

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

Request for Proposals

Historic-Style Jewelry Store Concession



Old Sacramento State Historic Park
Sacramento, California



RFP #: P17CA029

REQUEST FOR PROPOSALS

FOR

Historic-Style Jewelry Store Concession

AT

Old Sacramento State Historic Park

Opening Date:
April 22, 2018

Closing Date
June 4, 2018

STATE OF CALIFORNIA – RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
CONCESSIONS DIVISION
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814
www.parks.ca.gov/concessions



NOTICE OF REQUEST FOR PROPOSALS

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

Concession Name:	Historic-Style Jewelry Store Concession
Park Unit:	Old Sacramento State Historic Park
Proposal Closing Time & Date:	2:00 PM, Monday, June 4, 2018
Proposal Submission Location:	California State Parks Partnerships Office 1416 9 th St., Room 1442-07 Sacramento, CA 95814
Concession Type:	Historic-Style Jewelry Store
Contract Term:	Ten (10) year contract
Annual Rent:	\$28,000/year or 3% of annual gross receipts up to \$25,000; and 4% of annual gross receipts over \$25,000, whichever total is greater.
Concessionaire Capital Outlay:	No minimum amount required
Maintenance Fund Allocation:	0.25% of Gross Sales
Proposal Bond (due at time of proposal submission):	Five thousand dollars (\$5,000)
Performance Bond (due at time of Contract execution):	Twelve thousand dollars (\$12,000)
Proposer's Minimum Years of Relevant Experience:	Three (3) years
Optional Pre-Proposal Meeting:	Wednesday, May 2, 2018 at 6:00 PM

For more information or to purchase a copy of the complete RFP, contact Kevin White at the Partnerships Office at (916) 654-8924 or email at kevin.white@parks.ca.gov. Interested parties may download a complimentary copy of the RFP at www.parks.ca.gov/concessions.

Lisa Ann L. Mangat, *Director*

TABLE OF CONTENTS

NOTICE OF REQUEST FOR PROPOSALS	1
SECTION 1 - PROJECT SUMMARY	1
1.1 GOAL & OBJECTIVES	1
<i>Department Mission</i>	<i>1</i>
<i>Park Mission.....</i>	<i>1</i>
<i>Park Objectives.....</i>	<i>1</i>
<i>Goal of this Request for Proposals (RFP)</i>	<i>1</i>
<i>Objectives of this RFP.....</i>	<i>1</i>
1.2 GENERAL INFORMATION.....	1
<i>Site Description</i>	<i>1</i>
<i>The Building</i>	<i>2</i>
<i>Current Concession Operation.....</i>	<i>2</i>
<i>Future Site Plans.....</i>	<i>2</i>
1.3 CONCESSION CONTRACT SUMMARY.....	3
SECTION 2 - THE RFP PROCESS	5
2.1 PROPOSAL PROCESS.....	5
<i>Tentative Proposal Dates.....</i>	<i>5</i>
<i>Optional Pre-Proposal Meeting.....</i>	<i>5</i>
<i>RFP Content Questions</i>	<i>5</i>
<i>Proposal Bond.....</i>	<i>6</i>
<i>Proposal Submission</i>	<i>6</i>
<i>Proposal Format & Content.....</i>	<i>6</i>
<i>Confidentiality of Proposals.....</i>	<i>6</i>
<i>Withdrawal of Proposals</i>	<i>7</i>
2.2 EVALUATION PROCESS.....	7
<i>Verification of Proposal Information</i>	<i>7</i>
<i>State's Right to Reject Proposals, Waive Defects and Requirements.....</i>	<i>7</i>
<i>Supplemental Information</i>	<i>7</i>
<i>Proposal Evaluation</i>	<i>8</i>
<i>Concession Contract Award Board</i>	<i>8</i>
<i>Contract Award Board.....</i>	<i>8</i>
<i>Concession Contract Award.....</i>	<i>8</i>
<i>Protest of Award.....</i>	<i>8</i>
2.3 CONTRACT EXECUTION	9
<i>Preparation of Contract.....</i>	<i>9</i>
<i>Performance Bond and Insurance.....</i>	<i>9</i>
<i>Failure to Sign/Deliver Contract</i>	<i>10</i>
SECTION 3 - THE PROPOSAL.....	11
3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL.....	11
I. PROPOSER INFORMATION.....	11
II. PROPOSAL INFORMATION	14
III. PROPOSAL SUMMARY pass/disqualify.....	19
IV. CERTIFICATION OF PROPOSER INFORMATION.....	19
V. PRIVACY NOTICE.....	19
3.2 RESOURCES FOR HISTORIC-STYLE INTERPRETIVE CONCESSION	20
3.3 PROPOSAL EVALUATION SHEET.....	22
3.4 CONCESSION PROPOSAL, DPR 398.....	24
SAMPLE CONCESSION CONTRACT.....	25

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

The purpose of Old Sacramento State Historic Park is to preserve, study, restore, reconstruct, and interpret, for the education, recreation, and entertainment of the broadest possible audience, the story of the City of Sacramento: its Gold Rush roots; the development of commerce, communication, and transportation systems through the 1870s; and their impacts on cultural and natural resources in the development of the city, region, state, and nation.

Park Objectives

- Provide a quality interpretive experience for visitors consistent with the mission of the Museum and Park.
- Showcase examples of historic-style commerce through living history demonstrations, interpretive programs, exhibits, and concession operations.

Goal of this Request for Proposals (RFP)

The goal of this RFP is to award a ten (10) year contract to a business entity that will furnish, equip, operate, and maintain the premises at the Tehama Block Building in Old Sacramento State Historic Park as a historic style jewelry store.

Objectives of this RFP

- Provide high quality interpretive services to the public;
- Sell jewelry and other goods appropriate to a historic style jewelry store;
- Recreate interior/exterior settings, furnishings, and styles of service representative of a historic style jewelry store;
- Promote public interest in the park's interpretive programs through marketing strategies that complement the park's programs and operations.

1.2 GENERAL INFORMATION

Site Description

Old Sacramento State Historic Park is comprised of nine acres along the Sacramento River within Old Sacramento Historic District in downtown Sacramento, not far from the interchange of Interstate 5 and Highway 50. The park depicts the American period of California history, portraying the Gold Rush and Sacramento's early urban and industrial development. The California State Railroad Museum, the most visited railroad museum in North America, is the centerpiece of the park. Veranda-covered boardwalks connect historic storefronts, restaurants, and museums throughout the Old Sacramento Historic District depicting Sacramento as it appeared during the Gold Rush. Within the park, several historic buildings including the Tehama Block building have been reconstructed

to add to the ambiance and interpretive value of the park. This RFP is for the operation of a historic-style jewelry store in the Tehama Block Building. Research shows that jewelry stores were part of the period represented by the park. The park has over half a million visitors per year.

The Building

The Historic-Style Jewelry Store Concession is located on the ground floor of the Tehama Block Building at 935 Front Street in Old Sacramento. The Tehama Block Building is a historic reconstruction of the two-story building that occupied the corner of Front and J Streets in Sacramento from early 1850 to the summer of 1851. This corner was one of the choicest business locations in the city. The redoubtable Samuel Brannan owned the property immediately opposite on the south side of J Street.

The structure was built by Major Samuel C. Bruce and Messrs. Teschmacher & Co. of San Francisco. It cost \$36,000 to construct and rented for \$3,600 per month. The ground floor contained three stores and the second story was divided into offices and housing. Over its short life, the Tehama Block accommodated a variety of enterprises, including an auctioneer, express and steamboat agents, a grocer, wholesale and retail merchants, real estate agent, newspaper dealer, stationer, book seller, land agent and room rentals. The wood frame structure was replaced with a “fireproof” brick building in the summer of 1851. (For more information on the building’s history, refer to “A History of the Tehama Block” by Lucinda Woodward in *A Gold Rush Merchant’s Manual*.)

The Tehama Block was reconstructed by the State in 1988 as part of the on-going development of Old Sacramento State Historic Park. Since its completion, the second floor of the building has been utilized for State Park offices and the ground floor has been devoted to a retail concession appropriate to a historic style jewelry store.

Current Concession Operation

An existing historic-style jewelry store concession has been operated by a concessionaire since 1991. The concessionaire’s reported gross sales and rent to State for the last five years is as follows:

<u>Fiscal Year</u>	<u>Gross Receipts</u>	<u>Rent to State</u>
2015/16	\$1,066,330	\$42,657
2014/15	\$1,288,380	\$51,535
2013/14	\$1,087,404	\$43,496
2012/13	\$ 938,105	\$37,524
2011/12	\$1,176,746	\$47,070

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

Future Site Plans

The park’s current General Plan was authorized in 2013 and can be found on the parks website <http://www.parks.ca.gov>. Proposals should consider potential operational changes in the park unit that may occur during the term of the contract. Changes to park operations may include but are not limited to the result of changes in law, social or

use patterns, and budget considerations. Any changes in the normal operations of the park shall not be construed as authorizing a change in the terms and conditions of the contract.

Old Sacramento is the capital city's birthplace, the launch point for the Gold Rush, and mile zero for the transcontinental railroad. It is also a popular Tourist destination. City leaders are also making a new push to turn the area into a bigger draw year-round, the kind of place locals will frequent.

This past April, the City started an initiative focused on how to enliven the Sacramento riverfront from Tiscornia Park in the north to Miller Park in the south – but with the main focus on Old Sacramento. There have also been significant past improvements in this area, such as a promenade along the water leading south from Old Sacramento and the widening of walkways over O Street and the Tower Bridge.

1.3 CONCESSION CONTRACT SUMMARY

The goal of this RFP is to provide the public with high quality, reasonably priced goods and services in an authentic manner and atmosphere that enhances the visitor's educational experience within the park. The term of the contract is for a period of ten (10) years.

