

**SAMPLE CONCESSION CONTRACT #2**

FOR

San Diego Coast Private/Semi-Private Surf School

AT

**Frazee State Beach**

**(aka Carlsbad State Beach North of Tower #9)**

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



San Diego Coast Private/Semi-Private Surf Schools at Frazee State Beach  
SAMPLE CONCESSION CONTRACT #2  
INDEX

1. DESCRIPTION OF PREMISES .....	96
2. CONDITION OF PREMISES.....	96
3. TERM.....	96
4. RENT .....	97
5. USE OF PREMISES .....	99
6. BONDS .....	101
7. INSURANCE .....	102
8. ALCOHOLIC BEVERAGES .....	104
9. CONTRACT NOTICE.....	104
10. RECORDS AND REPORTS .....	105
11. GROSS RECEIPTS .....	106
12. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES.....	106
13. PERFORMANCE EVALUATIONS AND INSPECTION .....	106
14. HOLD HARMLESS AGREEMENT .....	107
15. TAXES .....	108
16. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS.....	108
17. PERSONAL PROPERTY .....	109
18. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL .....	109
19. UTILITIES AND SERVICES.....	111
20. RESOURCE CONSERVATION .....	111
21. HAZARDOUS SUBSTANCES .....	112
22. EQUIPMENT.....	114
23. SIGNS AND ADVERTISING .....	114
24. PHOTOGRAPHY .....	114
25. INTELLECTUAL PROPERTY RIGHTS.....	114
26. PARTICIPATION IN STATE PARK MARKETING PROGRAMS.....	114
27. DEFAULT BY CONCESSIONAIRE.....	115
28. STATE'S REMEDIES.....	117

29. DEFAULT BY STATE .....	121
30. SURRENDER OF THE PREMISES; HOLDING OVER .....	121
31. NO RECORDATION; QUITCLAIM.....	122
32. ATTORNEYS FEES.....	123
33. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES.....	123
34. NONDISCRIMINATION .....	123
35. DISABILITIES ACCESS LAWS.....	124
36. DRUG-FREE WORKPLACE .....	125
37. UNION ORGANIZING .....	125
38. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.....	125
39. CHILD SUPPORT COMPLIANCE ACT .....	126
40. EMPLOYEE TRAINING .....	126
41. CONFLICT OF INTEREST.....	126
42. WAIVER OF CLAIMS.....	127
43. WAIVER OF CONTRACT TERMS.....	127
44. INTERPRETATION OF CONTRACT .....	127
45. DURATION OF PUBLIC FACILITIES .....	128
46. TIME OF ESSENCE .....	128
47. EMINENT DOMAIN.....	128
48. TEMPORARY TENANCY .....	128
49. AGREEMENT IN WRITING .....	128
50. PARAGRAPH TITLES .....	128
51. CONTRACT IN COUNTERPARTS .....	129
52. INDEPENDENT CONTRACTOR .....	129
53. ASSIGNMENTS AND SUBCONCESSIONS.....	129
54. MODIFICATION OF CONTRACT .....	129
55. UNENFORCEABLE PROVISION .....	130
56. APPROVAL OF CONTRACT .....	130
57. STATE’S DISTRICT SUPERINTENDENT .....	130
EXHIBIT A – THE PREMISES .....	132
EXHIBIT B – OPERATION PLAN.....	133

EXHIBIT C – CONCESSIONAIRE FINANCIAL STATEMENT (DPR 86) ..... 134  
EXHIBIT D – CONCESSIONAIRE PERFORMANCE RATING (DPR 531) ..... 138  
EXHIBIT E – DRUG-FREE WORKPLACE CERTIFICATION (STD 21) ..... 140

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

**SAMPLE CONCESSION CONTRACT #2**

For

**San Diego Coast Private/Semi-Private Surf School**

Located In

Frazee State Beach

San Diego County

THIS CONTRACT is made and entered into by and between the STATE OF CALIFORNIA, acting through its Department of Parks and Recreation, hereinafter referred to as "State", and **Concessionaire** 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 a nonexclusive concession in Frazee State Beach at the location(s) as set forth in **Exhibit A**, attached to and made a part of this contract (the "Premises".)

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

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

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

### 3. **TERM**

The term of this contract shall be for a period of five years (5) with an additional five (5) year option to renew at the State's discretion commencing on the first day of the month following approval by State, the Office of the Attorney General, and the Department of General Services, as shown below. Should Concessionaire hold-over after the expiration of the term of this contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this contract, with continuous Consumer

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

For purposes of this contract, the term "contract year" shall mean each one-year period of time that commences on the commencement date identified above, extending twelve (12) months therefrom, and continuing from each anniversary throughout the term of the contract.

