated herein and made part of this Contract as **Exhibit I**. Implementation of the Plan shall be in accordance with State's Guidelines for Construction Completion of Improvements, as provided by State and which may be updated from time to time, and generally as follows:

- 1) Plan Amendment: Concessionaire shall meet with State within 14 days of contract execution to review the implementation plan and modify as reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department.
- 2) Schematic Design: Within four (4) weeks of contract execution, unless otherwise agreed to by State, Concessionaire shall provide to State for its review and approval a Schematic Design. The State shall not unreasonably withhold such approval. The objective of the Schematic Design is to clearly define the Facility Improvement Plan and should include a site plan, building floor plans, all building elevations, outline specification, and any additional detailed specifications necessary to describe project work, floor area usage, Critical Path Method (CPM) or Gantt-type chart construction schedule, and Preliminary Statement of Probable Construction Cost. In developing such materials, Concessionaire shall consider the Project Evaluation Form provided by State to

evaluate environmental permit requirements. If the State disapproves any element of the program statement, Concessionaire shall promptly submit to State all necessary modifications and revisions.

3) Design Development: Within four (4) weeks of State's approval of Concessionaire's Schematic Design, Concessionaire shall submit the Design Development for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Design Development is to define and describe all the important aspects of the Facility Improvement Plan and should include the necessary details of each element of the Schematic Design to adequately convey key conditions of major improvements. In addition, the Design Development should include Reflected Ceiling Plans, Schedules, Structural Requirements, Plumbing, Mechanical, and Electrical Plans, Food Service Requirements, Color Boards, Material and Systems Specifications, and an updated construction schedule and Preliminary Statement of Probable Construction Cost. If the State disapproves any element of the Design Development, Concessionaire shall promptly submit necessary modifications and revisions. Concessionaire shall concurrently complete California Environmental Quality Act (CEQA) and other environmental documents as may be required, and file such with California State Clearinghouse.

4) Working Drawings: Within four (4) weeks of State's approval of Concessionaire's Design Development, Concessionaire shall submit Working Drawings for State's review and approval. The State shall not unreasonably withhold such approval. The objective of the Working Drawings is to set forth in detail the requirements for construction of the Facility Development Plan 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 complete the Facility Improvement Plan; documentation of decisions made in the Design Development phase; all documentation needed for obtaining regulatory and State approvals; construction schedule; and the final Statement of Probable Construction Cost. If the State disapproves any drawings, plans or

specifications, Concessionaire shall promptly submit necessary modifications and revisions. No changes or alterations shall be made to the approved Working Drawings without prior written approval of State.

B. Use of Consultants: Concessionaire shall employ licensed Contractor(s) in the completion of all required construction work. Additionally, Concessionaire shall utilize professional contractors and consultants, including architectural historian(s) and engineer(s), acting in accordance with the latest American Institute of Architects' standards of practice to develop comprehensive construction plans, including schematic design plans, design development plans, and working drawings, and to conduct independent inspections and monitoring of all construction. Concessionaire agrees to select contractors and consultants who are licensed to practice in the State of California and are acceptable to the State. However, in no event shall State be deemed to have control of or be responsible for Concessionaire's final hiring decisions, the day-to-day management of the project, or administration of contracts with contractors or consultants. Contracts between Concessionaire and any contractor or consultant must be approved in writing by State in advance of execution by Concessionaire.

C. Permits: At its sole cost and expense, including mitigation costs, Concessionaire shall obtain all permits, licenses, and other approvals necessary for the construction and completion of the Facility Improvement Plan. Such permits may include, but are not limited to, those required under the California Environmental Quality Act (CEQA), Public Resources Code 5024, County Health Department, California Coastal Act, California Building Code, and State Fire Marshal. Any plans to comply with the Americans with Disabilities Act of 1990 (ADA) require written approval from State's Accessibility Section, in accordance with Section 40, Disabilities Access Laws, of this Contract. Concessionaire shall reimburse State for all costs incurred by State on behalf of Concessionaire in association with acquisition of said permits. State will produce records of such costs for review by Concessionaire on a monthly basis. The State shall cooperate with Concessionaire with respect to securing said permits including the execution of documents required by a governmental authority to be initiated by State. In the event Concessionaire, having exercised all due diligence in applying for and seeking all approvals, cannot secure all required permits within two (2)

years from Concessionaire's taking possession of the premises, the State shall have the option to terminate this Contract

D. State Approval/Acceptance of Plans and Work: Concessionaire shall allocate a minimum of thirty (30) days in construction schedules for each required review by State. Concessionaire shall reimburse State for all professional services, including architectural, engineering, construction monitoring, inspection, plan review and approval. State will produce records of such costs for review by Concessionaire on a monthly basis. State's approval of the work and plans shall be for the purpose of determining that such work conforms in scope and quality to State's policies and standards, and in no way shall relieve Concessionaire or its contractors or subcontractors of the responsibility to perform and complete the work (1) in accordance with generally accepted industry standards, (2) faithfully adhering to the approved plans, specifications, and drawings, and (3) in accordance with all applicable codes, laws, regulations, or other requirements, including but not limited to, the standards contained in this Contract. Permission to start construction will not be granted until all required permits and approvals have been secured.

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 construction schedule, and/or the construction timeline to agree with its schedule of development for the unit. Any changes to the timeline shall not be earlier than the dates set forth in the Working Drawings, as approved by State, except with concurrence of Concessionaire.

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, and prosecute the same to completion with all due diligence and within **four (4) months**. Such time shall be extended as reasonably necessary in the event of delays caused by fire, earthquakes, wars, strikes, adverse weather, or other calamity beyond Concessionaire's control. Concessionaire shall hold monthly or more frequent status

meetings throughout the period of construction, which shall include representatives of the general contractor, appropriate subcontractors, a representative of Concessionaire, and a representative of the State.

Upon completion of construction, Concessionaire shall (1) file a Notice of Completion of Construction in County within which work was executed, and identify State as recipient of recorded document; (2) secure Certificate of Occupancy if required by State Fire Marshal; (3) provide State with a complete set of "as-built" plans and updated specifications for all improvements in a format acceptable to State; (4) submit evidence that all improvements are clear of any mechanic's liens; (5) have work certified by a licensed architect or engineer to be in compliance with the Working Drawings as approved by State and all applicable building or other laws, codes, or regulations; (6) secure sign-off for CEQA compliance; and (7) submit an account of the cost for all facility improvements, excluding equipment and trade fixtures that are the personal property of Concessionaire.

The cost accounting as required by item (7) above shall include cost statements and substantiating invoices for all project expenses including labor and materials. After such accounting has been examined by State, State in its sole discretion will establish in a reasonable and fair manner the cost of facilities and improvements for the purposes of evaluating Concessionaire's compliance with the facility development expenditure requirements of this Contract. In the event such accounting is not filed by Concessionaire at the time specified, State shall estimate the cost of the project and serve notice of same on Concessionaire in the manner provided herein.

When Concessionaire has obtained lien releases, filed the Notice of Completion, received Certificate of Occupancy as required, and received written acceptance from the State, subject to all other provisions of this Contract, Concessionaire shall have the right to commence concession business operations.

## **12. 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  
Calaveras Sector  
11255 Jackson Street  
Columbia, CA 95310  
(209) 536-2917

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.

