

CONCESSION CONTRACT

FOR

Watersports Rentals and Services

AT

Kings Beach State Recreation Area

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

DEPARTMENT OF PARKS AND RECREATION

PARTNERSHIPS OFFICE

1416 NINTH STREET, 14<sup>TH</sup> FLOOR

SACRAMENTO, CA 95814



Watersports Rentals and Services  
CONCESSION CONTRACT  
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STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

**CONCESSION CONTRACT**

For

**ConcessionOperation**

Located In

**Park**

**CT-ParkCounty**

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 §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**, the State Parks and Recreation Commission has been notified in accordance with California Public Resources Code § 5080.23(a) 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 Kings Beach State Recreation Area (KBSRA) 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 five (5) years, commencing on the first day of the month following approval by the California Department of General Services. The contract may be extended for an additional five (5) years by mutual written agreement between the State and Concessionaire. 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 39**, Surrender of Premises; Holding Over, with continuous Consumer Price Index adjustment, as defined below, subject otherwise to all the terms and conditions of this Contract.

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

**4. RENT**

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

           percent (    %) of the first            dollars (**\$xxxx**) of Monthly Gross Receipts  
plus  
           percent (    %) of Gross Receipts over            dollars (**\$xxxx**)

Beginning with Contract Year Six (6) and on the first day of each fifth Contract Year thereafter, the Minimum Annual Rent (\$\$\$\$) shall be adjusted to reflect changes in the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in **Exhibit 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 (15<sup>th</sup>) day of the month following the execution of the Contract and on or before the fifteenth (15<sup>th</sup>) day of each month thereafter,

Concessionaire shall furnish to State a verified statement of the concession's gross receipts for the preceding month. Such statement shall be submitted on Form DPR 54, Concessionaire's Monthly Report of Operation, attached hereto as **Exhibit 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 (15<sup>th</sup>) day of the month as described above. Any late payment shall constitute a breach of contract, giving rise to State's remedies as set forth below. Further, any late payment will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or portion thereof. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of Concessionaire's default for the overdue amount, nor prevent State from exercising the other rights and remedies granted under this Contract. Concessionaire shall pay the late charge as additional rent with the next monthly rent payment.

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 reservation 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. USE OF PREMISES**

The Premises shall be used by the Concessionaire for the provision of watersports rentals and services (motorized and non-motorized watercraft) as approved by the District Superintendent or designee for rent by the public; may also provide for motorized parasail rides, if applicable. The Use of Premises will be consistent with the State approved Operation Plan as proposed by the concessionaire and as modified by State as is reasonable and necessary to meet the intention of the State for this operation and the mission of the Department.

### *Concession Operational Requirements:*

1. All equipment utilized by the concessionaire shall be of high-quality and well maintained.
2. All operations shall cease whenever small craft or lake wind advisories or warnings are issued by the National Weather Service or any other local resource and/or in the event the state or operator deems wind, thunderstorms or other weather events result in a safety threat.
3. Concessionaire shall include a safety and skills orientation presentation for customers, prior to each rental, including boating traffic awareness, park rules, and a brief natural and cultural history overview.

4. At no time shall the maximum-rated passenger capacity of the vessel be exceeded.
5. Personal Floatation Devices (PFD's) are to be issued and worn as required in California Law and must be U.S. Coast Guard-approved. The PFD will be of a bright color contrasting with water, so as to be visible in open water conditions.
6. Concessionaire shall conduct all operations in a manner that will not interfere with the use of private property by any person.
7. All concession staff shall wear a concession uniform or other identification that can be easily identified by the public and park staff.
8. In addition to any required notification to the Department of Parks & Recreation, Division of Boating & Waterways, concessionaire shall report, immediately, all accidents or other incidents, including injury or non-injury events, to a State Park Ranger. The name(s) of concession staff and the names and addresses and phone numbers of all concession patrons and related witnesses shall be collected and immediately be made available to park staff. State reserves the right to fully investigate serious incidents, injuries and accidents.
9. Concessionaire shall provide upon request to any member of the public, the name, address, and phone number of the Sierra District Superintendent.
10. Concessionaire rental equipment will be made available for immediate use for emergency law enforcement efforts.
11. The State may suspend concession operations at any time that is in the best interest of the State.
12. No equipment, materials or supplies, other than those directly associated with concession operation, may be stored on the Premises.
13. Concessionaire shall be solely responsible for clean-up and removal from the premises of all trash and debris generated by concession operation from the Premises.
14. Concessionaire shall provide a daily log that includes total number of participants that must be included with the Concessionaire's Monthly Report of Operations (DPR 54).