#### 4. **RENT**

During the months of June, July, and August Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Monthly Rent" two hundred dollars (\$200) *[or as bid]* or twelve percent (12%) *[or as bid]* of Gross Receipts, whichever is greater. During all other months, Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Monthly Rent", the sum of twelve percent (12%) *[or as bid]* of Gross Receipts.

Concessionaire shall make payment of Minimum Monthly 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 opening of the concession for business, 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 in a format provided by 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. 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 God or other reasons beyond Concessionaire's control, and when requested in writing in advance by Concessionaire, Minimum Rent may be abated in proportion to the amount by which gross receipts are reduced by the occurrence for such period of reduced or non-operation, as determined in the sole discretion of State.

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

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

## 5. USE OF PREMISES

The Premises shall be used by the Concessionaire for surfing instruction. Activities provided shall include daily surfing instruction and other beach and water sports such as body surfing, body boarding, and volleyball. The Use of Premises shall be consistent with the State approved "Operation Plan" as proposed by Concessionaire and modified by State as is reasonable and necessary to meet the intention of the State for this concession operation and the mission of the Department. The approved "Operation Plan" is incorporated herein and made part of this contract as **Exhibit B**.

Surfing Instruction: No more than three (3) students are allowed per instructor. No more than nine (9) students are allowed per class. No students are allowed in the water prior to 8 am. Lessons must end by one-half hour before sunset. No instruction may occur on weekends or holidays between Memorial Day and Labor Day weekends annually. State may require Concessionaire to adjust the days and/or hours of operation to a schedule provided by State. All students shall be supervised by concession staff at all times while on the Premises. Concessionaire may not reserve campsites at any State Beaches for use by concession staff or students or for other use in concession operation. Concessionaire shall ensure that all students certify in writing that they are able to swim.

Concession Staff: Concessionaire shall require all surfing instructors to be experienced surfers skilled in the intricacies of ocean behavior. All instructors must have Advanced First Aid and CPR certification. At anytime students are in the water, at least one American Red Cross Lifeguard certified instructor must be present and supervising the class. Proof of certification must be submitted to State prior to the start of employment and must remain current for the duration of employment. Each concession employee,

including Concessionaire and any Subconcessionaire, must be fingerprinted through the live scan process and results of said live scan must be on file with the State prior to work performed in association with this concession contract. Any persons with a report of criminal history, as identified by the live scan process, will be subject to review and approval by the State. Concession staff shall have at least one cellular phone programmed with the SURCOM emergency phone number (951-443-2969). State shall notify Concessionaire of phone number changes.

Lifeguard Services: The State may provide lifeguard services on the Premises. At anytime during the term of this contract, if an injury or death of a concession staff or customer occurs during the execution of the terms of this contract, Concessionaire shall maintain total liability. Any State lifeguard present on the beach at any time is responsible for patrol of the entire State Beach property and the safety of all persons present. At no time shall said lifeguard be responsible solely for the concessionaire and the concession clients.

Department Regulations: Concessionaire agrees that any Department staff has the right to expel any Concession staff or student who violates Department rules and regulations. Regulations that the Concessionaire agrees to follow include but are not limited to:

- A. Adherence to all regulations regarding property closures, trespass, and entrance to prohibited areas;
- B. Payment of all day use fees for all vehicles associated with the Concession;
- C. Adherence to 10 p.m. beach closure;
- D. Adherence to all state law as it applies to the use of tobacco, alcohol, and other controlled substances.

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.

**6. BONDS**

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

B. Performance Bond: Concessionaire, at Concessionaire's own cost and expense, agrees to obtain and deliver to State, prior to the commencement date of this contract and prior to entering the Premises, and will maintain in force throughout the term of this contract, a valid Performance Bond (which may be renewed annually) in the sum of one thousand dollars (\$1,000) payable to the State. This bond will insure faithful performance by Concessionaire of all the covenants, terms, and conditions of this contract inclusive of, but not restricted to, the payment of all rentals, fees, and charges and prompt performance of and/or payment for all maintenance obligations. In lieu of a bond, the Concessionaire may substitute another financial instrument (such as an Irrevocable Standby Letter of Credit), which must be sufficiently secure and acceptable to State. At least thirty (30) days prior to the expiration or termination of said bond or acceptable financial instrument, a signed endorsement or certificate showing that said bond or financial instrument has been renewed or extended shall be filed with the State. Within 15 days of State's request, Concessionaire shall furnish State with a signed and complete copy of the valid bond or financial instrument.