**13. 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 therefore. Concessionaire further agrees to allow interviews of any employees who might reasonably have information related to such records.

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

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

#### **14. 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.

#### **15. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES**

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

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

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.

#### **16. PERFORMANCE EVALUATIONS AND INSPECTION**

As part of its administration of this Contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A "Concessionaire Performance Rating" (DPR Form 531) attached hereto as **Exhibit F**, or other similar format(s) as may be adopted by the State will be utilized for evaluation purposes. State further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the State Park System. Concessionaire agrees to cooperate with State in all respects related to the implementation of State's Concession Performance Evaluation program and with State's activities on the Premises. State shall not be liable

in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State's entry in the Premises as provided herein, except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

**17. 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.

**18. 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.

**19. 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.

The Premises as shown on **Exhibit A** include a state historic facility, as defined in Public Resources Code Section 5024. No alteration, modifications, demolition, or construction, other than those which may be outlined herein, may be commenced without prior written approval from State in accordance with Public Resources Code Section 5024.5.

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.

**20. PERSONAL PROPERTY**

Except to the extent covered by Section 19, "Modifications, Additions, Title to Improvements", title to all personal property provided by Concessionaire shall remain in Concessionaire. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property will be considered a real property improvement and shall become property of State at the time this Contract is terminated.

**21. HOUSEKEEPING, MAINTENANCE, REPAIR, REPLACEMENT AND REMOVAL**

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. 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. All such maintenance shall conform to State Park standards, and the U. S. Secretary of Interior's Standards for the Treatment of Historic Properties (1995) and the Public Resources Code Section 5024.5. 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. Additionally, the Concessionaire's maintenance responsibilities include those described in **Exhibit K**, attached hereto and made part of this agreement. Subject to the availability of funds, the State shall be responsible for the structural stability of the building and maintaining roofs and exterior walls, excluding painting as noted in **Exhibit K**.

C. Pest Inspections: 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.

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.

## **22. 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.

## **23. RESOURCE CONSERVATION**

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

- 1) **Recycling and Beverage Container Programs:** The Concessionaire shall implement a source reduction and recycling program designed to minimize concession and patron use of disposable products, per Public Contract Codes Sections 12161 and 12200 et. seq. Reusable and recyclable products are preferred over "throwaways". Where disposable products are needed, products that have the least impact on the

environment will be selected. No Styrofoam containers or other non-biodegradable containers are to be used or sold by Concessionaire. The use of "post-consumer" recycled products is encouraged wherever possible.

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

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

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

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

**24. 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).

## **25. EQUIPMENT AND FURNISHINGS**

For the purposes of this Contract, "equipment" shall include all apparatus used to support an operation or activity. "Furnishings" shall include all apparatus used to facilitate the comfort and convenience of the consumer. All equipment and furnishings, furniture, accessories and fixtures shall reflect the historic period of the area and harmonize with the natural setting.

A. Maintenance of Furniture, Fixtures and Equipment – Concessionaire shall maintain, replace, repair or otherwise keep all equipment and furnishings as prescribed by the manufacturer in good working order throughout the term of this Contract, such that the Premises, equipment, and furnishings are fully operational upon termination of this Contract.

1) No furnishings or equipment shall be replaced without written approval of the District Superintendent or designee.

2) Any damage to furnishings, fixtures or equipment, including to its appearance and/or function shall be repaired and/or remedied within ten (10) business days of being noted. Any delay to said repair or remedy shall be approved by the District Superintendent or designee.

3) Concessionaire shall maintain in good condition all concession and park unit vehicles in accordance with State standards for appearance. Damages including scratches and other cosmetic problems must be repaired within thirty (30) days of being noted. Concessionaire shall provide fuel for all concession and Asilomar park unit vehicles.

B. Furniture and Equipment Inventory – An initial inventory of furnishings and equipment shall be provided by State within thirty (30) days of Contract execution. Concessionaire shall maintain this inventory throughout the term of this Contract and shall note on said inventory all additions and deletions to the list including pertinent information on cost, date of purchase, manner of disposal, salvage value, and other information relevant to the management of Premises. Concessionaire and State acknowledge that equipment and furnishing needs will change throughout the life of this

Contract. Concessionaire shall provide a copy of this inventory to State for approval within thirty (30) days of the end of each Contract Year or upon State's request.

1) Sixty (60) days prior to Contract termination, Concessionaire shall at no cost to the State, submit a Pre-Closing Inventory, conducted by a qualified third party, acceptable to the State, for the review and approval of the District Superintendent or designee. All items on the inventory, including but not limited to furnishings and equipment shall be entered and tracked, by the third party, into a State approved database.

2) Concessionaire shall resolve all non-acceptable items on the pre-closing inventory in conjunction with any other transition activities with the new concession contract or concessionaire. Cure of non-acceptable items may include provision of any missing items or replacement of any substandard items or cash payment equivalent to such missing or substandard items. Once approved, no changes to this inventory may occur without State approval.

3) All furnishings, fixtures, equipment, materials, supplies, substitutions, additions, and betterments thereto, whether provided by State or Concessionaire shall be the property of the State and title to same shall vest with the State, except where Concessionaire has obtained written approval from the District Superintendent or designee to allow Concessionaire to retain title to specified personal property purchased and maintained exclusively by Concessionaire for Concessionaire's use in the operation and maintenance of the Premises.

C. Reserved Property - Reserved Property includes historic artifacts and other historic items that relate to integral parts of Premises. Historic artifacts include such items as photographs, manuscripts, architectural drawings, and objects associated with the history of Columbia and that are part of the State's historic collections. Other Reserved Property items include but are not limited to removable architectural fixtures and decorative building elements, including historic signage and panels, movable and built-in furniture, draperies, and landscape features.

1) Concessionaire acknowledges that Reserved Property requires special attention, care, and treatment. Items of Reserved Property left on the Premises and/or made available to Concessionaire for use in the operation and interpretation of

Premises shall be provided by State in accordance with a custody agreement, DPR 928, Museum Collections Loan Agreement attached hereto and made part of this Contract as **Exhibit D**. Said document(s) shall be executed between State and Concessionaire prior to Concessionaire use of Reserved Property or within 30 days following Contract execution.

2) All artifacts used by Concessionaire shall be displayed, used, and maintained in accordance with the guidelines set forth in the State's program for artifact management and the executed custody agreement document(s) reference above. Reserved Property shall be managed in accordance with all other applicable provisions and procedures governing the care and protection of artifacts and historic architectural property.

3) Concessionaire shall maintain a current inventory of all Reserved Property under its care. Concessionaire shall provide this inventory to the District Superintendent or his/her designee for review and approval within thirty (30) days of the start of each Contract Year. Concessionaire shall cure all non-acceptable items on the Reserved Property inventory within thirty (30) days of notice. Cure of non-acceptable items may include provision of any missing items, replacement with in-kind items, or cash payment equivalent to such missing or damaged items.

4) In the event Concessionaire is presented with the opportunity to acquire Columbia-related historic artifacts or movable architectural elements or furnishings by gift or donation, Concessionaire shall direct the source of such items to the District Superintendent or designee for consideration. In the event Concessionaire comes into possession of Columbia-related historic artifacts or movable architectural elements or furnishings by any means during the term of this Contract, such items shall become the property of the State. State shall be so notified immediately to ensure accession of such items in accordance with State's policies and procedures. Accession or disposal of Reserved Property is the sole right of State as governed by applicable statute and regulation.