15. Concessionaire shall submit to District Superintendent or designee a schedule of all concession services and prices for approval. No schedule shall be implemented or price change made without prior approval of the District Superintendent or designee.
16. Concessionaire shall submit a current brochure annually to State prior to start of seasonal operations.
17. All motorized operations providing rides to passengers (if any), must meet the following:
  - Federal Code of Regulations, Sub Chapter C, 46 CFR Parts 24 – 26 and all other applicable laws and regulations.
  - All boat captains must be Coast Guard certified.
18. Storage area for recreation equipment and sales table on the beach is limited to a 50' x 50' or 2,500 square foot area.
19. Storage shed/office area shall be no larger than 26' x 13' with an outside counter to process rental paperwork.
  - a. The shed shall be painted a dark brown or dark green color. Must submit color sample to Tahoe Regional Planning Agency (TRPA), via State for review and approval.
20. Concessionaire shall place temporary navigational buoys, as directed by State.
21. Additions of equipment and permanent or temporary structures require written approval from State and TRPA prior to installation.
22. Concession staff shall supervise all renters and be available to render immediate assistance at all times renters are in or near the water.
23. All renters must remain within sight of the concession operation.
24. The site may include a contained bark or gravel walkway leading from the storage shed to the beach area and from the storage shed to the existing pathway.
25. One – 14 square foot sign is permitted, consistent with the requirements of the Kings Beach Community Plan sign standards. Concessionaire must work with TRPA and Placer County for approval. Must be approved by the State and TRPA. All off-site signs are prohibited.

26. Permanent attachment or boat bumpers or guards to the pier and the mooring of boats at the beach are prohibited.
27. Concession operation shall meet all and Federal, California and any other laws, rules and regulations pertinent to Lake Tahoe.
28. Concessionaire is required to obtain the necessary TRPA permit, (application forms are available here: - <http://www.trpa.org/permitting/permit-applications/>).
29. Collect fees as agreed upon in writing between State and Concessionaire.
30. Provide verification of the Lake Tahoe Aquatic Invasive Species Seal Inspection STAMPS (ONLY) for all boats entering Lake Tahoe.
31. For watercraft that meet the TRPA criteria, remove seals prior to watercraft entering Lake Tahoe and reattach to watercraft upon exiting.
32. Under TRPA requirements, all boats must be inspected for Aquatic Invasive Species (AIS) and the concessionaire is responsible for providing a trained seal inspection attendant at all times during ramp hours. Training must be received from TRPA and renewed on an annual basis.
33. Responsible for ensuring that the ramp gate is locked when an attendant is not present.
34. Concessionaire may park one vehicle in the State designated parking space at KBSRA, Coon Street parking lot. Concessionaire may park one truck in the boat ramp parking lot at KBSRA.

*Kings Beach Specific Operational Requirements:*

Provide for the rental/or rides of personal water recreation equipment, including at a maximum the following items:

1. 12 - Personal watercraft (wave runner/jet ski)
2. Parasailing rides
3. Water-ski boat
4. 6 - Fishing boats (20 hp. average)
5. Kayaks
6. Standup paddle boards