The following is a summary of important concession contract provisions. It is critical for proposers to understand all the terms and conditions of the Sample Concession Contract included herein. If a proposer is awarded a concession contract, the successful proposer has 30 days to review and sign the awarded concession contract. The successful proposer shall be expected to accept the provisions of the Sample Concession Contract as written. If necessary, minor clarifications, approved by State staff counsel, the Department of General Services, and the Attorney General, may be made prior to the concession contract execution.

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

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

1. Promote, equip, operate, and maintain a historic-style jewelry store and demonstrate jewelry-making techniques. The operation will cater to the wide variety of park visitors.
2. At a minimum, be open for business between the hours of 10:00 am and 5:00 p.m. seven (7) days per week from April through September; and a minimum of five (5) days per week, including weekends and holidays (Thanksgiving Day, December 25, and January 1 excepted), during the months of October through March. Operating days and hours may be changed after review and approval by the District Superintendent or designee.
3. Pay as annual rent the amount presented in the proposal, which, at a minimum, shall be twenty-eight thousand dollars (\$28,000) per year or three percent (3%) of annual gross receipts up to twenty-five thousand dollars (\$25,000); and four percent (4%) of

annual gross receipts over twenty-five thousand dollars (\$25,000), whichever total is greater.

4. Provide an Operation Plan, Facility Plan, and Interpretive Plan as specified in Proposal Instructions that clearly demonstrate the proposer's plan to provide fully accessible services and facilities that comply with ADA guidelines. The plans will become part of the contract subject to State review and approval.
5. Maintain the premises, facilities, furnishings, and equipment in good condition in accordance with Department standards and contract provisions. Commit an amount equal to 0.25% of gross receipts annually to a Maintenance Account for maintenance and refurbishment of the Premises. The concessionaire's Annual Maintenance Plan will be reviewed and approved by the District Superintendent or designee.
6. Provide a continuing Performance Bond in the amount of twelve thousand dollars (\$12,000).
7. Pay for all taxes applicable to the operation of the concession, including possessory interest taxes, and all utility services as required by the contract.
8. Provide liability and fire insurance as required by the contract.
9. 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.
10. 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.
11. Free parking will not be available to the concessionaire or any employees or staff hired by the concessionaire.
12. 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 contract.

SECTION 2 - THE RFP PROCESS

2.1 PROPOSAL PROCESS

Tentative Proposal Dates

April 22, 2018	Opening Date - Publication of the RFP
May 2, 2018	Optional Pre-Proposal Meeting
May 12, 2018	Questions - Last date for proposers to submit written questions
May 22, 2018	Answers - DPR written responses to questions
June 4, 2018	Closing Date - Deadline for proposal submission
June 4-18, 2018	Investigation and evaluation of Proposals
July 2, 2018.....	Notification of "Intent to Award Contract"
October 8, 2018	Award, preparation, and execution of contract
January 1, 2019	10 year contract begins

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

Optional Pre-Proposal Meeting

It is strongly recommended that the proposer or designated representative attend the optional pre-proposal meeting at 6:00 PM on May 2, 2018 at the Stanford Gallery, 111 I Street, Old Sacramento, CA. The meeting provides an equitable forum for all proposers to:

- Meet local State staff;
- Learn about the RFP process, including procedures for questions and answers, proposal submission, and concession contract award;
- Inspect the concession site and receive information on the park and facility history and State 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 May 12, 2018. To ensure fair competition, all proposers will receive the same information and materials; no telephone or personal inquiries about this RFP will be answered. Questions will be submitted in writing to the State by email or fax at the address and phone numbers listed below. A written compilation of all questions and answers, and any RFP addenda, will be posted at www.parks.ca.gov/concessions and sent by first-class mail to all identified potential proposers. Questions will be answered as clearly and completely as possible without jeopardizing the competitiveness of the proposals.

Proposers should send their questions addressed to:

California Department of Parks and Recreation
Partnerships Office
1416 9th St., Room 1442-07
Sacramento, CA 95814
Attn: Kevin White
Email: kevin.white@parks.ca.gov

Proposal Bond

Proposals must be accompanied by a Proposal Bond or cashier's check payable to the State of California, California State Parks, in the amount of five thousand dollars (\$5000). 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 concession 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 concession contract but fail to execute and proceed with the concession 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 concession contract upon notification of award by the State. Bonds will be returned to all proposers once the concession contract is signed by the best responsible bidder.

Proposal Submission

The proposal, including the Proposal Bond, must be received by 2:00 PM on June 4, 2018 at:

California Department of Parks and Recreation
Partnerships Office
1416 9th Street, Room 1442-07
Sacramento, CA 95814

Proposal Format & Content

The proposal package must be sealed and clearly marked on the outside with "Proposal for a historic-style jewelry store at Old Sacramento State Historic Park". Please submit an original plus **six (6)** copies of the proposal in 8.5" x 11" three-ring binders. All material should be presented in an 8.5" x 11" portrait format with tabs for each section. Larger formatted graphic exhibits are acceptable if folded to fit within the 8.5" x 11" three-ring binder.

Confidentiality of Proposals

All proposals submitted to an RFP become the property of the State and are subject to the requirements of the California Public Records Act (California Government Code Section 6250 et. seq.) The proposer must clearly identify in writing, within the body of the proposal, all copyrighted material, trade secrets, or other proprietary information the proposer claims are exempt from disclosure under the Public Records Act, this includes denoting where the confidential material begins, ends, and the specific reason(s) for the

exemption. Proposers claiming exemption must include the following statement in their proposal:

The proposer agrees to indemnify and hold harmless the State, its officers, employees, and agents from any claims, liability or damages against the State, and to defend any action brought against the State for proposer's refusal to disclose such material, trade secrets, or other proprietary information to any party. Proposer acknowledges and understands that State may release information in the proposal claimed by proposer to be exempt from disclosure under the Public Records Act, and that proposer waives any claims against the State for this release.

Failure of a proposer to include this statement and/or identify in writing the claimed exempt material, as set forth above, shall be deemed a waiver of any exemption from disclosure under the Public Records Act. In the event of a protest to State's intent to award a concession contract, State may, in its sole discretion, release any or all of the contents of the proposals to the proposers for purposes of hearing the protest. Otherwise, proposer requests to review proposal submissions will not be allowed until after a fully executed concession contract is signed and approved by the State.

Withdrawal of Proposals

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

2.2 EVALUATION PROCESS

Verification of Proposal Information

The State 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 State 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 concession contract award. The

State may obtain credit reports and/or make background inquiries to further establish the qualifications of any proposer. Proposers may be required to make a presentation to the concession contract award board.

Proposal Evaluation

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

Concession Contract Award Board

Upon receipt of multiple proposals, Concession Contract Award Boards are appointed by the Director of the California State Parks, or his or her representative, and convened to review, evaluate, and rate each proposal.

Contract Award Board

Upon receipt of multiple proposals, Concession Contract Award Boards are appointed by the Director of the California State Parks, 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 concession contract may include park staff with related expertise, such as Field Division Chief, Deputy Director, Park Design and Construction staff, or District Superintendent, and representatives from other public agencies or the private sector.

Concession Contract Award

If an award is made, the award for a concession contract will be to the "Best Responsible Proposer" in accordance with Section 5080.23 of the Public Resources Code. The "Best Responsible Proposer" will be the bidder whose proposal passes each of the required elements and receives the highest total score as determined by the Contract Award Board and approved by the Director. In the event of only one proposal for this concession contract, the State may award contract upon determination the one proposal passes each of the required RFP elements. Execution of the awarded concession contract is subject to approval by controlling agencies of the State, which include the Department of General Services and the Attorney General, and will not be binding on the State or the successful proposer until such approval is obtained. In the event the State does not identify a "Best Responsible Proposer" through the bid process, the State may negotiate a concession contract under the provisions of Public Resources Code Section 5080.16.

Protest of Award

Based on California Code of Regulations, Title 14, Division 3, Chapter 3, Section 4400 and California State Parks policy, within ten (10) days after the State has issued a notice of intent to award a concession contract for a term in excess of two (2) years following a request for proposals or invitation to bid, any proposer/bidder may file a written statement of protest against awarding of the contract with the Director of the California State Parks. The statement shall be signed by the protestor, shall specify the grounds for the protest and may include a demand for a hearing. Failure to file a

verified petition within the ten-day period shall constitute a waiver of the right to protest. Protests must be sent to:

Director
California Department of Parks and Recreation
1416 9th Street, 14th Floor
P. O. Box 942896
Sacramento, California 94296-0001
Fax: 916-657-3903

A copy of the protest must be served on the Attorney General within the ten-day period by the proposer/bidder. Serve the Attorney General at:

State of California
Department of Justice
Office of the Attorney General
Land Law Section
1300 I Street
Sacramento, California 95814
Fax: 916-322-5609

If a protest is timely served and a hearing is demanded, or if the Director on his or her own motion orders a hearing, proceedings shall be conducted according to the Administrative Procedure Act, and the protest statement shall be treated as a Statement of Issues (Govt. Code 110504). Issues not raised in the protest statement are deemed waived. The filing of a protest does not prevent the State from awarding the contract.

Any recommendation or decision of the hearing officer shall be submitted to the Director for approval, adoption, modification, disapproval, or other interlocutory or final action. If a hearing is not so demanded or ordered, the action of the Director shall be final.

2.3 CONTRACT EXECUTION

Preparation of Contract

Subsequent to the award of a contract, if an award is made, the State will prepare a final contract for execution. The contract will contain "exhibits" developed from the selected proposal including the proposal's Operation, Facility Improvement, 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 concession contract or its exhibits as presented in the RFP and in the selected proposal may be made.