At no time and in no event shall State be obligated to supply any new or replacement furnishings, fixtures, equipment, or supplies.

**26. 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.

**27. 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.

**28. 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 electronic

media that contain the design or other such files containing such information. Drawings and Project Manuals shall be provided in electronic format using industry standard software and in compliance with State's Guidelines for Construction and Completion of Improvements. 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.

**29. PARTICIPATION IN STATE PARK MARKETING PROGRAMS**

Concessionaire acknowledges that the State has an established advertising and marketing program designed to promote additional revenue for the State and to deliver a consistent and positive image to the public, and Concessionaire agrees to 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.

Concessionaire acknowledges the opportunity to voluntarily participate in the Park Patron Donation Program designed to raise funds for State Park interpretive programs and materials, restoration or rehabilitation of historic structures, new visitor centers, trail work, or projects to develop and operate new park properties that otherwise would not be open to the public.

**30. 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.

### **31. 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.

### **32. 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.

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

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

B. It is expressly understood that this Section does not apply to the situation where the State may terminate this Contract for any breach on the part of the Concessionaire under Section 29, "Default By Concessionaire", or where the Contract is terminated at Concessionaire's request. Where there has been a

breach on the part of the Concessionaire, under any terms of this Contract, the State shall not be obligated to pay the Concessionaire before or after taking possession of the Premises.

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

C. For the purposes of this Section, such facilities shall be deemed to be the structures Concessionaire is expressly required to construct, create, or develop under Section 11, "Construction and Completion of Improvements", or later adds, exclusive of Concessionaire's personal property. The cost of such facilities for the purposes of this Section shall be those values established under Section 11(e), "Construction and Completion of Improvements", above.

D. The amount to be paid as the then depreciated cost of the facilities in the event of termination under this Section shall be based on a \_\_\_ percent (%), \_\_\_\_\_ (\_\_\_) year capital recovery schedule, which shall provide \_\_\_\_\_ Dollars (\$\_\_\_) for each \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of beginning cost, multiplied by the remaining years of the Contract.

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

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

### **34. 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 10% over the Minimum Rent of the last year prior to the expiration or earlier termination of the Contract and in addition to any changes as the result of Consumer Price Index adjustments required by this Contract in accordance with Section 6, "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.

**35. 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.

**36. 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.

**37. 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.

**38. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES**

Concessionaire shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Contract, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all

pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and State building codes and regulations.

### **39. 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.

#### **40. 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.

#### **41. DRUG-FREE WORKPLACE**

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

**42. 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.

**43. 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.

**44. 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.

**45. WAIVER OF CLAIMS**

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

**46. WAIVER OF CONTRACT TERMS**

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

**47. INTERPRETATION OF CONTRACT**

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

**48. DURATION OF PUBLIC FACILITIES**

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

**49. TIME OF ESSENCE**

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

**50. 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.

**51. 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.

**52. 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.

**53. CONTRACT IN COUNTERPARTS**

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

**54. INDEPENDENT CONTRACTOR**

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

**55. ASSIGNMENTS AND SUBCONCESSIONS**

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

**56. MODIFICATION OF CONTRACT**

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

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

Notwithstanding any of the provisions of this Contract, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. Such written modifications or additions to this Contract shall not be effective until signed and acknowledged by the State and Concessionaire and approved in writing by the Department of General Services and the Attorney General of the State of California. The State shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

**57. UNENFORCEABLE PROVISION**

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

**58. APPROVAL OF CONTRACT**

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

**59. 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:**

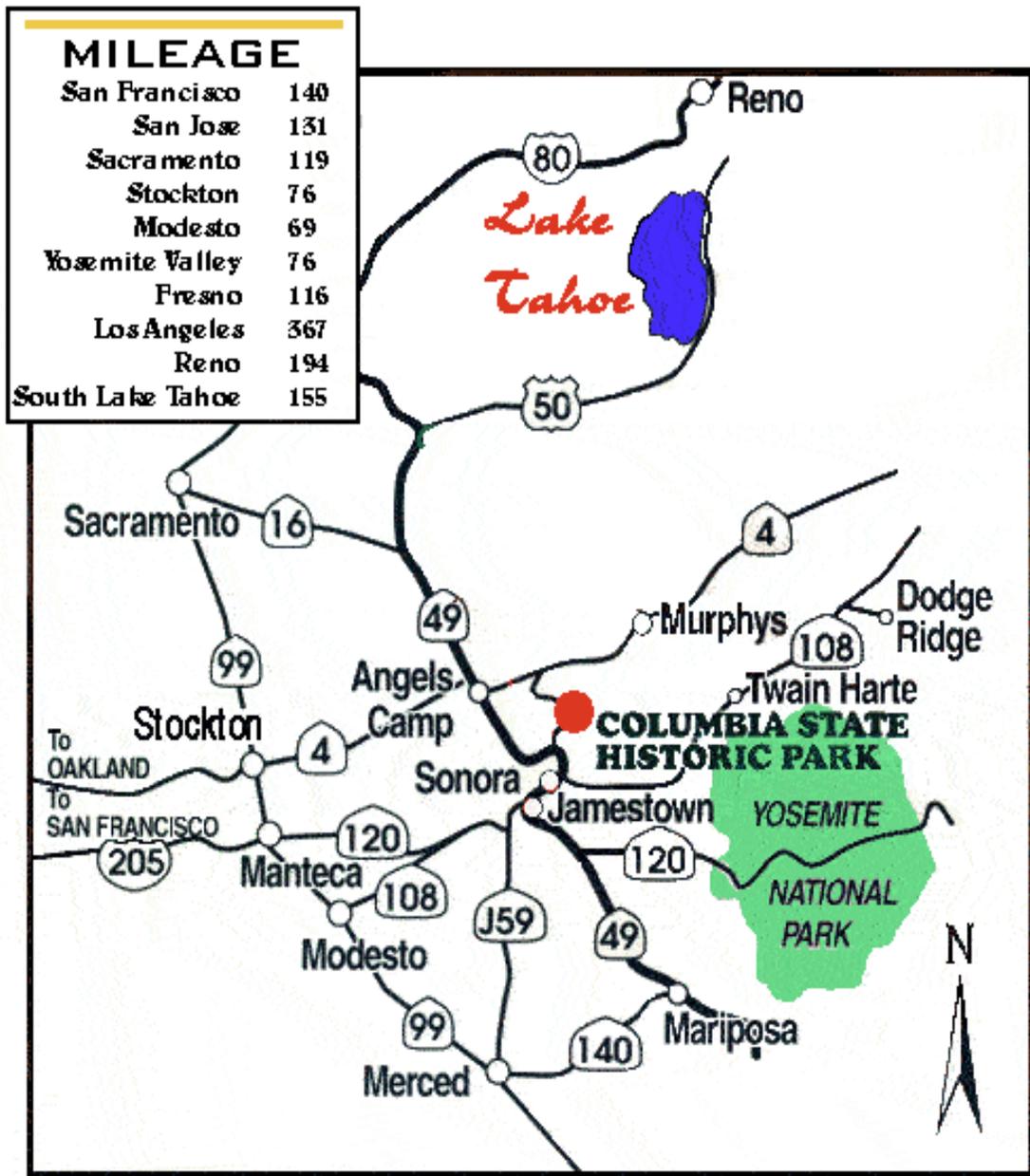
Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