7. Pedal boats
8. Aqua cycle trikes
9. Rubber inflatables
10. Chairs/umbrellas/sundries
11. Sale of bottled water

*Conditions for Motorized Watercraft (as applicable):*

1. All motorized watercraft must be moored at permanent buoys.
2. Concessionaire shall work directly with the California State Lands Commission on permitting and costs associated with the permanent buoys and provide a copy of Permit to the Department of Parks and Recreation & Sierra District, before the start of operation.
3. Fueling must comply with TRPA watercraft regulations and all fueling of any boats shall only occur at a marina.
4. Onsite maintenance of watercraft is prohibited and shall only occur at a marina or other approved location.
5. The TRPA prohibits the launch and use of all carbureted 2-stroke engines in Lake Tahoe. This generally applies to outboard motors and personal watercraft (jet skis). The TRPA does allow all 4-stroke engines and Direct Fuel Injected (DFI) 2-stroke engines. If your watercraft/engine has a California Air Resources Board (CARB) Star rating on it, it is allowed on the Lakes of the Tahoe Region. (source – [tahoebotinspections.com](http://tahoebotinspections.com))
6. The speed and revolutions per minute (RPMs) of all watercraft shall be such that disturbance (i.e. turbidity) to the lake bottom is minimized and shall be enforced via TRPA regulations and authority.
7. The creation of wakes or speeds in excess of 5 miles per hour by motorized watercraft within 600 feet of the waterline of Lake Tahoe is prohibited.
8. All motorized boats and watercraft require inspection for aquatic invasive species (AIS) prior to launching into Lake Tahoe. (source – [www.tahoebotinspections.com](http://www.tahoebotinspections.com)).

Hours of operation: Concession services shall be provided between the hours of 9:00 AM and 6:00 PM, starting on Memorial Day Weekend through September 30 or when the unit closes, whichever is earlier, during each year of the Contract. In the event State deems the hours of operation inadequate for proper service to the public, State may require Concessionaire to adjust the days and/or hours of operation to a schedule provided by State. In the event of adverse weather or other operating conditions, State may permit the concession to close at any time during the term of this Contract.

The following requirements meet the conditions in TRPA Permit #980580 and related documents.

*Minimum requirements for Coon Street Boat Ramp Operation:*

- A. Collect fees as agreed upon in writing between State and Concessionaire.
- B. Provide verification of the Lake Tahoe Aquatic Invasive Species Seal Inspection STAMPS (ONLY) for all boats entering Lake Tahoe.
- C. For watercraft that meet the TRPA criteria, remove seals prior to watercraft entering Lake Tahoe and reattach to watercraft upon exiting.
- D. Under TRPA requirements, all boats must be inspected for Aquatic Invasive Species (AIS) and the concessionaire is responsible for providing a trained seal inspection attendant at all times during ramp hours. Training must be received from TRPA and renewed on an annual basis.
- E. Responsible for ensuring that the ramp gate is locked when an attendant is not present.
- F. Concessionaire may park one vehicle in the State designated parking space at KBSRA, Coon Street parking lot.
- G. Concession operation shall meet all Federal and California laws, rules and regulations pertinent to Lake Tahoe.
- H. Concessionaire shall provide a daily log of the total number of visitors to be submitted along with the Concessionaire's Monthly Report of Operations form (DPR 54).

- I. Concessionaire shall submit to District Superintendent or designee a schedule of all concession services and prices for approval. No schedule shall be implemented or any price changes made without prior approval of the District Superintendent or designee.

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.

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

## **7. LIABILITY WAIVER**

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

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

#### **9. 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 and results shall be submitted to the District Superintendent or designee. 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.

#### **10. 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 Department of Parks and Recreation 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.

## 11. 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. **Environmental Compliance and Resource Protection:** The Department of Parks and Recreation shall comply with the State's Cultural and Natural resource management mandates in the conduct of all activities that may potentially affect cultural, natural, and/or scenic values. These mandates include, but are not limited to, the California Environmental Quality Act (CEQA/PRC 21074), the Memorandum of Understanding between California State Parks and the Office of Historic Preservation Executive Orders W-26-92 and B-10-11, Departmental Notice 2004-02, PRC Sections 5024, 5024.5 and 5097 et seq., the Native American Graves Protection and Repatriation Act (NAGPRA) (PL 101-601, 25 U.S.C. 3001 et seq., 104 stat. 3048) the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, the California

Endangered Species Act, the Federal Endangered Species Act, the Clean Air Act, the Clean Water Act, and the Porter Cologne Water Quality Act. When an undertaking has a Federal nexus, the National Historic Preservation Act (NHPA)-Section 106 (36 CFR Part 800.1 to 800.16) and the National Environmental Policy Act (42 U.S.C. Section 4321) will be required as well. The California State Parks Departmental Operation Manuals (DOM 300, 400, and 2000) for natural and cultural resources shall also be complied with projects with the potential to affect resources.