Performance Bond and Insurance

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

Failure to Sign/Deliver Contract

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

SECTION 3 - THE PROPOSAL

3.1 INSTRUCTIONS FOR THE CONCESSION PROPOSAL

A completed Concession Proposal form (also known as DPR 398) and a Proposal Bond will constitute the proposal. Proposer must complete all sections, respond to all questions, and fill in all blanks of the form. Inapplicable questions or blanks should be marked "N/A" or "Not Applicable". Failure to properly complete the form may disqualify the proposal. If the proposal receives a "disqualify" under Level I or Level II requirements listed within RFP Section 3.3 Proposal Evaluation Sheet, the proposal will be disqualified from further consideration.

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

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

I. PROPOSER INFORMATION

A. Proposer Identification

Incumbent Factor

5 Points

The incumbent concessionaire is defined as the individual, partnership, limited liability company 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 periodic Performance Evaluations (DPR 531) performed by the State. Poor Performance Evaluations may result in negative point scores.

Evaluation Criteria: Incumbent proposals are awarded points based on annual Performance Evaluations (DPR 531) 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	2 out of last 3 years	- 3 points

“unsatisfactory”		
“needs improvement” or “unsatisfactory”	3 out of last 3 years	- 5 points

Small Business Status

5 Points

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

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

Certification will verify that the business is independently owned and operated; not dominant in its field of operation; has its principal office located in California; has officers domiciled in California; and together with affiliates is either a service, construction, or non-manufacturer with 100 or fewer employees and average annual gross receipts of fourteen million dollars (\$14,000,000) or less over the previous three (3) years, or a manufacturer with 100 or fewer employees.

A non-profit organization may qualify for the same preference points as a small business if registered with the Office of Small Business.

B. Business Information

pass/disqualify

Select the type of business that describes the proposing entity (Sole Proprietorship, Partnership, Joint Venture, Limited Liability Company or Corporation) and provide the requested information. The type of business must be established prior to submitting a proposal.

- Corporations shall include a copy of the Articles of Incorporation with the California Secretary of State seal, and a board resolution to authorize the concession proposal and identify the individual authorized to act on behalf of the corporation.
- Limited Liability Companies (LLC) shall include a copy of their Articles of Organization with the California Secretary of State seal (LLC-1 or LLC-5) and the Statement of Information (LLC-12) to identify the managing member or members of the organization.
- Partnerships shall include a copy of the Partnership Agreement, which clearly describes the role of each partner.

C. Individual Information

25 points

This section must be completed by each individual, partner, and member of joint ventures; CEO, officers, and holders of 25% or more of the company's shares for corporations; concession manager; and the managing member(s) of the organization identified on the LLC-12 for a limited liability company. The aforementioned identified individual(s) must also complete and sign the Authorization to Release Information in Section IV.

Experience

For the purpose of this RFP, proposers must have a minimum of three (3) years' experience owning, managing or operating a business of similar type, size and scope as the concession operation set forth and described in this RFP. Proposals with less than the minimum experience will be disqualified.

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

D. Statement of Financial Capability

pass/disqualify

Proposers must present evidence satisfactory to the State demonstrating their ability to finance, construct, operate, and maintain the concession facilities as proposed. 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: The Business Financial Statement is intended to describe the condition of the proposer's current business, including assets, liabilities, and net worth. A complete and accurate Business Financial Statement will reflect assets equal to liabilities plus net worth. Round figures to the nearest dollar. If the business is a partnership or joint venture, each general partner or joint venturer must individually submit a Business Financial Statement. Proposers may provide copies of forms filed with the Internal Revenue Service, Franchise Tax Board or statements

prepared by a Certified Public Accountant in support of information contained in this statement.

E. Credit Worthiness **pass/disqualify**

Proposers must present evidence of credit worthiness. At a minimum, this shall include a complete credit report from a nationally recognized credit bureau, such as Equifax or Experian, issued within 60 days of the proposal due date and include the FICO score for sole proprietors, each partner within a partnership, and managing member of an LLC. Corporations shall provide the report from a recognized agency such as Dun and Bradstreet (D&B). Any derogatory information listed on said reports must be explained. Below average FICO scores, outstanding debts, delinquent payment history on current concession contracts, and any other negative credit history may disqualify a proposal.

F. References **pass/disqualify**

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 a minimum of 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 references from the following sources:

- Financial References: Include your bank or savings and loan institution.
- Client or Business References: Name clients or other persons familiar with your business knowledge and experience.
- Vendor References: Please provide vendor references if you are a pre-existing business currently utilizing vendors.

II. PROPOSAL INFORMATION

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

As a condition of the contract award, the successful proposer may be required to revise or further develop these plans to the satisfaction of the State and prior to the execution of the contract. If and when it is accepted, the final plans will be incorporated as exhibits to the contract and become an obligation of the concessionaire.

A. Operation Plan **20 points**

The Operation Plan should demonstrate an understanding of the State's intent for this concession as identified in the RFP and your ability to implement the plan in a first class manner. As a condition of the contract award, the successful proposer may be required to revise or further develop the Operation Plan to the satisfaction of the State and prior to the execution of the contract. If and when it is accepted, the final plan will be incorporated as an exhibit to the contract and become an obligation of the concessionaire thereunder.

The plan should include a discussion of each of the following elements:

Vision/Mission Statement

Provide a Vision/Mission Statement that captures both Old Sacramento State Historic Park's mission and proposer's goals and objectives for the concession business.

Organizational Structure

Provide an organization chart and staffing plan that can guide the operations and ongoing management of the concession business. The plan should identify the proposed concession manager; position titles and salaries for all job classifications with a summary of the required job skills, qualifications and duties; and the number of existing or proposed employees in each job classification to support the operation.

Transition/Business Start-Up Plan

Provide a plan and timeline for starting concession operation and providing a seamless transition in customer service. If applicable, this plan shall consider provisions for the retention of employees of an existing concessionaire who may become displaced during the transition to a new concession operator.

Customer Service Plan

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

Employee Staffing and Training

Describe personnel policies and training program for all employees including, but not limited to, hiring practices; probationary period; health, safety, and grievance policies and procedures; performance monitoring; uniform requirements; business orientation; job training; and park orientation training. Such programs must provide sufficient staffing with the skills and knowledge to ensure the provision of high-quality services, as well as, the ability to respond to public inquiries regarding state parks in the area and answer basic questions about the park's natural and cultural attributes.

Marketing and Advertising Plan

Describe proposed marketing and advertising methods, including those used to increase visitor diversity; identify media sources and sample advertising materials, schedules, brochures, signage; and specify an annual marketing budget allocation.

Community Involvement Plan

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

Products, Merchandise, and Services Plan

Provide a detailed description of the proposed products and services to be provided by the concession operation. The products and services offered should meet or exceed

the needs of the park users, and be compatible with and complementary to the mission of the park.

Prices and Pricing Policies

Provide a price schedule for a representative sample of the proposed products and services. The policies should include an explanation of the process to be used to establish prices for products and services. Such policies should provide park visitors with quality products at reasonable prices considering the competition of comparable markets for similar products, services and the cost of doing business.

Conservation and Recycling

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

Accessibility

Describe commitment to ensure that visitors with disabilities will have access to all of the events and services provided through the concession operation in accordance with the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code Sections 4450 et. seq. and 7250. Additional accessibility resources are available at www.ada.gov; http://www.parks.ca.gov/?page_id=21944 (State Parks Accessibility Program); and http://www.parks.ca.gov/?page_id=22651 (All Visitors Welcome handbook).

Evaluation Criteria: Points will be awarded based upon the degree to which the proposal demonstrates the ability and commitment to achieve the objectives of this RFP and the extent to which the plan is historically accurate, educational, and feasible.

B. Facility Plan

10 points

After the State's review and approval, the Facility Plan from the successful proposal shall be included as an exhibit to the contract. In addition to the Facility Plan, the successful proposer also must adhere to the facility requirements as described in the contract. The winning proposer will be required to develop a detailed Furnishings Plan following award of the contract, which must be approved by the District Superintendent prior to the concession opening for business.

The plan should include a discussion of each of the following elements:

Furnishings Plan

Describe the intended physical facilities of the concession including furnishings, equipment, décor, and layout. Implementation of proposer's plan should provide first-class concession facilities that are consistent with and will enhance park values, visitor services, and visitor experiences at the park. Proposers should include a plan for improving the window displays through the use of educational displays regarding the

history of the jewelry business, gold discovery, Old Sacramento, or other relevant subjects.

Maintenance and Housekeeping Plan

Provide a comprehensive plan to maintain the concession facilities in a first-class condition throughout the term of the contract. The maintenance plan criteria include budget allocations, staff skills and qualifications, staffing patterns, and housekeeping and maintenance schedules. For the purposes of this RFP, proposers are required to spend a minimum of 0.25% of gross receipts annually on a maintenance program.

Cost Estimates

Provide a cost breakdown for the Furnishing Plan.

Evaluation Criteria: Points will be awarded based upon the degree to which the proposal meets and exceeds the objectives of this RFP and the extent to which the plan is historically accurate, educational, and feasible.

C. Interpretive Plan

15 points

The Interpretive Plan is a critical element of a concession and, consequently, can be very influential in the selection of the successful proposal. After the State's review and approval, the Interpretive Plan from the successful proposal 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 must implement the interpretive elements as described in the contract.

A reference list is provided at the end of this document to aid in the development of Interpretive Plans. The plan should include a discussion of each of the following elements:

Proposer's Relevant Experience

Describe your experience, knowledge, skills, and abilities to develop and operate an interpretive program.

Diversity Plan

Describe your plan to develop, operate, or provide an interpretive program for multi-ethnic and multi-generational visitors and visitors with differing physical abilities.