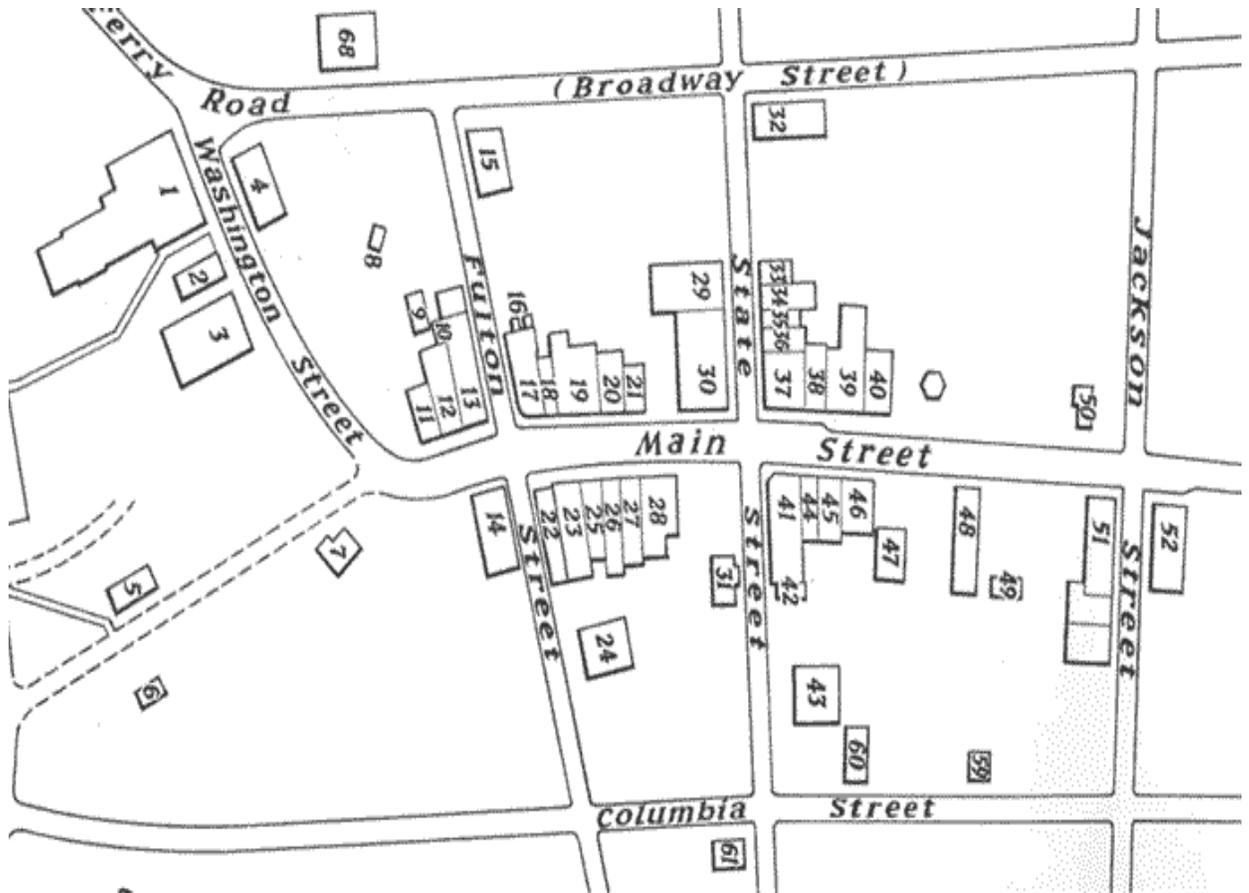
**EDMUND G. BROWN JR., Attorney General  
of the State of California**

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

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

**EXHIBIT A – THE PREMISES**





- 1. Fallon Theatre, Fallon Hotel, Ice Cream Parlour
- 3. Eagle Cotage - City Hotel Business Office (Upstairs)
- 30. Jenny Lind Restaurant and 29. Angelo's Hall
- 39. City Hotel and Restaurant 40. What Cheer Saloon

**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 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 – 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 \$

<b>SEASONAL CONCESSIONS</b> <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 C – *continued***

**DPR 54 COMPLETION INSTRUCTIONS**

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

COMMENTS/EXPLANATIONS:

DPR 54 (Back)

**EXHIBIT D – DPR 928, MUSEUM COLLECTIONS LOAN AGREEMENT**



**CALIFORNIA STATE PARKS**  
**MUSEUM COLLECTIONS**  
 State of California - The Resources Agency  
 DEPARTMENT OF PARKS AND RECREATION

**Loan Agreement**

- OL -  
 Activity Number \_\_\_\_\_  
 Number of Attachments \_\_\_\_\_  
**OUTGOING**

Borrowing Institution \_\_\_\_\_

Authorized Agent and Title \_\_\_\_\_ Phone/FAX \_\_\_\_\_

Address \_\_\_\_\_ City - State - Zip Code \_\_\_\_\_

Purpose of Loan \_\_\_\_\_ Period of Loan \_\_\_\_\_

Description of Objects (with catalog numbers): \_\_\_\_\_ Owner's Valuation: \_\_\_\_\_

I have read and agree to the conditions listed on the reverse of this document and any attachments to it.

Agent's Signature \_\_\_\_\_ Agent's Name \_\_\_\_\_ Date \_\_\_\_\_

**▼ Approval by California Department of Parks and Recreation**

Museum Curator's Signature \_\_\_\_\_ Museum Curator's Name \_\_\_\_\_ Date \_\_\_\_\_

Superintendent's Signature \_\_\_\_\_ Superintendent's Name \_\_\_\_\_ Date \_\_\_\_\_

Deputy Director of Park Stewardship's or Designee's Signature  Not Applicable Deputy Director of Park Stewardship's or Designee's Name \_\_\_\_\_ Date \_\_\_\_\_

DPR 928 (Rev. 4/99) (Front) (Excel 4/23/1999) Distribution:  Park Files  Statewide Records  Borrower

# LOAN AGREEMENT -- OUTGOING

## Conditions Governing the Loan of Objects by the California Department of Parks and Recreation

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### Care of Loaned Objects

Borrower shall provide a safe and stable environment for the loaned objects and shall return them in the same condition as they were lent.

In the event of any damage, soiling, or inordinate wear resulting from this loan, the borrower agrees to pay all costs required to restore the objects to as good a condition as when they left the custody of the lender, the California Department of Parks and Recreation (hereinafter referred to as DPR).

Borrower shall not effect repairs, cleaning, or other conservation or restoration treatments without express written permission from DPR.

Borrower shall notify DPR within forty-eight (48) hours after discovery of loss of or damage to the loaned objects.

Borrower shall not remove or alter any registration numbers, museum labels, or specimen tags from the loaned objects, or make alterations of any kind to the objects without prior permission of DPR.

### Use of Loaned Objects

Borrower may examine and/or display loaned objects. Any other use of the loaned objects and/or any intellectual property rights associated with them require prior written approval by DPR.

Borrower shall not transfer, license, assign, sell, pledge, mortgage, or part with the possession of the loaned objects or any intellectual property rights associated with the objects.