C. 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 shall cause State to incur costs and significant risks not contemplated by this contract, the exact amount of which shall 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 hundred dollars (\$500), 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)]**

## 7. **INSURANCE**

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

1) Liability Insurance:

- Commercial General Liability
- Automobile Liability (for all owned, non-owned, and hired vehicles used by Concessionaire in the conduct of business under this contract)

Each policy of liability insurance described above shall be in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damages combined.

2) Workers' Compensation Insurance: A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Such insurance shall include employer's liability coverage of One Million Dollars (\$1,000,000) and shall specifically cover all persons providing services by or on behalf of the Concessionaire and shall cover all risks to such persons under this contract.

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 paragraph 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 contain additional named insured endorsements in the name of the State of California, through its Department of Parks and Recreation, as to all insurable interests of the State including, but not limited to, the premises and all contents as follows:

- 1) State of California, its officers, employees, and servants are included as additional insured but only insofar as operations and facilities under this contract are concerned;
- 2) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

D. No cancellation provision in any insurance policy shall diminish the responsibility of Concessionaire to furnish continuous insurance throughout the term of this contract. Each policy shall be underwritten to the satisfaction of the State. A signed certificate of insurance with each endorsement required shall be submitted to State at the time this contract is executed, showing that the required insurance has been obtained. Further, at least thirty (30) days prior to the expiration of any such policy, Concessionaire shall submit to State a signed and complete certificate of insurance with all endorsements required by this

paragraph, showing to the satisfaction of State that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, Concessionaire shall furnish State with a signed and complete copy of the required policy.

**8. ALCOHOLIC BEVERAGES**

Notwithstanding anything to the contrary, the sale of liquor, beer, or other alcoholic beverages on the Premises is expressly prohibited.

**9. CONTRACT NOTICE**

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

Concessionaire at:	Concessionaire Address City, State Zip xxx-xxx-xxxx
State at:	Department of Parks and Recreation San Diego Coast District Office 4477 Pacific Highway San Diego, CA 92110 619-688-3260
Copy to:	Department of Parks and Recreation Concessions & Reservations Division P.O. Box 942896 Sacramento, California 94296-0001

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 paragraph shall preclude the giving of any such notice by personal service.

## 10. RECORDS AND REPORTS

Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this contract in a manner that conforms to industry standards and practices and in a manner acceptable to State. Concessionaire shall keep all records for a period of at least four years.

In accordance with Public Resources Code Section 5080.18(b), copies of all sales and use tax returns submitted by Concessionaire to the California State Board of Equalization, the Employment Development Department, the Franchise Tax Board, or any other governmental agency shall be concurrently submitted to State no later than May 1st of each year during the term of this agreement.

In accordance with Public Resources Code Section 5080.18(c), State shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine and copy Concessionaire's books and records including all tax records and returns. Concessionaire hereby agrees to make all such records, books, and tax returns available to State upon State's request therefor. Concessionaire further agrees to allow interviews of any employees who might reasonably have information related to such records.

Concessionaire will submit to State, no later than May 1st of each year during the term of this contract, a verified profit and loss statement for the previous calendar year. Such statement shall be submitted on Form DPR 86, "Concessionaire's Financial Statement", attached hereto as **Exhibit C**, 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.

**11. GROSS RECEIPTS**

The term "gross receipts", wherever used in this contract, is intended to and shall mean all moneys, property, or any other thing of value received by Concessionaire and any sub-concessionaire or operator, if other than Concessionaire, through or in connection with the operation of the concession, including any concession related business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this contract, or that associates with or implies an endorsement by State, all without deduction. The term "gross receipts" shall not include any sales taxes imposed by any governmental entity and collected by Concessionaire.

**12. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES**

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

**13. PERFORMANCE EVALUATIONS AND INSPECTION**

As part of its administration of this contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A "Concessionaire

Performance Rating” (DPR Form 531) attached hereto as **Exhibit D**, or other similar format(s) as may be adopted by the State will be utilized for evaluation purposes. State further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Concessionaire’s performance of the terms and conditions of this contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the State Park System. Concessionaire agrees to cooperate with State in all respects related to the implementation of State’s Concession Performance Evaluation program and with State’s activities on the Premises. State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State’s entry in the Premises as provided herein., except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

#### **14. HOLD HARMLESS AGREEMENT**

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

**15. TAXES**

A. By signing this contract, Concessionaire acknowledges that occupancy interest and rights to do business on state property being offered Concessionaire by this agreement 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.

