



RFP # 21-5905S

Request for Proposal for a

RESTAURANT CONCESSION

AT

GOLETA BEACH COUNTY PARK

5905 Sandspit Drive

Goleta, CA 93117

Proposals Due: 3 pm, June 30, 2021



Contact Information

Jeff Lindgren, Parks Assistant Director
GoletaBeachRestaurantRFP@sbparks.org
(805) 568-2475

SECTION 1 - General Proposal Information

A. Introduction and Purpose

Santa Barbara County is seeking proposals from qualified persons or companies to operate a food and beverage restaurant concession at Goleta Beach County Park. The ocean front location includes an existing building previously operated as a restaurant and social event center for more than 36 years. The building, as configured, includes 5,754 square feet of interior space, 3,480 square feet of outdoor dining area and event space.

A requirement of the lease is to operate the 220 square foot snack bar at hours that will service park visitors and the beach going public.

Goleta Beach County Park is a 29-acre park owned and operated by the Santa Barbara County Community Services Department, Parks Division, is a popular year-round recreation and day use area, drawing beach goers, picnickers, bird watchers and swimmers. The park attracts over 1.4 million visitors annually for recreation and special events and is distinguished by the facilities and features that include Nearby "Campus Point" surf spot, ample free public parking, destination for bicyclists from Santa Barbara, Goleta, and Carpinteria along the County's paved Class I Bike path, convenient access from HWY 217, adjacent to the campus of the University of California at Santa Barbara, just a 5 minute drive (2 miles) from Old Town Goleta, picnic tables, group picnic areas, group areas available by reservation, BBQ's, public restrooms, playground, Goleta Pier including a hoist for private boat launch, horse shoe pits, and beach showers.

The property presents a rare opportunity for a restaurant to occupy an existing beach front building with opportunities for private catering and special event, the opportunity to create new food and beverage concept in the expansion area, operate the snack bar for dining or an awe inspiring sunset happy hour.

B. County Goals

The County seeks a long-term partnership and revenue sharing agreement that provides a welcoming and casual restaurant/café catering to a wide array of user groups, while supporting community events and recreational programming, with the ability to creatively collaborate on marketing to enhance dining and beach activities.

The ideal partner for the County will have significant experience within the food and beverage profession with a track record of success. The County goals for the renovated Restaurant are summarized below and are not ranked in any particular order. Proposer should integrate these goals when preparing the Proposal.

1. Operate a quality sit-down restaurant open 7 days a week, brunch, lunch, happy hour, and dinner, taking advantage of all that this unique location offers.
2. Operate a walk-up snack bar selling food, snacks, and beverages to park visitors and beach goers.
3. Establish operating hours to meet the needs of beach goers, social and sporting events, restaurant patrons, and park users.
4. Provide affordable and healthy menu options at all times of day with walk up, take-out, catering and sit-down service provided.
5. Incorporate a full liquor license to sell alcohol including spirits

6. Collaborate on joint marketing and programmatic delivery to enhance dining and beach objectives.
7. Offer Private Events, although the County reserves the right to limit the frequency of such events, to the extent they prevent general public use of the Restaurant.

C. Preliminary Schedule

Informational meetings and tours of restaurant space	May 20 – May 26, 2021
Written Questions Due	June 1, 2021
Response to Questions	June 11, 2021
Request for Proposal responses due	June 30, 2021 (3 p.m.)
Contract negotiations	July 2021
County Board of Supervisors awards contract	August 2021
Building plans and permits, depending on complexity of renovations	August 2021 – Oct 2021
Restaurant buildout (Initial Term)	Oct 2021 – March 2022
Building and restaurant open for business (Primary Term)	April 2022

This schedule is subject to change by the County by issuance in writing.

D. Additional Documents

RFP documents can be obtained from the County website, **www.countyofsb.org/parks/procurement.sbc**. If a Proposer is unable to access this site, a copy of the RFP can be provided via email / US mail at no charge by contacting Jeff Lindgren, Parks Assistant Director, via email GoletaBeachRestaurantRFP@sbparks.org

Any clarifications or changes to the RFP requirements or Agreement will be made by written addenda to this document, and posted on the County website. Included in the addenda will be all questions submitted prior to and during Proposer Site Meetings, the answers to those questions, and a list of Meeting attendees. The County is not responsible for any explanation, clarification, interpretation or approval made or given in any manner except by written Addendum. Any addenda so issued will be considered a part of this RFP document.

Receipt of all addenda issued during this RFP must be acknowledged, signed and included in your Proposal. Failure to sign and submit the Addenda Acknowledgement Form as part of your proposal may result in the rejection of your proposal.