All resource management projects proposed within the Premises will be undertaken with the oversight provided by the appropriate State staff, specifically Environmental Scientists, State Historians, and State Archaeologists.

Sensitive information will be safeguarded from general public distribution as required by state and federal law (California Government Code Section 65040.2(g)(3); 6254.10; 43 CFR 7, Section 7.18(a)).

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.

## 12. **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.

**13. 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.

**14. 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.

**15. PERSONAL PROPERTY**

Except to the extent covered by **Section 21**, 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.

**16. 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.

**17. 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.

**18. 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 Department of Parks and Recreation 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 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 State Parks, 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.

#### **19. GRANT OF STATE’S TRADEMARK LICENSE**

State hereby grants Concessionaire, and Concessionaire hereby accepts a non-exclusive, non-assignable license to use the Department of Parks and Recreation 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 Department of Parks and Recreation name, Trademark, and brand consistent with the Department of Parks and Recreation Brand Standards Handbook available at

<http://isearch.parks.ca.gov/pages/321/files/BrandHandbookJanuary2007.pdf>.

The Department of Parks and Recreation name, Trademark and brand will not be used on Concessionaire social media pages.

## **20. PARTICIPATION IN STATE PARK MARKETING PROGRAMS**

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

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

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

Concessionaire agrees to rent or sell, along with all other items of merchandise that are part of the Concessionaire's normal and customary inventory, any item of merchandise that the State approves under this program, provided that Concessionaire

is authorized to sell or rent it under the terms of the Contract, and the Concessionaire receives reasonable compensation for its sale.

**21. 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.

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.

**22. 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 shall be renewed annually) in the sum of fifty percent (50%) of one year's Minimum Annual Rent 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. 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.

### 23. **INSURANCE**

A. Concessionaire shall maintain insurance for all services defined in this Contract and any amendments or other activities authorized in writing by the State. At a minimum, Concessionaire shall provide the following before entering the premises and maintain in full force throughout the term of the Contract:

- 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.
- 2) **Automobile Liability**: Concessionaire shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of motor vehicles including owned, hired and non-owned motor vehicles used by Concessionaire in the conduct of business under this Contract. Automobile Liability coverage is waived if no motor vehicles are used in the conduct of business under this Contract.
- 3) **Watercraft Liability**: If Concessionaire uses any motorized watercraft in the conduct of business under this contract the

Concessionaire shall maintain watercraft liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of motorized watercraft used by Concessionaire in the conduct of business under this Contract.

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

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

C. 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.

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

**24. 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.

**25. 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 is also required to obtain the necessary TRPA permit, (application forms are available here: - <http://www.trpa.org/permitting/permit-applications/>). Concessionaire further acknowledges State policy for concession employees to maintain compatible relations with State employees and the public.

**26. 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.

**27. 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.

## **28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

#### **34. 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.

### **35. 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.

### **36. 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.

### **37. 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.

### **38. 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.

**39. 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.

**40. NO RECORDATION**

A. No Recordation: This Contract shall not be recorded.

**41. 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.

**42. WAIVER OF CLAIMS**

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

**43. WAIVER OF CONTRACT TERMS**

Unless otherwise provided by this Contract, no waiver by either party at any time of any of the terms, conditions, or covenants of this Contract shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the Premises or to exercise any right, power, privilege, or option arising from any breach, nor any subsequent acceptance of rent then or

thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the State by this Contract shall be deemed cumulative.

**44. INTERPRETATION OF CONTRACT**

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

**45. DURATION OF PUBLIC FACILITIES**

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

**46. 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.

**47. 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.

**48. 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.

**49. INDEPENDENT CONTRACTOR**

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

**50. ASSIGNMENTS AND SUBCONCESSIONS**

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

**51. MODIFICATION OF CONTRACT**

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

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

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

**52. UNENFORCEABLE PROVISION**

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

**53. APPROVAL OF CONTRACT**

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



**54. 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  
Sierra District Office  
PO Box 266 – 7360 West Lake Blvd  
Tahoma CA 96142  
(530) 525-7232

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.