Business' Ambiance Plan

Describe your plan to develop and implement historical ambiance including such things as historic characterizations, environment, costumes, furnishings, signs, wall treatment, advertising, window coverings, equipment, tools, display shelves, counters, tables, chairs, and cooking equipment. The successful proposer will be required to develop a more detailed Furnishings Plan, which must be reviewed and approved prior to the concession opening for business.

D. Rental Offer

25 points

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 should 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 you propose must be at least twenty-eight thousand dollars (\$28,000) per year or three percent (3%) of annual gross receipts up to twenty-five thousand dollars (\$25,000); and four percent (4%) of annual gross receipts over twenty-five thousand dollars (\$25,000), whichever total is greater.

Evaluation Criteria: 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 \$28,000)

$$\frac{(\text{Bid Amount}) \text{ minus } (\$28,000)}{(\text{Highest Bid Amount}) \text{ minus } (\$28,000)} \times 11 \text{ points} = \underline{\hspace{2cm}} \text{ points}$$

Percentage of Gross Sales

Gross Sales Less Than \$25,000 (Minimum bid is 3%)

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

Gross Sales of \$25,000 and more (Minimum bid is 4%)

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

*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.

E. Concession Feasibility

pass/disqualify

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. Fiscal documentation that will be considered in awarding points includes a financial pro forma; statement of assets and liabilities; business, vendor, bank, and/or financial references; and similar documents. 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

pass/disqualify

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

IV. CERTIFICATION OF PROPOSER INFORMATION

A. Labor Law Compliance Certification

pass/disqualify

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

pass/disqualify

A completed certification is required with your proposal or it may be disqualified.

C. Authorization to Release Information

pass/disqualify

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 RESOURCES FOR HISTORIC-STYLE INTERPRETIVE CONCESSION

A Gold Rush Merchant's Manual, 1849-1852, (2 vols.). By Pauline Grenbeaux and Mary A. Helmich. Old Sacramento State Historic Park, California State Parks. Available through the California State Parks Store, 1-800-777-0369, ext. 5, \$15.00.

Old Town San Diego's Retailer's Reference and Historic Account Book. By Mary A. Helmich. Old Town San Diego State Historic Park, California State Parks. Available through the California State Parks Store, 800-777-0369, ext. 5, \$20.00.

Sutter's Fort Costume Manual: A Guide to Clothing Worn in California and the Far West, CA 1845. By David Rickman. Available for inspection at Interpretation and Education Division, California State Parks, 1416 Ninth Street, #1449-1, Sacramento, CA 95814, 916-654-2249. Available for purchase through the California State Parks Store, 800-777-0369, ext. 5, \$10.00.

Workbook for Planning Interpretive Projects in California State Parks. By Mary A. Helmich. California State Parks. Available on-line under "Adventures in Learning" at www.parks.ca.gov.

All Visitors Welcome: Accessibility in State Park Interpretive Programs and Facilities. By Erika Porter. California State Parks. \$20.00

19th Century Business Reference Binders. Available for inspection only. Interpretation and Education Division, California State Parks, 1416 Ninth Street, #1449-1, Sacramento, CA 95814, 916-654-2249.

How They Said It!: A glossary of terms and phrases of the Gold Rush. By Benjamin M. Hughes. Available from William B. Ide Adobe State Historic Park. 530-529-8599. \$9.95 plus shipping and handling.

Old Sacramento Historic District's A Guideline for Signs. By Stephen G. Helmich. Old Sacramento Management, 1111 2nd St., Suite 300, Sacramento, Ca 95814, (916) 264-7031. \$7.00.

...With Our California Rig On.... By Jim Miller. Available from J.C. Miller, Carpenter & Joiner in Columbia State Historic Park. 209-532-0575. (message 3/24)

Mining is a Hard Kind of Labor (music CD). Various Artists. Ide Adobe Interpretive Association. Available from William B. Ide Adobe State Historic Park, 530-529-8599. \$14.95 plus shipping and handling.

Past Patterns Company producing patterns for clothing worn 1830-1939. (866) 738-8426, www.pastpatterns.com.

REFERENCES AVAILABLE COMMERCIALY

Past Into Present: Effective Techniques for First-Person Historical Interpretation. By Stacy F. Roth. University of North Carolina Press, 1998.

Interpreting Our Heritage, by Freeman Tilden. University of North Carolina Press. 1977.

Environmental Interpretation: A Practical Guide for People with Big Ideas and Small Budgets. By Sam Ham. North American Press, 1992.

Men's Garments, 1830 – 1900: A Guide to Pattern Cutting and Tailoring. By R.I. Davis Players Press, Inc., Studio City, 1994.

Early Stores and Markets. The Early Settler Series, Crabtree Publishing Co. 1981.

OTHER SUGGESTED READING

The World Rushed In: The California Gold Rush Experience. By J.S. Holliday.

Rush for Riches: Gold Fever and the Making of California. By J.S. Holliday.

What I Saw In California. By Edwin Bryant.

Days of Gold: The California Gold Rush and the American Nation. By Malcolm Rohrbough.

California Gold: The Beginning of Mining in the Far West. By Rodman W. Paul.

California: An Interpretive History. By Walton Bean and James J. Rawls.

California, A History. By Andrew Rolle.

They Saw the Elephant: Women in the California Gold Rush. By Jo Ann Levy.

The Shirley Letters. Edited by Carl Wheat.

3.3 PROPOSAL EVALUATION SHEET

LEVEL I COMPLIANCE WITH RFP SUBMISSION 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 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.

PROPOSAL EVALUATION SHEET, cont.

LEVEL II RENT PROPOSED/CREDIT WORTHINESS & ABILITY TO FINANCE

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

Proposer must pass LEVEL II to qualify for further consideration.

LEVEL III PROPOSAL EVALUATION

- A. Proposer Information
 - Incumbent Preference _____ / 5 Points
 - Small Business Preference _____ / 5 Points
 - Experience and Capability _____ / 20 Points
 - B. Proposal Information
 - Operation Plan _____ / 20 Points
 - Facility Plan _____ / 10 Points
 - Interpretive Plan _____ / 15 Points
 - Rental Offer _____ / 25 Points
- GRAND TOTAL _____ / 100 Points**

Comments:

Board Member: _____ Date: _____

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

3.4 CONCESSION PROPOSAL, DPR 398

If interested in submitting a proposal, please request the DPR 398 Concession Proposal forms from Kevin White at (916) 654-8924 or kevin.white@parks.ca.gov. Proposal forms will also be available at the Pre-Proposal Meeting.

SAMPLE CONCESSION CONTRACT

CONCESSION CONTRACT

FOR

Historic-Style Jewelry Store Concession

AT

Old Sacramento State Historic Park

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY
DEPARTMENT OF PARKS AND RECREATION
PARTNERSHIPS OFFICE
1416 NINTH STREET, 14TH FLOOR
SACRAMENTO, CA 95814



Old-Style Jewelry Store
CONCESSION CONTRACT
INDEX

1. DESCRIPTION OF PREMISES..... 2

2. CONDITION OF PREMISES 2

3. TERM 3

4. RENT 3

5. GROSS RECEIPTS..... 6

6. OTHER FINANCIAL REQUIREMENTS 6

7. USE OF PREMISES..... 7

8. INTERPRETATION, SETTINGS, AND COSTUMES..... 8

9. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES 9

10. EMPLOYEE ORIENTATION AND TRAINING..... 9

11. ALCOHOLIC BEVERAGES..... 9

12. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL..... 10

13. RESOURCE CONSERVATION..... 11

14. HAZARDOUS SUBSTANCES..... 13

15. PEST CONTROL ACTIVITIES 14

16. UTILITIES AND SERVICES 15

17. EQUIPMENT 15

18. PERSONAL PROPERTY 15

19. SIGNS AND ADVERTISING..... 16

20. PHOTOGRAPHY..... 16

21. INTELLECTUAL PROPERTY RIGHTS 16

22. GRANT OF STATE’S TRADEMARK LICENSE..... 18

23. PARTICIPATION IN STATE PARK MARKETING PROGRAMS 18

24. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS 19

25. BONDS..... 20

26. INSURANCE 21

27. HOLD HARMLESS AGREEMENT 24

28. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES 24

29. DISABILITIES ACCESS LAWS..... 25

30. NONDISCRIMINATION..... 25

31. DRUG-FREE WORKPLACE 26

32. CONFLICT OF INTEREST 27

33. EXPATRIATE CORPORATIONS 27

34. NATIONAL LABOR RELATIONS BOARD CERTIFICATION 27

35. CHILD SUPPORT COMPLIANCE ACT..... 28

36. RECORDS AND REPORTS..... 28

37. TAXES..... 29

38. PERFORMANCE EVALUATIONS AND INSPECTION 30

39. DEFAULT BY CONCESSIONAIRE 30

40. STATE’S REMEDIES 32

41. DEFAULT BY STATE..... 36

42. SURRENDER OF THE PREMISES; HOLDING OVER..... 37

43. NO RECORDATION; QUITCLAIM 38

44. ATTORNEY FEES..... 38

45. WAIVER OF CLAIMS 38

46. WAIVER OF CONTRACT TERMS 39

47. INTERPRETATION OF CONTRACT 39

48. DURATION OF PUBLIC FACILITIES..... 39

49. EMINENT DOMAIN 40

50. TEMPORARY TENANCY..... 40

51. SECTION TITLES 40

52. INDEPENDENT CONTRACTOR..... 40

53. ASSIGNMENTS AND SUBCONCESSIONS 40

54. MODIFICATION OF CONTRACT..... 41

55. UNENFORCEABLE PROVISION..... 42

56. APPROVAL OF CONTRACT 42

57. CONTRACT NOTICE 42

58. STATE’S DISTRICT SUPERINTENDENT 43

EXHIBIT A – THE PREMISES 45

EXHIBIT B – DPR 54, CONCESSIONAIRE’S MONTHLY REPORT OF OPERATION 47
EXHIBIT C – DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT..... 49
EXHIBIT D – DPR 531, CONCESSION PERFORMANCE RATING..... 53
EXHIBIT E – DRUG FREE WORKPLACE CERTIFICATION..... 55
EXHIBIT F – LICENSE/PERMISSION FOR USE OF TRADEMARKS..... 56
EXHIBIT G – CONSUMER PRICE INDEX ADJUSTMENT FORMULA 58
EXHIBIT H – WAIVER OF LIABILITY AND RELEASE SAMPLE..... 59
EXHIBIT I – CONCESSIONAIRE’S OPERATION PLAN 60
EXHIBIT J – CONCESSIONAIRE’S FACILITY IMPROVEMENT PLAN 61
EXHIBIT K – CONCESSIONAIRE’S INTERPRETIVE PLAN..... 62