E. Information Regarding Proposal Submittals

1. Submittals shall include:

- a. One (1) original and two (2) hard copies of the Proposal shall be sealed in envelopes; and
- b. One (1) Electronic copy on a thumb-drive with all attachments clearly saved as separate files.

2. Submittals are to be submitted to the attention of:

Jeff Lindgren, Parks Assistant Director
RFP # 21-5905S: Proposal for Restaurant Concession at Goleta Beach
County of Santa Barbara County Community Services, Parks Division
123 Anapamu Street, 2nd Floor
Santa Barbara, CA 93101

Proposals must be received by the Proposal due date at the address listed above. Any Proposal received after the scheduled due date and time will not be considered and will be returned unopened. The County reserves the right to extend or cancel the scheduled Proposal due date. Notice of such extension or cancellation shall be sent by Addendum.

3. The County reserves the right to accept Proposals for award of Agreements on the basis of the Proposals submitted, to negotiate with Proposers for modifications of Proposals prior to acceptance for award of Agreements, or to reject all Proposals. By submission of a Proposal, the Proposer agrees to be legally bound thereby if its Proposal is accepted for award of Agreement by the County.
4. The County shall not be obligated to respond to any Proposal submitted, nor shall it be legally bound in any manner whatsoever by the receipt of a Proposal submitted pursuant to this RFP.
5. Any and all Agreements arising out of Proposals submitted hereunder (including any negotiations that follow) shall not be binding on the County, its officers, employees, or agents unless duly approved by the Santa Barbara County Council.
6. The County reserves the right to postpone the Proposal submittal due date.
7. Under the laws of the State of California (State), any Proposal may be considered a public record after the acceptance of the Proposal for award of Agreement and, except as noted below, will be available for inspection and copying by any person after the award of the Agreement. The County will take reasonable efforts to protect any information marked "confidential" provided that such information meets the criteria of information exempt from public disclosure. Confidential information may be submitted in a separate envelope, sealed and marked "Confidential Information" and will be returned to Proposer upon request, after the award of the Agreement. It is understood, however, that the County will have no liability for disclosure of such information. Any proprietary or otherwise sensitive information contained in or with the Proposal is subject to potential disclosure.
8. No Proposal may be withdrawn after it has been submitted to the County unless the Proposer so requests in writing and such request is received by the Director before the Proposal due date.
9. By submitting the Proposal, the Proposer agrees that the Proposal will remain valid for ninety (90) calendar days after the closing date for submission of Proposals and may be extended upon mutual agreement.

10. The County of Santa Barbara encourages all businesses, including those owned and controlled by one or more socially and economically disadvantaged individuals that can provide the desired product or service, to submit a Proposal.
11. More than one Proposal for the same location from any individual, company, corporation, partnership or other entity under the same or different names will not be considered. Reasonable grounds for believing that any Proposer has a business or financial interest in more than one Proposal for the same space will cause rejection of all Proposals in which such Proposer has such interest. If there is reason to believe that collusion exists among Proposers, none of the participants in such collusion will be considered.
12. County reserves the right to waive irregularities.



SECTION 2 - Description for Restaurant Concession

A. Lease space available for Food and Beverage

Restaurant Concession

The restaurant leased area includes 5,754 square feet interior space and 3,480 outdoor ocean front patio area. The western outdoor patio dining area includes a fireplace and retractable sun shades. The lease space does not include public restrooms available to the restaurant patrons or any beach areas.

Outdoor Patio Event Space

The eastern outdoor patio is a separate outdoor space useable for special and private events or as the proposer designates.

Snack Bar

A 220 sq. ft. market and walk up snack bar is located just east of the restaurant at the foot of Goleta Pier.

The restaurant layout should consider ocean views and the location of key utilities. To study space needs, exiting conditions, a floor plan and building elevation as-built drawings were created by AsBuilt Services and are available with this RFP. As-built plans are available in PDF and .dwg file format.

Proposers are invited to ask any clarifying questions prior to submittal in order to present any ideas that maximize interior space, proximity to the beach, and dining opportunities highlighting how these could be implemented and managed.

B. Other Amenities & Services Available at Goleta Beach

1. Public Restrooms:

In addition to the restrooms inside the restaurant building, Goleta Beach has three public restrooms on the west end, middle and east end of the park which will be maintained and made available to guests of the restaurant by the County during operating hours.

2. Site Security

The County provides on-site park rangers and park hosts at Goleta Beach. Park rangers patrol the park during regular park business hours and park hosts live on-site. Parking areas adjacent to the restaurant have exterior and parking lot lighting to ensure site safety.

3. Group Picnic Areas:

Goleta Beach includes four group picnic areas with tables, seating and built in BBQs available for reservations and catered events through the County. Some have electrical water at each location. Use of this space by proposer will require specific permission from County Community Services Parks Assistant Director, or designee, in writing and shall be included within Gross Receipts for Concessionaire for purposes of calculating revenue and rent owed to the County.