**55. 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:**

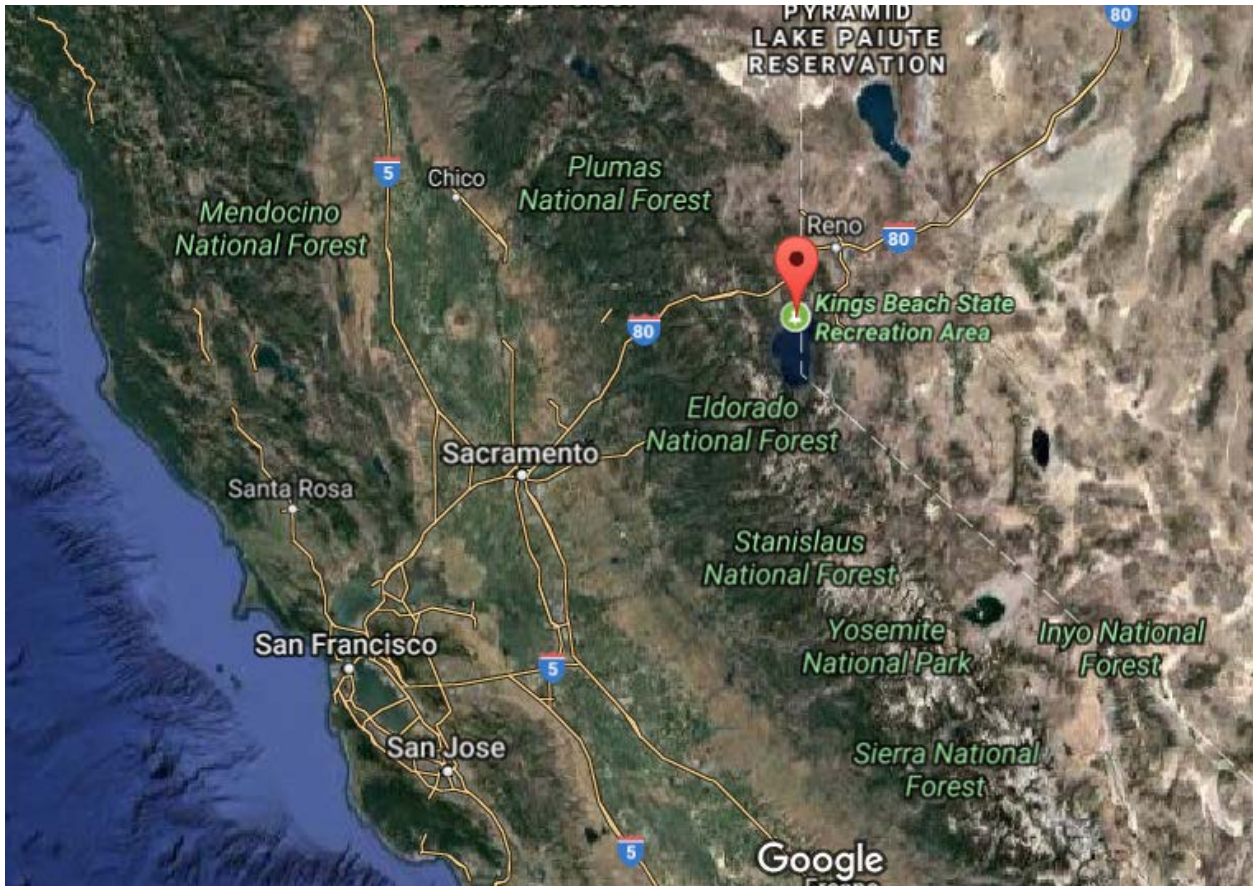
Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