Borrower shall give credit for the loan as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### Release from Liability

Borrower waives all claims and recourses against DPR, its employees, agents, and contractors for loss or damage to persons or property arising from, growing out of, related to, or in any way connected with or incident to this agreement.

Borrower shall defend, indemnify and save harmless DPR, its employees, agents, and contractors from all liability, loss, cost, or obligation on account of or arising out of any injury to person or persons or property of any kind, from any cause or causes whatsoever in any way connected with the borrower's use of the loaned objects, including acceptance and re-delivery thereof.

### Termination of Loan

Both the borrower and DPR may cancel this loan prior to the period stated in this agreement by providing thirty (30) days written notice to the other party.

Borrower shall coordinate with DPR to insure the safe return of the loaned objects at the conclusion of the loan, and to obtain approval of packing and transportation methods.

DPR reserves the right to inspect and audit loaned objects. The loaned objects may be withdrawn without prior written notice if DPR determines that the conditions of this agreement are not being met or the objects are otherwise in jeopardy.

### Other Loan Agreement Forms

In case of any difference between this agreement and the loan agreement forms of the borrower, which DPR may complete upon request, the conditions of this document will control.

# EXHIBIT E - DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

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

## CONCESSIONAIRE FINANCIAL STATEMENT

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

### A. CASH FLOW STATEMENT

**GROSS SALES/RECEIPTS**

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

**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: _____	_____	
<b>TOTAL EXPENSES</b>		<b>\$ _____</b>
<b>NET PROFIT FROM OPERATIONS</b>		<b>\$ _____</b>
<i>(before income taxes)</i>		



# CONCESSIONAIRE FINANCIAL STATEMENT

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

## C. BALANCE SHEET

### ASSETS

#### **CURRENT ASSETS**

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

**TOTAL CURRENT ASSETS**      \$ \_\_\_\_\_

#### **NONCURRENT ASSETS**

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

**TOTAL NONCURRENT ASSETS**      \$ \_\_\_\_\_

**TOTAL ASSETS**      \$ \_\_\_\_\_

### LIABILITIES

#### **CURRENT LIABILITIES**

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

**TOTAL CURRENT LIABILITIES**      \$ \_\_\_\_\_

#### **OTHER LIABILITIES**

Other: _____	\$ _____
Other: _____	_____

**TOTAL OTHER LIABILITIES**      \$ \_\_\_\_\_

**TOTAL LIABILITIES**      \$ \_\_\_\_\_

### CAPTIAL

#### **OWNER'S EQUITY**

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

**TOTAL CAPITAL**      \$ \_\_\_\_\_

**TOTAL LIABILITIES AND CAPITAL**      \$ \_\_\_\_\_



# EXHIBIT F - DPR 531, CONCESSION PERFORMANCE RATING

## CONCESSION PERFORMANCE RATING

State of California - The Resources Agency  
CALIFORNIA STATE PARKS

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



CATEGORIES		E	S	NI	NON	COM	NA	COMMENTS	
SAFETY	FIRE SAFETY/PREVENTION	4	3	1	0				
	GAS/ELECTRIC	4	3	1	0				
	GENERAL SAFETY	4	3	1	0				
	OTHER:	4	3	1	0				
FACILITY MAINTENANCE	INTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0				
	INTERIOR - FACILITY MAINTENANCE	4	3	1	0				
	EXTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0				
	EXTERIOR - FACILITY MAINTENANCE	4	3	1	0				
	GROUNDS - HOUSEKEEPING/CLEANLINESS	4	3	1	0				
	GROUNDS - FACILITY MAINTENANCE	4	3	1	0				
	MAINTENANCE PLAN	4	3	1	0				
	OTHER:	4	3	1	0				
INTERPRETIVE PROGRAM <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?*		
$( \frac{\quad}{\quad} ) \times 100 = \#DIV/0!$		<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	
In signing this report I do not necessarily agree with the conclusion of the rater.									
CONCESSIONAIRE'S SIGNATURE					TITLE		DATE		

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

# **EXHIBIT G - DRUG FREE WORKPLACE CERTIFICATION**

STATE OF CALIFORNIA

## **DRUG-FREE WORKPLACE CERTIFICATION**

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

### **CERTIFICATION**

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

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

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

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

**EXHIBIT H – CONCESSIONAIRE OPERATIONS PLAN**

**EXHIBIT I – CONCESSIONAIRE FACILITY IMPROVEMENT PLAN**

**EXHIBIT J – CONCESSIONAIRE INTERPRETIVE PLAN**

## **EXHIBIT K – MAINTENANCE AND HOUSEKEEPING PROGRAM**

### I. INTRODUCTION

This Concession "Maintenance Program" serves as a supplement to the concession contract but is not used to amend the authorization or to alter the rights and liabilities of parties to the contract. It is intended to further define maintenance responsibilities of the Concessionaire and the State with relation to those lands and facilities within COLUMBIA SHP, which are assigned to, or otherwise used by the Concessionaire for the purposes authorized by the contract.

In the event of any apparent conflict between the terms of the contract and this Facility Maintenance Program, the terms of the contract including its amendments, shall prevail.

This Facility Maintenance Program shall remain in effect until superseded or amended. It shall be reviewed annually and revised as determined necessary by the District Superintendent. Incorporated within this Program is the requirement for the Concessionaire to provide the State with an "Annual Maintenance Plan" for the concession premises. Said Plan shall be delivered to the District Superintendent at the start of each contract year. The District Superintendent shall provide written response thereto within thirty (30) days from receipt thereof.

It is mutually accepted at this time that the facilities assigned under this Contract may not be in compliance with all aspects of the standards defined in this Maintenance Program. The intent of this Facility Maintenance Program is to complete improvements and to comply with the standards contained herein over the term of the contract.

### II. DEFINITIONS

Concessionaire's Improvements: "Concessionaire Improvements" are defined as "buildings, structures, fixtures, furnishings, equipment, décor and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessionaire for the purpose of the contract."

Assigned Areas: The premises located at COLUMBIA SHP. These premises contain facilities used by the Concessionaire. The Concessionaire has specific responsibilities, defined below, regarding the conditions of the assigned premises together with the facilities and landscapes which occupy them.

Exterior: With regard to structures, the foundations, supports and joists under the lowest sub-floor, exterior walls and surfaces, interior load-bearing structure, roofs, and load bearing structure of all porches, stairways, and other structural attachments.

Interior: With regard to structures, the area above the lowest sub-floor inside the external walls that is not a part of the load-bearing structure including door and window frames, and those areas inside the roof, which are not structurally load bearing.

Maintenance: With regard to structures and facilities, the execution of procedures designed to correct physical deficiencies in a structure or facility that may cause either accelerated deterioration and/or loss of the facility or unsafe or hazardous conditions. The objective of maintenance is to preserve structures or facilities in a stable condition to avoid deterioration or correct unacceptable conditions.

Operations: All aspects of activity by the Concessionaire authorized under the Operation Plan include all services provided to the public and all non-public actions necessary to support those authorized services as defined in the contract.

Repair: The act of correcting an unsatisfactory physical condition. Repair is an aspect of maintenance, and the objective of repair is the same as the objective of the general act of maintenance as defined above in this section.