SAMPLE

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

CONCESSION CONTRACT

For

Historic-Style Jewelry Store

Located In

Old Sacramento State Historic Park

Sacramento County

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

RECITALS

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

WHEREAS, in accordance with California Public Resources Code § 5080.20(a), the State Parks and Commission has reviewed the proposed services, facilities and location of the concession and determined they are compatible with the classification of the unit in which the concession will be operated and;

WHEREAS, the Legislature and the Joint Legislative Budget Committee has been notified in advance of the proposed concession in accordance to California Public Resources Code § 5080.20(b) and;

WHEREAS, for any concession contract authorizing occupancy by the concessionaire for a period of more than two years of any portion of the state park system that is entered into, proposals shall be completed only on the basis of the request for proposal pursuant to California Public Resources Code 5080.23(b), 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 Old Sacramento State Historic Park at the location(s) as set forth in **Exhibit A**, attached to and made a part of this contract (the "Premises".)

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

2. CONDITION OF PREMISES

The taking of possession of the Premises by the Concessionaire, in itself, shall constitute acknowledgment that the Premises are in good and sufficient condition for the

purposes for which Concessionaire is entering into this Contract. Concessionaire agrees to accept Premises in their presently existing condition, "AS IS," and that the State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Contract.

3. **TERM**

The term of this Contract shall be for a period of ten (10) years, commencing on the first day of the month following approval by the California Department of General Services. Should Concessionaire hold-over after the expiration of the term of this Contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this Contract in **Section 42**, Surrender of Premises; Holding Over, with continuous Consumer Price Index (CPI) adjustment, as defined below, subject otherwise to all the terms and conditions of this Contract.

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

4. **RENT**

Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Annual Rent" the sum of twenty-eight thousand dollars (\$28,000) per year or three percent (3%) of annual gross receipts up to twenty-five thousand dollars (\$25,000); and four percent (4%) of annual gross receipts over twenty-five thousand dollars (\$25,000), whichever total is greater.

Beginning with Contract Year Six (6) and on the first day of each contract year, the twenty eight thousand dollars (\$28,000) Minimum Annual Rent shall be adjusted to reflect increases in CPI. Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit G**, 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 (15th) day of the month following the execution of the Contract, and on or before the fifteenth (15th) 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 B**, or in a format previously approved by the State, and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current Contract Year. Concessionaire shall also provide such statement for periods of non-operation. Concurrent with such monthly statement, the Concessionaire shall pay to State the appropriate rental fee based on the gross receipts for the preceding calendar month as prescribed above. Payments to State shall be made to the order of the Department of Parks and Recreation and delivered to the District Office identified herein below or at such other location as may from time to time be designated by State. If, at the end of the Contract Year, the total of monthly percentage rental payments made (or due) during that Contract Year is less than the Minimum Annual Rent required for that Contract Year, the difference shall be remitted to State with the last monthly sales statement for the Contract Year. Payments must be received by State on or before the fifteenth (15th) day of the month as described above. Any late payment shall constitute a breach of contract, giving rise to State's remedies as set forth below. Further, any late payment will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or portion thereof. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of

Concessionaire's default for the overdue amount, nor prevent State from exercising the other rights and remedies granted under this Contract. Concessionaire shall pay the late charge as additional rent with the next monthly rent payment.

Any amount due to State, if not paid within five (5) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Concessionaire. Payment of interest shall not excuse or cure any default by Concessionaire.

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

If this Contract is terminated by State because of Concessionaire's default, and if Concessionaire becomes liable for any deficiency in rent and/or fees by way of damages or otherwise, or if at any time during the Contract term Concessionaire ceases to conduct in the Premises the business referred to herein below, then from and after the time of the breach causing this termination, or from and after the time of the cessation of business, all unpaid rent and/or fees prior to the breach causing termination or cessation of business shall become due and payable. The amount due shall be deemed to be the greater of: (a) the Minimum Rent provided herein, or (b) an amount based upon the average of the payments that have accrued to State as percentage rent during the twenty-four (24) months preceding the termination or cessation of business, unless the termination or cessation occurs within three (3) years of the beginning of the Contract term, in which event the previous twelve (12) (or fewer, if applicable) months shall be used as the basis of this average.

5. GROSS RECEIPTS

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

Equipment deposits shall not be included in gross receipts until the services that relate to the deposit have been rendered by Concessionaire or the reservation has been canceled and the deposit has been retained by Concessionaire in accordance with the deposit policy as approved in advance in writing by the State. Such advance deposits shall be retained in an interest-bearing joint trust account. All earned interest, including interest earned on a reservation deposit, shall be included in gross receipts for the month such earned interest is reported to Concessionaire.

6. OTHER FINANCIAL REQUIREMENTS

Within thirty (30) days of the effective date of this contract, Concessionaire will establish a Maintenance Account with a financial institution licensed to do business in California and acceptable to State. Within fifteen (15) days of the end of each month following the first month of the effective date of this contract, Concessionaire shall deposit in the Maintenance Account an amount equal to one quarter of one percent (0.25%) of the monthly gross receipts from the previous month. The account shall be interest bearing with all interest accruing to the account. The account will generate monthly account statements directly to the State and will be structured so that any withdrawal from said account will require the co-signature of State's authorized representative. Within thirty (30) days of the start of the first contract year and annually

thereafter, Concessionaire will submit an Annual Maintenance Plan for the repair or refurbishment of the Premises. If the State disapproves any element of the Plan, Concessionaire shall promptly submit to State all necessary modifications and revisions. Upon approval by State, Concessionaire will implement the Annual Maintenance Plan using funds from the Maintenance Account. Any unspent balance from one contract year may be carried over to the next contract year if pre-approved by the District Superintendent or designee.

7. USE OF PREMISES

The Premises shall be used by the Concessionaire for a historic style jewelry store. Concessionaire shall provide interpretive information on Old Sacramento State Historic Park and other nearby historical attractions.

The Use of Premises will be consistent with the State approved "Operation Plan", "Interpretive Plan", and "Facility 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", "Interpretive Plan", and "Facility Plan" are incorporated herein and made part of this contract as **Exhibit I, J, and K**, respectively.

Concession services shall be provided daily between the hours of 10 a.m. and 5 p.m. during the months of April through September; and a minimum of five (5) days per week, to include weekends and holidays (Thanksgiving, Christmas, and New Year's excepted), during the months of October through March during each contract year. 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.

Additional Use of Premises conditions:

- ◆ The second floor of the Tehama Block Building shall be retained by the State as office space.
- ◆ Free parking will not be available to the concessionaire or any other employees or staff hired by the concessionaire.

8. **INTERPRETATION, SETTINGS, AND COSTUMES**

A primary consideration to State under this contract is the operation of a historic style jewelry store. To this end, Concessionaire shall furnish, equip, operate, and maintain an interpretive jewelry store concession within the Premises. Concessionaire shall prepare and deliver a detailed Furnishings Plan to the District Superintendent for approval after the award of this contract and prior to the opening of the concession for business. Within the Furnishings Plan, all aspects of the store's décor and ambiance including furnishings, lighting, counters, shelving, window treatments, display pieces, music, products, packaging, merchandising (display of goods for sale), and interior and exterior signage must be described and appropriate. The concession's ongoing interpretive responsibility will be to stock, display, and sell jewelry and related goods. Non-historic plastic or decal signs will not be permitted and modern equipment and utensils shall be disguised or hidden from public view.

To achieve the interpretive goals stated above, Concessionaire shall provide and carry out an Interpretive Plan attached hereto as **Exhibit K** and made a part of this contract. It is understood, however, that the implementation of this plan shall be subject to approval by State.

Concessionaire acknowledges that he/she whole-heartedly supports the policies of the Department regarding the historical interpretation of Old Sacramento State Historic Park and the Tehama Block Building during the Gold Rush Era.

9. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES

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

10. EMPLOYEE ORIENTATION AND 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.

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

11. ALCOHOLIC BEVERAGES

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

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

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain the Premises and areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Removal and disposal of all rubbish, refuse, and garbage resulting from concession's operations shall be the Concessionaire's responsibility and shall be disposed of outside the park unit and in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of State. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

A. **Housekeeping**: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks. Concession housekeeping shall conform to California State Park standards as stated in Chapter 8 of the Department's Operations Manual.

B. **Maintenance and Repairs**: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this Contract. Such maintenance shall conform to State Park standards as stated in Chapter 8 of the Department's Operations Manual. For the purposes of this Contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

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 §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 expected, and shall completely remedy all injuries to the Premises.

13. 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 §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 §5024 and 5097 et seq., the Department Operations Manual Chapter 300, Department's cultural resource directives and Secretary of the Interior's Guidelines for Historic Preservation.

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 §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.

14. **HAZARDOUS SUBSTANCES**

A. On the Premises, Concessionaire shall not:

- 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
- 2) Carry-on any offensive or dangerous trade, business, or occupation; or
- 3) Use or operate any machinery or apparatus that shall injure the Premises or adjacent buildings in any way.