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

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

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

**EXHIBIT A – THE PREMISES**

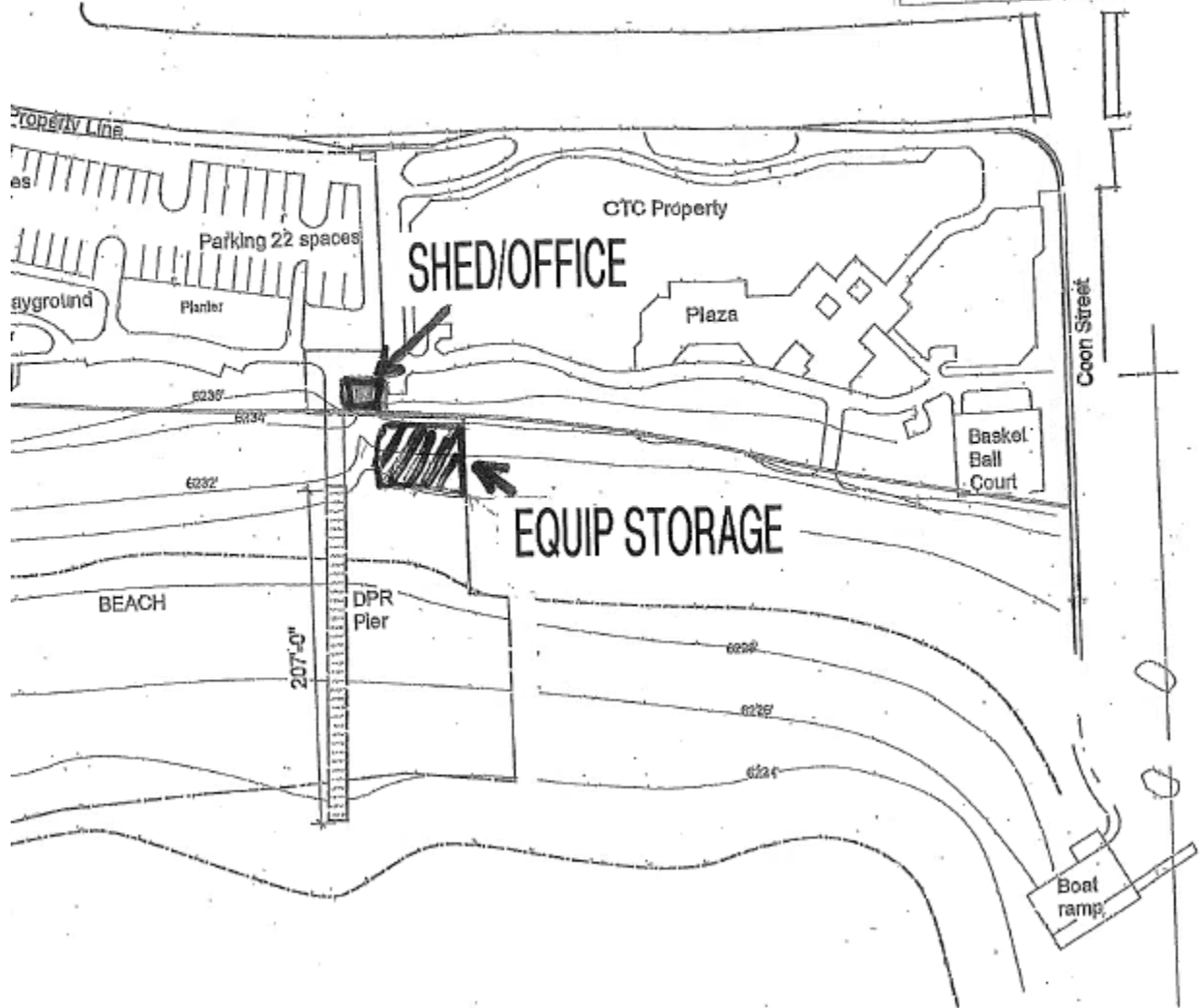


# KINGS BEACH STATE RECREATION AREA NORTH TAHOE