**16. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS**

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

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

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

**17. PERSONAL PROPERTY**

Except to the extent covered by **Paragraph 16**, 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.

**18. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL**

During the term of this contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the 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 State Park standards.

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

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

C. Removal and Restoration. At the expiration or sooner termination of this contract, Concessionaire at its own expense shall remove all personal property brought onto the Premises by Concessionaire. Concessionaire, at Concessionaire's expense, shall restore and repair the Premises, and any of Concessionaire's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.

**19. UTILITIES AND SERVICES**

Concessionaire shall be responsible for all costs associated with the installation and provision of 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.

**20. 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:

B. 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.

**21. 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 paragraph 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 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: 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).

**22. EQUIPMENT**

Concessionaire, at Concessionaire's own expense, shall completely equip the concession improvements described herein and shall keep the same equipped in a safe and first-class manner throughout the term of this contract.

**23. SIGNS AND ADVERTISING**

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

**24. 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.

**25. INTELLECTUAL PROPERTY RIGHTS**

Any names, logos, trademarks, and/or copyrights 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, shall belong to State upon creation, and shall continue in State's exclusive ownership upon termination of this contract. Further, any works developed pursuant to this contract by Concessionaire, including all related copyrights and other proprietary rights therein, shall belong to State upon creation, and shall continue in State's exclusive ownership upon termination of this contract.

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

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

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

- A. Concessionaire agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.
- B. Concessionaire agrees to place on the 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.
- C. Concessionaire agrees to rent or sell, along with all other items of merchandise that are part of the Concessionaire's normal and customary inventory, any item of merchandise that the State approves under this program, provided that Concessionaire is authorized to sell or rent it under the terms of the contract, and the Concessionaire receives reasonable compensation for its sale.

**27. 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 sixty (60) 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.

## **28. 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. Right of Entry as Agent (Maintain Contract in Effect): In any case in which provision is made herein for the termination of this contract by the State or in the case of abandonment or vacating of the Premises by Concessionaire, the State, in lieu of declaring a forfeiture, may enter upon the Premises. To such end, Concessionaire hereby irrevocably appoints the State as Concessionaire's agent to remove any and all persons or property on the Premises and place any such property in storage for the account of and at the expense of Concessionaire and to enter into such other contracts for operation of the Premises as the State, in its sole discretion, may deem appropriate. Until the Premises are relet and/or assigned, if at all, Concessionaire shall pay to State all amounts required to be

paid by Concessionaire hereunder. Further, if a sufficient sum shall not be realized through efforts to relet, after paying expenses of such reentry and contracting, to satisfy the rent and other sums herein agreed to be paid by Concessionaire, such shortage of rent and expenses shall be paid by Concessionaire. Concessionaire agrees to save the State harmless from any loss or damage or claim arising out of the action of the State in accordance with this paragraph. Notwithstanding that State fails to elect to terminate this contract initially, State, at any time while any default of Concessionaire has not been cured, may elect to terminate.

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: State may terminate Concessionaire's right to possession of the Premises at any time. However, no act by State, other than giving specific notice of termination to Concessionaire, shall terminate this contract. 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 not constitute a termination of Concessionaire's right to possession. On termination, State has the right to recover from Concessionaire: the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of Concessionaire's possession; 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 Concessionaire's possession until the time of the award exceeds the amount of loss of rent that Concessionaire proves could have reasonably been avoided; 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 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.

**29. 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.

**30. 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 Paragraph 3, 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 monthly rent shall be increased by 10% over the monthly rent of the last month prior to the expiration or earlier termination of the contract, unless otherwise agreed to in writing by State. Concessionaire shall pay such monthly 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.

**31. 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.

**32. 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.

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

Concessionaire shall comply with all applicable laws, rules, regulations, and orders existing during the term of this contract, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historical preservation, environmental impacts, and State building codes and regulations.

**34. NONDISCRIMINATION**

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

shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

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 (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)-(f), are incorporated into this contract by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §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 paragraph, the State will have the right to terminate this contract, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by the Concessionaire.

### **35. DISABILITIES ACCESS LAWS**

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

With regard to facilities for which Concessionaire is responsible for operation, maintenance, construction, restoration, or renovation under this contract, Concessionaire also shall be responsible for compliance with Government Code Section 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws. Written approval from State is required prior to implementation of any plans to comply with accessibility requirements.