B. Nothing in this Section shall preclude Concessionaire from bringing, keeping, or using on or about said Premises such materials, supplies, equipment, and machinery as is appropriate or customary in carrying-on Concessionaire's business.

C. Storage of Hazardous Materials: Concessionaire shall comply with all applicable laws and best practices pertaining to the use, storage, transportation, and disposal of hazardous substances. Gasoline, oil and other materials considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

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

E. Certification: Upon termination of this Contract, when requested by State, Concessionaire shall provide certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Premises.

15. PEST CONTROL ACTIVITIES

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

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

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).

16. 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.

17. 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.

18. PERSONAL PROPERTY

Except to the extent covered by **Section 24**, Modifications, Additions, Title to Improvements, title to all personal property provided by Concessionaire shall remain in Concessionaire. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless 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.

19. 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.

20. 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.

21. INTELLECTUAL PROPERTY RIGHTS

A. Clarify Ownership of Pre-existing Intellectual Property Rights: Other than as specifically identified and authorized in this Contract, no names, logos, trademarks or copyrighted materials belonging to and/or associated with California State Parks shall be used, circulated, or published without the express written consent of the State. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in Concessionaire any rights of ownership on such names, logos, trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Contract.

Any trademarks and/or copyrights belonging to Concessionaire prior to the commencement of the Contract shall remain in Concessionaire's sole ownership upon termination of the Contract.

During the course of this relationship, Concessionaire shall use the name, [Name]. Any additional and/or different names may be used only upon written agreement of the State.

B. Ownership of New Logos and Trademarks Developed During Contract:

Any names, logos, and/or trademarks developed during and/or pursuant to this Contract that in any way associate with, identify or implicate an affiliation with California State Parks and/or are funded by the State shall be approved in writing by the State, shall belong to the State upon creation, subject to express written agreement otherwise, and shall continue in the State's exclusive ownership upon termination of the Contract. Further, all good will and other rights in said marks shall inure to the benefit of the State as the mark owner.

C. Ownership of new Copyrights, Developed by Concessionaire for the State, Absent a Separate Written Agreement:

Any copyrighted materials developed and created by Concessionaire for the State during the term of this Contract shall be deemed to be "works for hire" under the United States Copyright Act 17 USC §101 et seq. and shall, unless otherwise agreed to in writing, belong to the State upon creation, and continue in the State's exclusive ownership upon termination of this Contract. Unless otherwise agreed to in writing, Concessionaire intends and agrees to assign to the State all rights, title, and interest in and all works created pursuant to this Contract as well as all related intellectual property rights.

Concessionaire agrees to cooperate with the State and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

D. Concessionaire Rights in Separately Created Works: Any copyrighted materials and/or trademarks developed and created by Concessionaire separate and apart from this Contract, shall belong to Concessionaire, and shall continue in Concessionaire's exclusive ownership upon termination of this Contract. In the event that any trademarks and/or copyrights are created by Concessionaire during the term of this Contract and same are proposed for use in connection with Concessionaire's performance under the Contract, Concessionaire shall

promptly notify the State in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

22. GRANT OF STATE'S TRADEMARK LICENSE

State hereby grants Concessionaire, and Concessionaire hereby accepts a non-exclusive, non-assignable license to use the State Park Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by State, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as **Exhibit F** and is incorporated herein by this reference. After signature by both Concessionaire and the State, this License shall authorize the use of the Trademark and associated goodwill, in connection with this Contract only.

A record of each authorized use by Concessionaire of the Trademark shall be maintained by Concessionaire and by the State.

Concessionaire and the State will use the State Park name, Trademark, and brand consistent with the State Park Brand Standards Handbook available at <http://isearch.parks.ca.gov/pages/321/files/BrandHandbookJanuary2007.pdf>.

The State Park name, Trademark and brand will not be used on Concessionaire social media pages.

23. PARTICIPATION IN STATE PARK MARKETING PROGRAMS

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

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

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.

24. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS

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

25. BONDS

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

B. Performance Bond: Concessionaire, at Concessionaire's own cost and expense, agrees to obtain and deliver to State, prior to the commencement date of this Contract and prior to entering the Premises, and shall maintain in force throughout the term of this Contract, a valid Performance Bond (which may be renewed annually) in the sum of twelve thousand dollars (\$12,000) payable to the State. This bond shall ensure 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 fifteen (15) days of State's request,

Concessionaire shall furnish State with a signed and complete copy of the valid bond or financial instrument.

C. Beginning with Contract Year Six (6), and on the first day of every other contract year thereafter, the required bond amount 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 G**.

D. Concessionaire acknowledges that allowing the Performance Bond or other security instrument(s) to expire or otherwise terminate and/or allowing the total secured amount to fall below the security required herein will cause State to incur costs and significant risks not contemplated by this Contract, the exact amount of which will be difficult to ascertain. These costs include, but are not limited to, administrative costs and other expenses necessary to ensure continued performance of services for the public and protection of the Premises. Accordingly, if Concessionaire allows the Performance Bond or other security instrument to expire or otherwise terminate and/or allows the total secured amount to fall below the security required pursuant to this Contract, Concessionaire shall pay to State an amount equal to five percent (5%) of the required security or five 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.

26. **INSURANCE**

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

- 1) **Commercial General Liability Insurance**: Concessionaire shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability

combined with \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal and advertising injury. If Concessionaire occupies a portion of a State structure, liability insurance shall specify fire coverage (damage to rented premises) in an amount equal to the replacement value of the occupied part of the structure estimated to be \$.

2) Workers' Compensation Insurance: Concessionaire shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Contract. Employer's liability limits of \$1,000,000 are required. The workers' compensation policy shall contain a waiver of subrogation in favor of the State of California in a form acceptable to State.

3) Property Insurance:

Concessionaire shall provide Special Form building coverage on a replacement cost basis limits based on the estimated replacement value of facilities occupied by Concessionaire. Replacement value based on 2,142 square feet per floor (2 floors) at \$400 per square feet effective May 14, 2018 is \$1,700,000. Property insurance shall include Business Interruption coverage on a Special Form basis with limits equal to the actual loss sustained for up to one (1) year.

B. The State shall be named as "loss payee" for any Property Insurance claim related to the destruction, loss, or damage of State-owned buildings. In the event of destruction, loss, or damage of any of the State-owned buildings, improvements, or fixtures located on the Premises that the State determines (1) to be essential to the continued operation of the Contract and (2) cannot be repaired within one-hundred-eighty (180) days of the occurrence, the State may terminate this Contract. A decision by the State to terminate the Contract under this provision shall be communicated in writing to Concessionaire as soon as practicable. If the Contract is so terminated, State shall be entitled to the

proceeds payable under any applicable insurance policies pertaining to the loss 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, and employees, [and other property owner] as additional insured**. These endorsements must be supplied under form acceptable to State. Any subcontractors shall be included under Concessionaire's policy or provide evidence of coverage equal to limits and policies required of Concessionaire.

D. Concessionaire is responsible to provide the State within five (5) business days following receipt by Concessionaire a copy of any cancellation or non-renewal of insurance required by this Contract. In the event Concessionaire fails to keep in effect at all times the specified insurance coverage, State may, in addition to other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

E. Each policy shall be underwritten to the satisfaction of the State. Concessionaire shall submit to State a signed and complete certificate of insurance with all endorsements required by this Section, showing to the satisfaction of State that such insurance coverage has been renewed or

extended. Within fifteen (15) days of State's request, Concessionaire shall furnish State with a signed and complete copy of the required policy.

27. HOLD HARMLESS AGREEMENT

Concessionaire hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Contract, except claims arising from, and to the extent of, the sole gross negligence or willful misconduct of the State, its officers, agents, or employees. Concessionaire shall protect, indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, attorney fees, expert costs and fees, or liability costs arising out of the development, construction, operation, or maintenance of the Premises property described herein and compliance with all laws, including but not limited to the Americans With Disabilities Act of 1990 as provided for herein, except for liability arising out of, and to the extent of, the sole gross negligence or willful misconduct of State, its officers, agents, or employees or other wrongful acts for which the State is found liable by a court of competent jurisdiction.

28. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES

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

29. DISABILITIES ACCESS LAWS

Without limiting Concessionaire's responsibility under this Contract for compliance with all laws, with regard to all operations and activities that are the responsibility of Concessionaire under this Contract, Concessionaire shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (ADA) [Public Law 101-336, commencing at §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 §4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code §7250, et seq., Facilities for Handicapped Persons, and any other applicable laws. Written approval from State is required prior to implementation of any plans to comply with accessibility requirements.

These facilities must be compliant with the 2010 ADA Standards for Accessible Design, California Building Code, Title 24 Chapter 11B (latest edition), Accessibility to Public Accommodations, and the Final Accessibility Guidelines for Outdoor Developed Areas put forth by the United States Access Board.

30. NONDISCRIMINATION

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

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

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

Further, as part of compliance with the foregoing, Concessionaire shall comply with The Americans With Disabilities Act Title II Regulations Part 35, Subpart B – §35.130 General Prohibitions Against Discrimination, and Subpart D - Program Accessibility §35.149 Discrimination Prohibited.

Concessionaire shall comply with the provisions of the Fair Employment and Housing Act (Government Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Division 4, Chapter 5). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Concessionaire and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

Concessionaire shall include the non-discrimination and compliance provisions of this Section in all agreements to perform work under and/or in connection with this Contract.

In the event of violation of this Section, the State will have the right to terminate this Contract, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by the Concessionaire.

31. DRUG-FREE WORKPLACE

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

32. CONFLICT OF INTEREST

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

33. EXPATRIATE CORPORATIONS

Concessionaire hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code §10286 and 10286.1 and is eligible to contract with the State.

34. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Concessionaire, by signing this Contract, does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Concessionaire within the two-year period immediately preceding the date of this Contract because of Concessionaire's failure to comply with a Federal Court order that Concessionaire shall comply with an order of the National Labor Relations Board.

35. CHILD SUPPORT COMPLIANCE ACT

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

- A. The Concessionaire recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall comply with all applicable state and federal laws provided in Chapter 8 (commencing with §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.

36. RECORDS AND REPORTS

Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this Contract in a manner that conforms to industry standards and practices and in a manner acceptable to State. Concessionaire shall keep all records for a period of at least four (4) years.

In accordance with Public Resources Code §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 §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.

37. TAXES

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

B. Concessionaire agrees to pay all lawful taxes, assessments, or charges that at any time may be levied by the State, County, City, or any tax or assessment levying body upon any interest in or created by this Contract, or any

possessory right that Concessionaire may have in or to the premises covered hereby, or the improvements thereon by reason of Concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Concessionaire in or about the Premises.

38. PERFORMANCE EVALUATIONS AND INSPECTION

As part of its administration of this Contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A Concessionaire Performance Rating (DPR Form 531) attached hereto as **Exhibit 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.

39. DEFAULT BY CONCESSIONAIRE

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

- 1) Failure to Pay Rent: Any failure of Concessionaire to timely pay any rent due or any other monetary sums required to be paid hereunder where

such failure continues for a period of ten (10) consecutive days after such sums are due.

2) Absence from Premises: Any complete absence by Concessionaire or its agents and employees from the Premises for thirty (30) consecutive days or longer. The Premises shall be deemed abandoned after State has followed the procedures set forth in Civil Code §1951.3.

3) Nuisance: Should Concessionaire create or allow to be created a nuisance on the Premises, State may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Premises without notice to Concessionaire. For the purpose of this paragraph, "nuisance" consists of an egregious activity that threatens the health, welfare, and safety of the public. Concessionaire shall immediately vacate the Premises and remove all personal property within thirty (30) days after State's declaration of default.

4) Failure to Observe Other Provisions: Any failure by Concessionaire to observe or perform another provision of this Contract where such failure continues for twenty (20) consecutive days after written notice thereof by State to Concessionaire; this notice shall be deemed to be the notice required under California Code of Civil Procedure §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.

40. STATE'S REMEDIES

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

A. Collection of Rent: In any case where State has a cause of action for damages, State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar State from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of State in any suit or entry of judgment for any part of the rent reserved under this Contract, to sue for, or to include in, any suit and judgment

the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Contract. The claims for rent may be regarded by State, if it so elects, as separate claims capable of being assigned separately.

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

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

D. Termination of Concessionaire's Right to Possession: Upon an event of default, State may terminate Concessionaire's right to possession of the Premises at any time by written notice to Concessionaire. In the absence of such written notice from State, no act by State, including, but not limited to, acts of maintenance, efforts to relet and/or assign rights to possession of the Premises, or the appointment of a receiver on State's initiative to protect State's 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 §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 §5080.18 (h), where the Contract has been terminated due to a breach on the part of the Concessionaire under any terms of this Contract the State shall not be obligated to purchase any improvements made by Concessionaire or to pay the Concessionaire for said improvements before or after taking possession of the Premises.

41. DEFAULT BY STATE

State shall not be in default of the performance of any obligation required of it under this Contract unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Concessionaire to State specifying the alleged default and the applicable contract provision giving rise to the obligation. However, if the nature of State's obligation is such that more than thirty (30) days is required for its performance, then State shall not be deemed in default if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

42. SURRENDER OF THE PREMISES; HOLDING OVER

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

1) Personal Property: All of Concessionaire's personal property remaining on the Premises beyond such time specified in this Section shall be dealt with in accordance with California Code of Civil Procedure §1174 and California Civil Code §1980, or such other laws as may be enacted regarding the disposition of Concessionaires' property remaining at the Premises. Concessionaire waives all claims against State for any damage to Concessionaire resulting from State's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to State for State's costs in storing, removing, and disposing of Concessionaire's personal property or trade fixtures.

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

B. Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Premises with State's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the Minimum Rent shall be increased by Consumer Price Index adjustments required by this Contract in accordance with **Section 4**, Rent, unless otherwise agreed to in writing by State. Concessionaire

shall pay such rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this Contract except those pertaining to the term shall apply to the month-to-month tenancy.

43. NO RECORDATION; QUITCLAIM

- A. No Recordation: This Contract shall not be recorded.
- B. Quitclaim: Concessionaire shall execute and deliver to State on the expiration or termination of this Contract immediately on State's request, a quitclaim deed to the Premises and the rights arising hereunder, in recordable form or such other document as may be necessary, to remove any claim of interest of Concessionaire in and to all property belonging to the State. Should Concessionaire fail or refuse to deliver to State a quitclaim deed or other documents as aforesaid, a written notice by State reciting the failure of the Concessionaire to execute and deliver said quitclaim deed as herein provided, shall after ten (10) days from the date of recordation of said notice be conclusive evidence against the Concessionaire and all persons claiming under Concessionaire of the termination of this Contract.

44. ATTORNEY FEES

Concessionaire shall reimburse the State on demand for all reasonable attorney fees (including attorney fees incurred in any bankruptcy or administrative proceeding or in any appeal) and expenses incurred by State as a result of a breach or default under this Contract. If Concessionaire becomes the prevailing party in any legal action brought by State, Concessionaire shall be entitled to recover reasonable attorney fees and expenses incurred by Concessionaire and need not reimburse the State for any attorney fees and expenses incurred by the State.

45. WAIVER OF CLAIMS

The Concessionaire hereby waives any claim against the State of California, its officers, agents, or employees for damage or loss caused by any suit or proceeding

directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same or any part thereof from being carried out.

46. WAIVER OF CONTRACT TERMS

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

47. INTERPRETATION OF CONTRACT

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

48. DURATION OF PUBLIC FACILITIES

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

49. EMINENT DOMAIN

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

50. TEMPORARY TENANCY

This tenancy is of a temporary nature and the parties to this Contract agree that no relocation payment or relocation advisory assistance will be sought or provided in any form as a consequence of this tenancy.

51. SECTION TITLES

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

52. INDEPENDENT CONTRACTOR

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

53. ASSIGNMENTS AND SUBCONCESSIONS

No transfer, assignment, or corporate sale or merger by the Concessionaire that affects this Contract or any part thereof or interest therein directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer, assignment, or corporate merger or sale is first consented to in writing by State. Before State considers such assignment, evidence must be given to State that the proposed assignee qualifies as a "best responsible bidder" under the terms of §5080.05 of the Public Resources Code or "best responsible person or entity submitting a proposal" under the terms of §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 §5080.20 and 5080.23.

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

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

54. MODIFICATION OF CONTRACT

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

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

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

55. UNENFORCEABLE PROVISION

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

56. APPROVAL OF CONTRACT

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

57. CONTRACT NOTICE

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

Concessionaire at: CT-ConcessionaireName
CT-ConcessionContactAddress
CT-ConcessionCityState CT-ConcessionZip
CT-ConcessionairePhone

State at: Department of Parks and Recreation
Capital District
101 J Street
Sacramento, CA 95814
916-445-7373

Copy to: Department of Parks and Recreation
Partnerships Office
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.

58. STATE'S DISTRICT SUPERINTENDENT

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

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.

**XAVIER BECERRA, Attorney General
of the State of California**

By: _____
Deputy Attorney General

Dated: _____

EXHIBIT A – THE PREMISES



The Historic-Style Jewelry Store Concession is located on the ground floor of the Tehama Block Building at 935 Front Street in Old Sacramento.



An inside look at the main merchandise displays and floor design.



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

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

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

CONCESSIONAIRE’S MONTHLY REPORT OF OPERATION FOR THE MONTH OF _____, YEAR _____

(Instructions on reverse.)

NAME OF CONCESSION					
ADDRESS			CITY/STATE/ZIP CODE		
DISTRICT			PARK UNIT		
TYPE OF RECEIPT	GROSS RECEIPTS	NUMBER OF UNITS <i>(WHERE)</i>	CUMULATIVE GROSS TO DATE <i>(CONTRACT YEAR)</i>	PERCENT RATE OR AMOUNT PER UNIT DUE STATE	AMOUNT DUE TO STATE
Jewelry Sales					
SUBTOTALS					
				ADJUSTMENTS <i>(EXPLAIN REASON ON REVERSE)</i>	
				TOTAL DUE	
				<i>(EXPLAIN REASON ON REVERSE)</i>	

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

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

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. ()	

DPR 54 (Rev. 4/2007)(Front)(Excel 4/27/2007) **Original - District Office; Copy - Concessions, Reservations and Fees (address on reverse)**

EXHIBIT B – 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 C - DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

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

CONCESSIONAIRE FINANCIAL STATEMENT

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

A. CASH FLOW STATEMENT

<u>GROSS SALES/RECEIPTS</u>		\$ _____
Less Returned Sales and Allowances	\$ _____	
Less Sales Taxes	_____	
Net Sales for Period		\$ _____
Cost of Goods Sold:		
Inventory at Beginning of Period	\$ _____	
Add Purchases During Period	_____	
Merchandise Available for Sale	_____	
Less Inventory at Close of Period	_____	
Less Cost of Goods Sold		\$ _____
GROSS PROFIT		\$ _____
 <u>LESS EXPENSES</u>		
Salaries & Wages <i>(do not include Concessionaire salaries)</i>	\$ _____	
Rent to State	_____	
Insurance	_____	
Materials & Supplies	_____	
Maintenance & Repairs	_____	
Utilities <i>(including telephone)</i>	_____	
Advertising	_____	
Taxes & Licenses <i>(other than income & sales)</i>	_____	
Legal & Accounting	_____	
Travel & Transportation	_____	
Interest	_____	
Security	_____	
Administrative Overhead	_____	
Depreciation <i>(equipment)</i>	_____	
Amortization <i>(improvements)</i>	_____	
Other: _____	_____	
Other: _____	_____	
Other: _____	_____	
Other: _____	_____	
TOTAL EXPENSES		\$ _____
NET PROFIT FROM OPERATIONS		\$ _____
<i>(before income taxes)</i>		