WATER SPORTS

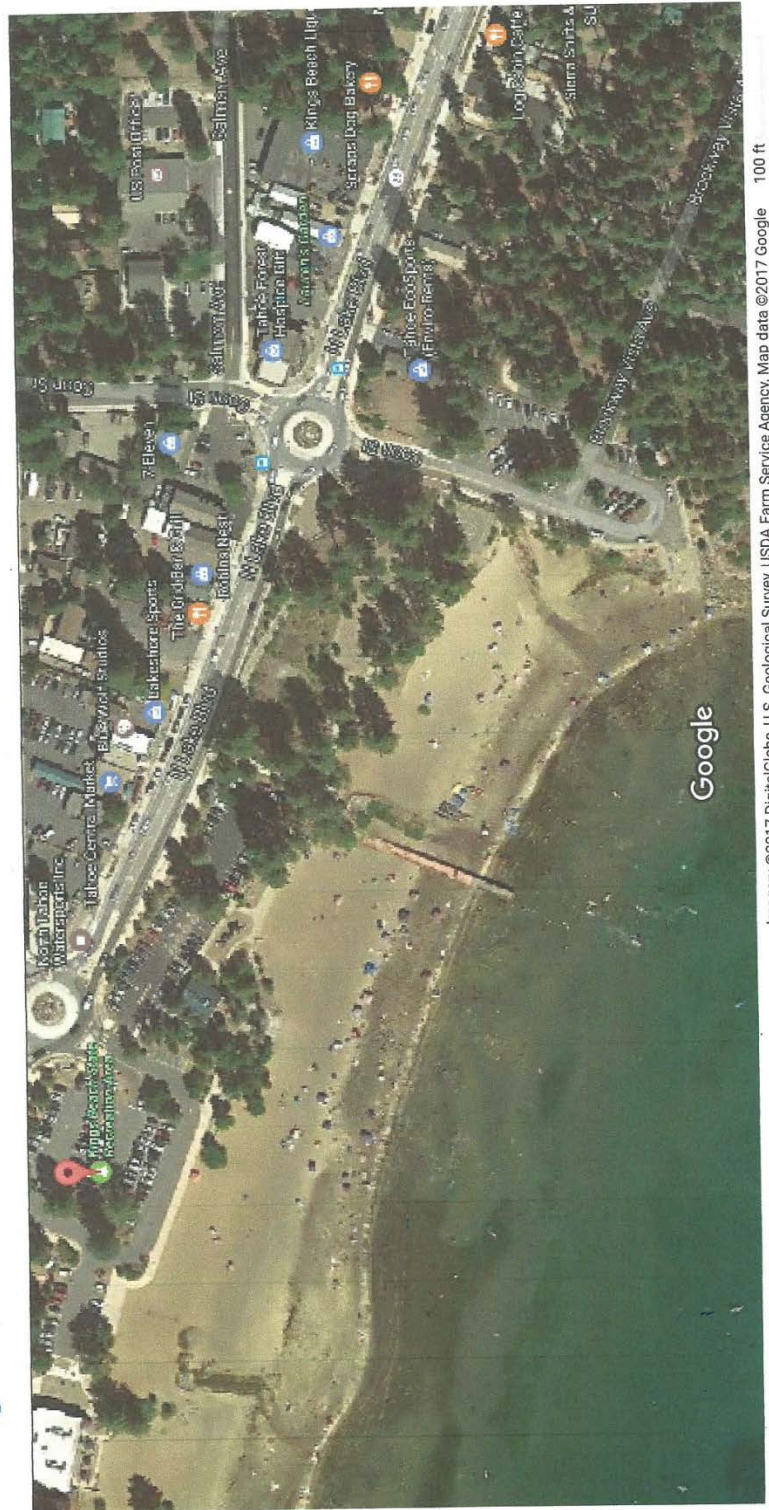


DEPARTMENT  
OF PARKS AND RECREATION

Commercial



# Google Maps Kings Beach State Recreation Area



Imagery ©2017 DigitalGlobe, U.S. Geological Globe, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2017 Google 100 ft