## GENERAL STANDARDS FOR CONCESSION FACILITIES IN CALIFORNIA STATE PARKS

A. General Standards: Department of Parks and Recreation's Operations Manual, Chapter 8, Maintenance of Facilities (0800-0883). The Department's Concession's Program Maintenance Policy is to:

1. Adequately safeguard the natural, historic, and scenic values of COLUMBIA SHP, and;
2. Obtain maximum economy in the utilization of manpower, material, equipment, and methods used to implement the maintenance activity.

California State Parks Guidelines for Maintenance of Facilities offers the following general direction regarding standards for interior and exterior maintenance. The exterior of the buildings and other outdoor appurtenances shall be in good physical condition, well painted or otherwise treated to protect against deterioration and kept clean and in good repair. Lobbies, offices, storerooms, workrooms, retail sales areas, dining areas, corridors, and other spaces shall be clean, properly illuminated and well maintained. Floors shall be clean, free of litter and stains. Vinyl floor coverings shall be clean, waxed, or buffed, free of cracks, chips and worn places. Masonry tile or flagstone grouting shall be in good repair and clean. Wood floors are to be clean and waxed or otherwise sealed. Carpeting shall be clean, reasonably free of stains and be in good repair. Walls and ceilings are to be free of breaks and stains and have a fresh appearance. Windows shall be clean and free of breaks.

It is the goal of the plan to ensure that these general standards are both adequately defined and fully achieved. To that end both Concessionaire and State have specific responsibilities. These responsibilities are defined in Sections V and VI.

#### IV. MAINTENANCE INSPECTIONS

A certified Building Inspector shall conduct an annual maintenance inspection of the facility and provide a written report to the District Superintendent thirty (30) days prior to the end of each contract year. Work needed, as identified in the inspection report, will be the responsibility of the concessionaire. An appropriate licensed contractor will accomplish identified work to meet California Building Code (CBC) and American Disabilities Act (ADA) regulations.

There shall be a joint review by the State and the Concessionaire of structures, facilities, and areas assigned to the Concessionaire to determine what maintenance work is necessary and if the facilities are compliant with applicable laws, codes and regulations, guidelines, rules, and policies. As a result of these inspections, an Annual Maintenance Plan shall be prepared by the Concessionaire and submitted to the District Superintendent by the contract year anniversary date. This program shall specify the manner in which the Concessionaire intends to execute its maintenance responsibilities during the following year. After approval of the "Annual Maintenance Plan" and prior to work on a specific maintenance project, Concessionaire shall submit a "Concession Maintenance Project Proposal" form to the District Superintendent for review and approval before commencement of any such work. Any project proposal that would result in any physical change to a structure or the environment, including air/water quality, and modification of historical buildings shall require the Concessionaire to submit a "Project Evaluation (PEF)" to the District Superintendent for review and approval before commencement of any such work.

The State Fire Marshall, at the request of the District Superintendent, shall conduct an annual inspection of the facility. A written report shall be sent to the District Superintendent. Work needed, as identified in the report, will be the responsibility of the concessionaire. A licensed contractor shall correct any deficiencies within thirty (30) days of report.

#### V. CONCESSIONAIRE'S RESPONSIBILITIES

##### A. Maintenance and Repair:

1. The Concessionaire shall maintain and repair State and Concessionaire improvements assigned to the Concessionaire in accordance with the Contract and this Exhibit "K" except as noted under "State Responsibilities".

The Concessionaire's maintenance and repair responsibilities for the concession premises include, but are not limited to: structural and landscape maintenance, including mechanical, electrical and plumbing systems, all concession improvements resting on the lands (buildings, parking areas, pavement markings, fences, curbing culverts, etc.); intrusion and fire alarm systems; interior and exterior lighting systems; fire suppression systems, utility and utility distribution systems; structural elements and surfaces (walls, ceilings, flooring, windows, doors, porches, etc. including hazard abatement); heating and cooling systems; and all installed fixtures, furnishings, décor, artifacts and equipment.

The Concessionaire's maintenance and repair responsibilities for the common interior and exterior patio areas shall include but are not limited to, landscape maintenance, repair and replacement of interior and exterior lighting systems and the repair and replacement of all fixtures, furnishings and equipment, including but not limited to, tables, chairs, benches, umbrellas and other types of patio furniture, signs, cigarette and trash receptacles, awnings and all décor, and other items identified in the Contract.

Concessionaire shall carry out general preventative and cyclic maintenance and emergency repair in a timely manner to ensure that all improvements assigned to Concessionaire achieve the basic goals described by Chapter 8, Maintenance of Facilities (0800-0883) and other codes and guidelines. The contract does not specifically identify the extent of Concessionaire's general responsibility for the physical maintenance, repair, or replacement of certain assigned areas.

The following specific requirements supplement the Concessionaire's general responsibilities listed above:

**B. Building and Appurtenances: Exterior Maintenance**

1. Doors and Windows: Shall be inspected on an annual basis and shall be maintained to prevent water or moisture from entering the building and causing deterioration of materials or structural damage to the building.

Door and window replacement: Door and window replacement shall conform to existing size, style, and appearance or as otherwise may be approved in writing by the District Superintendent.

Paint and Thinning Products: Shall be stored in fire proof cabinets or disposed of according to City, County, State, and Federal Hazardous Waste Disposal Regulations.

Structural Ventilation: Shall be inspected on an annual basis and maintained to permit air circulation as designed.

Structural ventilation: Wire screen, metal or wooden louvers shall be intact to prevent the entering of birds, bees, rodents and other wildlife.

4. Roofing: Every two years, a licensed roofing contractor shall inspect entire roof and submit a written report to District Superintendent no later than thirty (30) days prior to end of the contract year. Work needed, as identified in the inspection report, will be the responsibility of the concessionaire. An appropriate licensed contractor will accomplish identified work to meet CBC and ADA regulations.

5. Beehives: The structure(s) shall be inspected on an annual basis for beehives.

Beehives: Shall be removed from the structure by a licensed beekeeper. (applies to honey bees)

Beehives: Chemical application to remove bees shall not be permitted.

African Honeybees: Concessionaire is cautioned not to disturb the bee colonies, and to report any bee colonies or swarms within or near the concession facility to the District Superintendent immediately.

6. Insect/Pest Control: A licensed pest control contractor shall inspect all buildings/structures annually and submit a written report to the District Superintendent no later than thirty (30) days prior to the end of the contract year. All pest control shall be completed in full compliance with the Departmental "Pesticide Manual". Work needed, as identified in the inspection report, shall be the responsibility of the concessionaire and shall be completed by a licensed contractor

Exterior Lighting: Shall be maintained by the Concessionaire as required by the contract.

a. Exterior Lighting: Any new installations shall be pre-approved in writing by the District Superintendent, and, if approved, done by a California licensed electrician/contractor with energy efficient standards with dusk-to-dawn controls or timers to provide prudent energy conservation.

8. Security: The Concessionaire is responsible for the installation, inspection and maintenance of all security intrusion and fire alarm systems and equipment in all concession premises areas as required by State.

**C. Building and Appurtenances: Interior maintenance**

1. Painting: Paintable surfaces shall be painted on a regular cycle of not less than three (3) years when necessary in accordance with State contract specifications.

Painted surfaces: Shall be maintained in an acceptable manner free of peeling, blistering, and excessive wear.

Paint products: Shall be of a "best quality" from a major manufacturer and a type and color which is readily available on the open market. Any changes to paint colors from the color range provided by the District Superintendent shall be approved by the Superintendent.