CONCESSIONAIRE FINANCIAL STATEMENT

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

C. BALANCE SHEET

ASSETS

CURRENT ASSETS

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

TOTAL CURRENT ASSETS \$ _____

NONCURRENT ASSETS

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

TOTAL NONCURRENT ASSETS \$ _____

TOTAL ASSETS \$ _____

LIABILITIES

CURRENT LIABILITIES

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

TOTAL CURRENT LIABILITIES \$ _____

OTHER LIABILITIES

Other: _____	\$	
Other: _____		

TOTAL OTHER LIABILITIES \$ _____

TOTAL LIABILITIES \$ _____

CAPTIAL

OWNER'S EQUITY

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

TOTAL CAPITAL \$ _____

TOTAL LIABILITIES AND CAPITAL \$ _____

CONCESSIONAIRE FINANCIAL STATEMENT

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

D. STATEMENT OF MONTHLY GROSS SALES/RECEIPTS

Jan 20 ____ \$ _____	April 20 ____ \$ _____	July 20 ____ \$ _____	Oct 20 ____ \$ _____
Feb 20 ____ \$ _____	May 20 ____ \$ _____	Aug 20 ____ \$ _____	Nov 20 ____ \$ _____
Mar 20 ____ \$ _____	June 20 ____ \$ _____	Sept 20 ____ \$ _____	Dec 20 ____ \$ _____

TOTAL MONTHLY GROSS SALES/RECEIPTS \$ _____

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

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

AUTHORIZED SIGNATURE

DATE



PRINTED NAME OF PREPARER

EXHIBIT D - DPR 531, CONCESSION PERFORMANCE RATING

CONCESSION PERFORMANCE RATING

State of California - The Resources Agency
CALIFORNIA STATE PARKS

DISTRICT		PARK UNIT					DATE	
CONCESSIONAIRE		TYPE OF CONCESSION						
CATEGORIES <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)	COMMENTS <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					0			
PAGE 1 ONLY								

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

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

EXHIBIT E - 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 FIRMS MAILING ADDRESS	

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

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy in maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c), that everyone who works on the proposed contract or grant:
 - (a) Will receive a copy of the company's drug-free workplace policy statement, and
 - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until (NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts ^(DATE) 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 F – LICENSE/PERMISSION FOR USE OF TRADEMARKS

LICENSE/PERMISSION FOR USE OF TRADEMARKS

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

REQUESTER NAME	_____ hereafter called the "Licensee."
Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation (the "STATE") grants permission to use certain trademarks (the "Mark(s)"), created and owned by the STATE, in accordance with the terms and conditions of this License, identified as follows:	
California State Parks logo USPTO Registration No. 2437051	
See attached exhibit "A" for additional provisions regarding use of the logo, including specifications, registration, and logo usage guidelines.	
STATE hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicenseable right and license to use the Mark pursuant to the terms and conditions of this license from and including _____ through _____, intended to match and run concurrent with Licensee's Concession Contract with STATE.	
This license shall authorize the use of the Mark and associated goodwill, in connection with the following only:	
Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicenseable (except as described above). This is not an exclusive privilege to the user, and STATE reserves the right to make the Mark available to others.	
Licensee shall not modify or alter the Mark in any way without prior written approval from STATE.	
All uses of the Mark must be accompanied by the trademark symbol (®).	
IN NO EVENT SHALL THE DEPARTMENT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. THE DEPARTMENT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MARK IS GRANTED "AS IS."	
Licensee agrees to indemnify, protect, hold harmless, and defend STATE from and against any liability that might arise from any and all use of the Mark by Licensee, its licensees, successors or assigns.	
Licensee agrees to pay STATE, upon acceptance of this agreement, all expenses as follows:	
No additional expenses.	
<u>Goodwill and Quality Control</u>	
A. Licensee recognizes the great value and goodwill associated with the Mark and acknowledges that such goodwill belongs to STATE. Licensee further acknowledges that the Mark has acquired a secondary meaning among the public. Licensee agrees not to take any action that could be detrimental to the goodwill associated with the Mark or to STATE.	
B. Before Licensee uses the Mark on any materials, it shall send a copy of each representative item showing the proposed use to, and obtain written approval from, STATE. STATE shall not unreasonably withhold delay such approval.	
<u>Third Party Infringement</u>	
STATE, at its sole discretion, shall take whatever action it deems advisable in connection with any unauthorized use of the Mark(s) by a third party. STATE shall bear the entire cost and expense associated with any such action, and any recovery or compensation that may be awarded or otherwise obtained as a result of any such action shall belong to STATE.	
The provisions above constitute page 1 of 2 of this agreement. Page 2 must be initialed by both parties for this agreement to be valid.	

AGREED AND ACCEPTED

State of California Department of Parks and Recreation		LICENSEE	
BY _____	DATE _____	BY _____	DATE _____
PRINTED NAME OF PERSON SIGNING		PRINTED NAME AND TITLE OF PERSON SIGNING	
TITLE	DISTRICT/SECTION	ADDRESS	
PHONE NO.	EMAIL	PHONE NO.	EMAIL

LICENSE/PERMISSION FOR USE OF TRADEMARKS

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

The provisions below constitute page 2 of 2 of this agreement. This page must be initialed by both parties for this agreement to be valid.

Ownership Rights

Licensee acknowledges the STATE's exclusive right, titles and interest in and to the Mark. Licensee further covenants that it shall not at any time challenge or contest the validity, ownership, title and registration of STATE in and to the intellectual property or the validity of this License. Licensee's use of the Mark shall inure to the benefit of the Department. If Licensee acquires any trade rights, trademarks, equities, titles, or other rights in and to the Mark, by operation of law, usage, or otherwise, Licensee shall, upon the expiration of this License, assign and transfer the same to STATE without any consideration other than the consideration of the License.

All rights not specifically transferred by this License are reserved to STATE.

Termination

A. The Department shall have the right to terminate the License without cause upon sixty (60) days notice if the Licensee's Concession Contract with the STATE, whereupon all rights granted herein shall revert immediately to STATE.

B. Upon early termination by STATE or by expiration of the License, the License shall terminate, Licensee's rights shall cease immediately and Licensee shall discontinue all use of the Marks and/or other licensed property at once. Licensee shall dispose of all goods, works and materials bearing or relating to the Mark in accordance with STATE's instructions and consistent with the terms and conditions of the Concession Contract.

No Partnership or Agency Created

Nothing herein shall be construed to constitute the parties hereto as partners or joint venturers, nor shall any similar relationship be deemed to exist between them. Further, nothing in this License shall make one party the agent of the other, and neither party has power or authority to bind the other.

Applicable Law

This License shall be construed in accordance with the laws of the State of California; Licensee consents to jurisdiction of the courts of Sacramento, California.

Integration

This License and Exhibit A attached hereto and the Concession Contract constitute the entire agreement between the parties hereto and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto. This License shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

Notices

All notices and reports to be sent to the Department shall be in writing and shall be mailed or delivered to California Department of Parks and Recreation, Partnerships Office, PO Box 942896, Sacramento CA 94296-0001. All notices to be sent to Licensee shall be mailed or delivered to the address specified on the first page of the License form. All notices and reports shall be deemed delivered immediately upon personal delivery, or, if mailed, three (3) days after being deposited in the United States mail system, postage prepaid, first class mail, and properly addressed. The Department and Licensee shall provide notice to the other of any change in address.

Modifications

This License may not be modified except by a written instrument, signed by both parties, making specific reference to this License by date, parties and subject matter.

Severability

The invalidity or unenforceability of any provision of this License, or the invalidity or unenforceability of any provision of this License as applied to a particular occurrence or circumstance, shall not affect the validity or enforceability of any of the other provisions of this License or any other applications of such provisions, as the case may be.

Attorneys Fees

If litigation becomes necessary to secure compliance with the terms and conditions of this License, to recover damages and/or to terminate the License, the prevailing party in any legal action shall be entitled to recover reasonable attorney fees and expenses incurred.

AGREED AND ACCEPTED

LICENSOR'S INITIALS	DATE	LICENSEE'S INITIALS	DATE
---------------------	------	---------------------	------

EXHIBIT G - CONSUMER PRICE INDEX ADJUSTMENT FORMULA

In accordance with **Section 4** of this contract, the minimum monthly rental shall be adjusted at the beginning of **contract year six (6)** to reflect increases in the Consumer Price Index (CPI) over the **first year** of the contract. CPI calculations shall be based on increases 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.

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

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

Step #2:
$$\% \text{ Change} \times \text{Existing Annual Rental} = \text{Adjustment}$$

Step #3:
$$\text{Existing Annual Rental} + \text{Adjustment} = \text{New Annual Rental}$$

EXHIBIT H –WAIVER OF LIABILITY AND RELEASE SAMPLE

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

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

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

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

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

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

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

Printed Name & Address: _____

Signature: _____ Date: _____

Signature of parent or guardian for participant under age 18: _____

Name & Telephone of person to contact for emergencies: _____

EXHIBIT I – CONCESSIONAIRE’S OPERATION PLAN

EXHIBIT J – CONCESSIONAIRE’S FACILITY IMPROVEMENT PLAN

EXHIBIT K – CONCESSIONAIRE’S INTERPRETIVE PLAN