**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:

# 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

**GROSS SALES/RECEIPTS**

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

**LESS EXPENSES**

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





# CONCESSIONAIRE FINANCIAL STATEMENT

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

## C. BALANCE SHEET

### ASSETS

#### CURRENT ASSETS

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

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

#### NONCURRENT ASSETS

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

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

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

### LIABILITIES

#### CURRENT LIABILITIES

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

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

#### OTHER LIABILITIES

Other: _____	\$ _____
Other: _____	_____

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

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

### CAPTIAL

#### OWNER'S EQUITY

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

**TOTAL CAPITAL** \$ \_\_\_\_\_

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

# 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						
<b>CATEGORIES</b> <i>Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box.</i>		EXCELLENT (E)	SATISFACTORY (S)	NEEDS IMPROVEMENT (NI)	NONCOMPLIANCE/ UNACCEPTABLE (NON)	COMPLIANCE (COM)	NOT APPLICABLE (NA)	<b>COMMENTS</b> <i>Explain items which are rated excellent, needs improvement or noncompliance/unacceptable. Make recommendations for correction for NI and NON rating. Attach additional sheets as necessary.</i>
ACCOUNTING	RENTAL PAYMENT	8	6	2	0			
	MONTHLY DPR 54 SUBMITTAL	4	3	1	0			
	ANNUAL DPR 86 SUBMITTAL	4	3	1	0			
	MAINTAINS REGISTER JOURNAL/\$ TRAIL				0	4		
	OTHER:				0	4		
BONDS/INSURANCE	PERFORMANCE BOND				0	4		
	LIABILITY INSURANCE				0	4		
	FIRE INSURANCE				0	4		
	AUTOMOBILE INSURANCE				0	4		
	OTHER:				0	4		
CONSTRUCTION	REQUIRED IMPROVEMENTS				0	4		
	TIME SCHEDULE				0	4		
	PAYMENT BOND				0	4		
	OTHER:				0	4		
USE OF PREMISES	OPERATING DAYS/HOURS	4	3	1	0			
	AUTHORIZED GOODS/SERVICES	4	3	1	0			
	APPROPRIATE SIGNAGE/ADVERTISING	4	3	1	0			
	OTHER:	4	3	1	0			
QUALITY ASSURANCE	GOODS	8	6	2	0			
	SERVICES	8	6	2	0			
	PRICES (COMPETITIVE/POSTED)	4	3	1	0			
	CUSTOMER SERVICE	8	6	2	0			
	OTHER:	4	3	1	0			
<b>TOTAL POINTS PER COLUMN</b>					0			
<i>PAGE 1 ONLY</i>								

CATEGORIES		E	S	NI	NON	COM	NA	COMMENTS
SAFETY	FIRE SAFETY/PREVENTION	4	3	1	0			
	GAS/ELECTRIC	4	3	1	0			
	GENERAL SAFETY	4	3	1	0			
	OTHER:	4	3	1	0			
FACILITY MAINTENANCE	INTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	INTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	EXTERIOR - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	EXTERIOR - FACILITY MAINTENANCE	4	3	1	0			
	GROUNDS - HOUSEKEEPING/CLEANLINESS	4	3	1	0			
	GROUNDS - FACILITY MAINTENANCE	4	3	1	0			
	MAINTENANCE PLAN	4	3	1	0			
	OTHER:	4	3	1	0			
INTERPRETIVE PROGRAM <i>(When Applicable)</i>	COSTUMES	4	3	1	0			
	MERCHANDISE AND INTERPRETIVE PLAN	4	3	1	0			
	FURNISHINGS AND INTERPRETIVE PLAN	4	3	1	0			
	EVENTS/ACTIVITIES AND INTERPRETIVE PLAN	4	3	1	0			
	IMPLEMENTATION OF INTERPRETIVE PLAN	4	3	1	0			
	OTHER:	4	3	1	0			
<b>TOTAL POINTS PER COLUMN</b> <i>PAGE 2 ONLY</i>					0	0		
<b>TOTAL POINTS PER COLUMN</b> <i>PAGE 1 + PAGE 2</i>					0			
TOTAL POINTS RECEIVED FROM ALL CATEGORIES		MAXIMUM POINTS POSSIBLE FOR RATED CATEGORIES			PERCENT RATING		ARE THERE ANY NONCOMPLIANCE OR UNACCEPTABLE RATINGS IN ANY CATEGORY?*	
(		÷			) 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) <i>[Signature]</i>	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 <sup>(DATE)</sup> 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:	
Department of Parks and Recreation 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.	
<b>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.</b>	

### 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
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## **EXHIBIT G - CONSUMER PRICE INDEX ADJUSTMENT FORMULA**

Consumer Price Index (CPI) adjustments applied to the \$\$\$ Minimum Annual Rent shall be based on changes in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, San Francisco, All Items, (1982-84=100). Calculations shall employ the following formula:

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

"Base Rent" = Minimum \$\$\$ rent during the first Contract Year.

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

	<u>"Year End Index" - "Base Index"</u>		
<b>Step #1:</b>	"Base Index"	=	% Change
<b>Step #2:</b>	% Change x Base Rent	=	Adjustment
<b>Step #3:</b>	Base Rent + Adjustment	=	New Rent

**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**