Paint and thinning products: Shall be stored in fire proof cabinets or disposed of according to City, County, State, or Federal Hazardous Waste Disposal Regulations, including, but not limited to California State Fire Marshal standards.

2. Heating, Ventilating, and Air Conditioning Units: Shall be inspected by a licensed HVAC contractor on an annual basis and be clean, maintained and operated in strict accordance with manufacturer's instructions. Repairs are the responsibility of the concessionaire.

a. Heating, ventilating and air conditioning units: New installation(s) and repair shall be done in accordance with manufacturer's recommended requirements.

b. Heating, ventilating, and air conditioning units: Adjacent areas shall be free of litter, dirt accumulation and unnecessary storage.

3. Electrical Systems: Shall be maintained and inspected on an annual basis for compliance with the National Electrical Code and requirements of the utility provider.

Electrical systems: Shall be equipped with properly functioning safety equipment. Overload protective devices and switches.

Electrical systems: High voltage (220v and higher) shall have contact points marked in accordance with National Safety Council coding standards.

Electrical systems: Installations shall be in accordance with the National Electrical Code and installed by a California licensed electrician/contractor.

4. Fire Protection Systems: Fire Alarms and Sprinkler systems shall be inspected annually by a licensed contractor, and be in full operating condition at all times in accordance with California Department of Forestry, City, County, State, and National Fire Protection Association requirements.

a. Fire protection systems: Installations shall be done by a licensed technician/contractor.

5. Fire Escapes and Exits: Shall be inspected on an annual basis and be maintained to provide safe and expedient exit from the building at all times.

Fire escapes and exits: Fire exit doors shall be equipped with operable panic hardware and be identified by illuminated fire exit signs.

Fire escapes and exits: A fire or emergency exit plan shall be posted on each floor, showing the escape routes and emergency exit doors.

Fire escapes and exits: Installations of fire escapes and emergency exit hardware and signs shall receive prior written approval from the District Superintendent.

6. Floor and Floor Coverings: Shall be inspected on an annual basis and be maintained to prevent signs of displacement, deflection, water damage, and abnormal deterioration.

Floors and floor coverings: Shall be maintained so they are free of objectionable deterioration, evidence of vandalism and excessive wear.

Floors and floor coverings: Hardwood floors, tile and linoleum coverings shall be maintained using proper sealants and waxes.

Every five- (5) years, a licensed contractor will refinish wood floors and display cabinets/counters. This work is the responsibility of the concessionaire.

7. Interior Lighting: Shall be maintained by the Concessionaire as required by the contract.

8. Asbestos: In the course of some maintenance projects, it may be necessary to ascertain the presence of asbestos and/or lead. The Concessionaire is responsible for maintaining health and safety standards in the presence of asbestos and/or lead in all assigned buildings and areas. To this end, the concessionaire will be responsible for bringing in an appropriate licensed contractor to conduct inspection and testing, and to provide a written report to the State. Concessionaire will be responsible for any mitigation measures identified in report. All work shall be done by an appropriate licensed contractor and in accordance with CBC and any other regulations or laws pertaining to the removal of asbestos and/or lead.

9. Security: All security intrusion and fire alarm systems and equipment, including installation, inspection and maintenance, and personnel security policies and procedures shall be strictly adhered to as required by Contract.

#### **D. Utilities**

1. Water Systems: The Concessionaire shall maintain the water system within its assigned area.

The Concessionaire shall replace or repair any damage to the water system, within the assigned areas. The Concessionaire shall also maintain all fixtures attached to the water system within all buildings and structures.

Water systems shall be maintained showing no evidence of leaks and all reasonable measures have been taken to conserve water through the use of water restricting flow devices and low volume flush toilets.

New installations shall be done by a licensed plumber/contractor and receive prior written approval of the District Superintendent.

2. Sewage Systems: Shall be operated and maintained by the Concessionaire within the assigned areas.

Concessionaire shall replace or repair any damage to the sewage disposal system within the assigned areas.

Concessionaire shall maintain and repair the internal building fixtures attached to the sewage disposal system (including sinks, toilets, urinals, and dish washing equipment etc.).

Concessionaire shall be responsible for maintenance and cleaning of grease traps (interceptors) serving all facilities within assigned areas.

Effluent discharged on the ground shall be handled according to U. S. Public Health Service and State of California Water Quality Control Board standards.

3. Natural and Liquefied Petroleum Gas Systems: Shall be maintained from the meter or tank into the building and installations and appliances shall comply with the following:

National Fire Protection Association (NFPA) installation of gas appliances and gas piping.

National Fire Protection Association (NFPA) storage and handling of liquefied petroleum gases.

Concessionaire shall maintain according to NFPA codes, all liquid petroleum gas (LPG) systems in their assigned areas. This includes, but is not limited to tanks, valves, regulators, and piping. Placement of new or additional tanks shall be subject to written approval from the District Superintendent.

Concessionaire shall arrange for an annual inspection of its gas storage distribution systems. Such inspection shall include a representative of the park unit staff. All gas installations shall require a licensed California LPG contractor.

4. Electrical Systems:

The concessionaire shall be responsible for maintenance of all electrical lines and equipment (conduits, fuses, panels, switches, etc.) within all assigned buildings and structures (both state and concessionaire improvements) and for all fixtures (lines, cords, and equipment) affixed to the secondary electrical lines beyond the electric meters/main disconnects within the assigned areas maintained by the concessionaire. Maintenance of electrical circuits shall be considered as beginning at the meter/main disconnects.

Concessionaire shall repair or replace any damage to the electrical system beyond the meters/main disconnects within the assigned areas, as a result of acts by the concessionaire, its employees, patrons and/or agents.

All construction requiring electrical work or rewiring of existing facilities shall be completed only by a California licensed electrician at Concessionaire's expense, and that inspection shall certify to the State the installation meets all applicable laws.

Examples of electrical work include additions of electric panels or sub-panels, a new circuit or meter box, and renovations of existing electrical systems.

**E. Food Service Equipment:**

1. All equipment used in food service operations, especially dishwashers, refrigerators, freezers, serving counters, etc., shall be maintained in compliance with United States public health Service Standards and State and Local requirements associated with food service activities.

2. A licensed refrigeration contractor shall annually inspect and provide the State with a written report on the condition of facility freezers and/or refrigerators. Repairs needed, as identified by the inspection report, are the responsibility of the concessionaire and shall be done by a licensed refrigeration contractor.

**F. Historic Structures:**

1. Any concession facility eligible or listed on the National Register of Historic Places shall have work done in accordance with the Secretary of the Interior's Standards for Historic Preservation (36 CFR 68) and in full compliance with the National Historic Preservation Act of 1966, and Department of Parks and Recreation (DPR) Form 750 or 523.

**G. Signs:**

The California State Parks' Old Sacramento's Historic District Guidelines state:

Public signs for which the Concessionaire is responsible shall be appropriately located, accurate, attractive, and well maintained. Signs of a permanent nature shall be prepared in a professional manner, consistent with DPR standards, appropriate for the purpose they serve, and approved by the District Superintendent prior to installation.