**36. DRUG-FREE WORKPLACE**

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

**37. UNION ORGANIZING**

Concessionaire shall not use the Premises to hold a meeting with any employee(s) or supervisor(s) if the purpose of the meeting is to assist, promote, or deter union organizing. This provision does not apply if the Premises are equally available, without charge, to the general public for holding a meeting. Breach of this provision shall subject Concessionaire to civil penalties and damages pursuant to California Government Code §§ 16645.5 and 16645.8.

**38. 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.

**39. 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 fully 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 fully 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.

**40. EMPLOYEE TRAINING**

All concession employees shall receive training to include an orientation on the State Park System, and local points of interest, provided by Concessionaire. Such orientation shall be sufficient to permit concession employees to reply adequately to inquiries from the visiting public. Training also shall include job or task-specific training necessary to ensure high-quality job performance in a manner consistent with the protection of the State Park System and its visitors. Concessionaire's Employee Training/Orientation Program is subject to approval by the State.

**41. 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 paragraph, State shall have the right both to annul this contract without liability and, in its discretion, recover the full amount of any compensation paid to such official, employee, or business entity.

**42. 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.

**43. 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.

**44. 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.

**45. 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.

**46. TIME OF ESSENCE**

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

**47. 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.

**48. 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.

**49. AGREEMENT IN WRITING**

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.

**50. PARAGRAPH TITLES**

The paragraph 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.

**51. CONTRACT IN COUNTERPARTS**

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

**52. INDEPENDENT CONTRACTOR**

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

**53. ASSIGNMENTS AND SUBCONCESSIONS**

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

**54. MODIFICATION OF CONTRACT**

Notwithstanding any of the provisions of this contract, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. Such written modifications or additions to this contract shall not be effective until signed and acknowledged by the State and Concessionaire and approved in writing by the Department of General Services and the Attorney General of the State of California.

The State shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

**55. UNENFORCEABLE PROVISION**

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

**56. APPROVAL OF CONTRACT**

This contract, amendments, modifications, or termination thereof shall not be effective until approved by State's relevant control agencies.

**57. STATE'S DISTRICT SUPERINTENDENT**

For purposes of this contract, the "District Superintendent" is the State representative in direct charge of the San Diego Coast District. The District Superintendent or designee 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 problems as might arise.

**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  
DISTRICT SUPERINTENDENT**

By: \_\_\_\_\_

By: \_\_\_\_\_

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**

Frazee State Beach (aka Carlsbad State Beach)

North of Tower #9



**EXHIBIT B – OPERATION PLAN**

*To be determined by the winning proposal.*

**EXHIBIT C – CONCESSIONAIRE FINANCIAL STATEMENT (DPR 86)**

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>	\$ _____

**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>NET PROFIT FROM OPERATIONS</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 D – CONCESSIONAIRE PERFORMANCE RATING (DPR 531)**

**CONCESSION PERFORMANCE RATING**

State of California - The Resources Agency  
CALIFORNIA STATE PARKS

DISTRICT				PARK UNIT			DATE	
CONCESSIONAIRE				TYPE OF CONCESSION				
CATEGORIES		EXCELLENT (E)	SATISFACTORY (S)	NEEDS IMPROVEMENT (NI)	NONCOMPLIANCE/ UNACCEPTABLE (NON)	COMPLIANCE (COM)	NOT APPLICABLE (NA)	COMMENTS
<i>Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box.</i>								<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			
TOTAL POINTS PER COLUMN PAGE 1 ONLY					0			

CATEGORIES		E	S	NI	NON	COM	NA	COMMENTS
SAFETY	FIRE SAFETY/PREVENTION	4	3	1	0			
	GAS/ELECTRIC	4	3	1	0			
	GENERAL SAFETY	4	3	1	0			
	OTHER:	4	3	1	0			
FACILITY MAINTENANCE	INTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	INTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	EXTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	EXTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	GROUNDS - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	GROUNDS - FACILITY MAINTENANCE	4	3	1	0			
	MAINTENANCE PLAN	4	3	1	0			
	OTHER:	4	3	1	0			
INTERPRETIVE PROGRAM <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
<i>In signing this report I do not necessarily agree with the conclusion of the rater.</i>								
CONCESSIONAIRE'S SIGNATURE			TITLE			DATE		

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

**EXHIBIT E – DRUG-FREE WORKPLACE CERTIFICATION (STD 21)**

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.