2. Concessionaire shall be responsible for the installation, maintenance, and replacement of all interior and exterior signs relating to its operations and service within the assigned areas. Examples of this responsibility are signs identifying the location of functions (when attached to Concessionaire operated buildings or on grounds assigned to the Concessionaire), signs identifying operating services and hours, and signs identifying the Concessionaires rules or policies.

3. Concessionaire is responsible for ensuring that its signs are compatible with California State Parks sign standards as determined by the District Superintendent. All new sign installations shall be approved in advance by the District Superintendent. No handwritten or typed signs shall be permitted within the Concessionaire's assigned area(s).

**H. Litter and Garbage:**

1. Concessionaire shall keep all assigned areas free of litter, garbage, abandoned equipment, vehicles, furniture or fixtures.

2. Concessionaire shall provide an effective system for the collection and disposal of garbage and trash within its areas of responsibility. Waste should not accumulate in trash containers to the point of overflowing. Trash containers shall be conveniently located and in sufficient quantity to handle the needs of the area. Refuse

shall be stored in receptacles which are covered, waterproof, and which comply with all relevant construction standards (such as raccoon and vermin proof), as specified by the unit or district. State and/or county codes shall also be followed if applicable.

3. The general standard for concession facility grounds includes the following: Grounds shall be well maintained, properly illuminated, uncluttered, and free of litter and debris. This shall include facility entrances, stairways, parking areas, trails, driveways, walkways, and other areas for which the Concessionaire has responsibility or as outlined in the contract.

4. The Concessionaire shall use adequate DPR approved trash and garbage containers within the assigned areas. These containers shall be clean, well maintained, serviceable, and the sites free of spills, waste and reasonably odor free. Additionally, to prevent pest attraction and breeding, all garbage shall be adequately bagged and tied.

5. All materials generated as solid waste, slash, untreated wood and tree branches, shall be removed from the Park at Concessionaire's expense and disposed of at an approved land fill or disposal site outside the Park boundary.

#### **I. Grounds and Landscaping:**

Concessionaire shall conduct business and daily activities in such a manner as to minimize impacts on the natural scene. This shall involve protecting native vegetation and controlling erosion.

A State representative will annually inspect the grounds and landscaping areas associated with the concession, and provide a written report to the concessionaire regarding the conditions of the grounds and landscaping. The written report will identify the grounds and landscaping work that concessionaire will be required to complete as part of the maintenance requirement of the contract. All landscaping work identified in the report will be the responsibility of the concessionaire. An appropriate licensed contractor shall do any tree trimming.

Concessionaire shall prepare and submit to the District Superintendent, a well-defined landscape plan for the installation, care and maintenance of all landscaped areas, including, but not limited to: restaurant grounds, parking lot planters and all other landscaped areas. Additionally, Concessionaire shall receive prior State approval before undertaking any new landscaping activities.

In a historic park, the welfare of the buildings, structures, and artifacts in the vicinity of any planting shall be considered the paramount issue. In areas where non-historic structures exist, the landscape should reflect and interpret the area as it would have been found during the interpretive period. The following restrictions apply to Concessionaires in a historical park:

All plants used shall be consistent with the approved plant list. All landscape efforts should be done with interpretation in mind. (i.e., if it does not have an appropriate story, it does not belong)

b. All landscape improvements shall be made according to plans and specifications approved by the District Superintendent. It should also be noted that virtually all landscape plans shall require CEQA approval. As a general rule, all digging shall require monitoring by a State approved archaeologist.

c. All landscape efforts should employ xeriscape techniques as much as possible. Large volume watering requirements are inconsistent with historical landscaping, native plants, and modern resource management practices.

**J. Roads, Trails, Parking Areas, and Walkways:**

Concessionaire shall be responsible for the removal of litter and trash as identified in the concession contract.

Concessionaire shall be responsible for maintaining, repairing and replacement of all parking areas, sidewalks, walkways, and trails within its assigned area of responsibility.

Maintenance of sidewalks, walkways, and trails shall ensure that paved/unpaved surfaces are safe for pedestrian traffic. In all assigned areas the Concessionaire shall be responsible for sweeping walks on a recurring schedule that ensures public areas are consistently clean and free from litter, and other debris, and otherwise maintained in safe conditions and aesthetically acceptable as public use areas.

Concessionaire shall install and maintain lighting systems that provide adequate levels of lighting for security and safe nighttime walking in assigned areas. Construction of additional path or parking area lighting shall occur only with written permission of the District Superintendent.

**K. Alterations:**

1. All work, whether preventative, routine and/or emergency maintenance repairs, shall be the responsibility of the concessionaire and be performed by an appropriate licensed contractor. All work needs State approval prior to start of work.

2. For any projects/maintenance/repair work that shall result in changes, alterations, or modifications to existing structures, facilities, or assigned areas, the Concessionaire shall submit a written proposal package (Concession Maintenance Project Proposal Form) to the District Superintendent for prior written approval. This clause applies to projects that change the functions, nature, or appearance of a structure, facility, or area. Sufficient lead-time should be allowed for project review.

3. Project Proposal Package to include, but is not limited to the following:

a. Background Narrative & Justification Statement.

Full Written Description of Project:

- What work is to be accomplished.
- Cost estimates with basis.

- Design/Construction drawings, photos, maps, etc.
- Material and equipment submittals.
- How work is to be accomplished and by whom.
- Proposed start date and estimated completion date.
- Hours of planned work activity.
- Description of proposed safety measures to be taken.
- Listing of Project Supervisor and On-Site Supervisor.

- c. Compliance with Federal and State Accessibility Standards.
- d. Analysis of foreseen impacts to the visiting public and to natural and cultural resources.

4. All work which shall modify the existing configuration of facilities and/or site improvements shall be defined by construction documents stamped by the appropriate professional engineering or licensed architectural designer. These documents shall be submitted to the District Superintendent for consideration. No work is to commence until written approval from the District Superintendent is received.

5. Prior to beginning work on any project, a Pre-Construction meeting shall be held between the Concessionaire and State Park staff.

6. All projects are to be performed by licensed California contractors, except with the prior written authorization of the District Superintendent. All work must meet or exceed all applicable codes and regulations. A California licensed contractor, without exception, shall perform all work on electrical systems, fire protection systems, or gas-fired heating systems.

7. Projects and work sites are subject to on-site inspection and review by the State.

## VI. STATE RESPONSIBILITIES

A. The State admits or assumes no responsibility for the execution of physical maintenance work on state buildings, structures, facilities or areas assigned to the Concessionaire except as stated below. The State shall assist the Concessionaire in its maintenance program by assuming and executing the following responsibilities:

1. Exterior:

State shall be responsible for the maintenance, testing, and repair of all fire hydrants on water mains within the Concessionaire assigned areas.

2. Historic Structures:

a. The State shall provide oversight and advice regarding the management of identified or potentially eligible historical and cultural resources assigned to the Concessionaire.

3. Signs:

State is responsible for all regulatory, control, or information signs that serve the interest of the State. Examples include information signs along roadways, directional signs along trails, walkways, and interpretive signing. The State shall install, maintain, and replace all such exterior signing outside the assigned area. All roadway signs are the responsibility of the State.

State shall provide direction and assistance to the Concessionaire in cases where such Concessionaire is responsible for design and installation of signs.

4. Fire and/or Security Detection Systems:

State shall provide direction and assistance to the Concessionaire in areas where such Concessionaire is responsible for the design and installation of fire, security and intrusion detection equipment.