4. Parking:

The site has parking lots with 572 free parking spaces and 18 ADA spaces. Parking is accessible 24 hours per day while some of the parking at the west end of the park, closes at sunset. Parking will not be provided to Tenant for exclusive use.

5. Commercial Loading Zone:

A non-exclusive commercial loading zone provides direct access to the service entrance on the east

side of the building.

6. Trash and Recycling:

The restaurant will be responsible for the service cost of appropriately sized food bin, recycle bin, grease collection, and trash bin.

7. Service Entrance:

A non-exclusive service entrance will allow deliveries direct access from the parking lot to the kitchen door through the service entrance on the east side of the building.

C. County Permitting and Restaurant Design

1. Proposer will be required to plan, design, build-out, maintain, manage, staff and stock, at their sole cost, their designated concept in accordance with the Agreement.
2. Proposer is responsible for obtaining necessary entitlements to operate food and beverage services within the Leased Premises. Type of entitlements will depend upon Operator's proposed scope of restaurant operations. Proposer is encouraged to review County zoning codes and contact the County Planning and Development Department to understand the potential entitlement requirements and costs.
3. Ensure compliance with all applicable statutes regarding equal opportunity employment and accessibility practices.

SECTION 3 - Business Information

A. Business Terms

The County of Santa Barbara is seeking to maximize revenue from the restaurant concession.

1. Agreement Term

- a. The Agreement is projected to have an Initial Term commencing on the Effective Date and ending on the first day of the Primary Term. During the Initial Term, Concessionaire shall develop the concession area and complete build out of tenant improvements. The Commencement Date of the Primary Term will be 120 days following written notice to commence Leased Premises for Build-Out or the date on which the Leased Premises is opened to the public, whichever is sooner.
- b. Proposer to identify and justify any proposed extensions to the Initial Term as defined in this document by referencing their capital investment plans and any other relevant criteria.
- c. The Primary Term is proposed to be 10 years beginning on the Effective Date. Provided Concessionaire is in compliance with all terms and conditions of the Agreement, Concessionaire may, by mutual agreement of the parties have three (3) five (5) year options to extend the agreement.

2. Rent

a. Rent

Beginning on the Rent Commencement Date and throughout the Primary Term of the Agreement, Concessionaire shall pay the County the greater of the Minimum Base Rent of \$8,000 per month or Percentage Rent for each Agreement Year. These payments will be made monthly in accordance with any Agreement. Rent will be deemed late if not received by County by the 15th day of each month.

- b. **Base Rent Adjustment**
Base Rent of \$8,000 per month shall be adjusted upward not downward, commencing on the start of the County's 2022-2023 fiscal year, July 1, 2022, by using the Consumer Price Index (CPI), as based on the All Urban Consumers, Los Angeles All Items using the average of the prior 12-month period. The monthly rent for each and every subsequent year thereafter shall be increased from the monthly rent payable during the immediately preceding year of the lease term by the same percentage by which the CPI has increased during the period noted.
- c. **Percentage Rent**
Proposer shall bid both the Percentage of Gross Sales, not including alcohol, and Percentage of Alcohol Sales in the proposal. For purposes of this RFP, the bid for Percentage of Gross Sales must be at least ten percent (10%) of gross sales, not including alcohol. The bid for Alcohol Sales must be at least fifteen percent (15%) of alcohol sales. Any offer below these minimums will result in proposal disqualification.
- d. **No Rent due during the Initial Term of the Agreement during Restaurant build out.** Rent payments to be initiated when the Primary Term commences.

3. Initial Tenant Investment

- a. The County will provide Concessionaire with access to existing restaurant approximately 120 days prior to the Primary Term to complete all tenant improvements.
- b. All interior wall, ceiling, lighting, equipment, ventilation, cabinetry, finishes, furniture, etc. will be provided by the Concessionaire.
- c. The Concessionaire will be responsible, at its own cost, for design, construction and equipping the leased space.

SECTION 4 - Proposal Submittal

Your Proposal should clearly describe the concept, menus, Leased Premises design, the financial proposal and other elements requested below. Please take the time to carefully read and understand the Proposal requirements. Format, organization and content are all important so that the evaluation committee can conduct an accurate and complete review of the Proposal. Be sure to include all information requested in this section.

If you have other information that may help us understand unique strengths of your proposal, please be sure to include that information.

Only complete Proposals will be considered. Please prepare your Proposal in the order requested.

A. Proposal Submittal

The following section describes the information that must be submitted with each Proposal. In order to have a Proposal consider by the County, the Proposer must submit a complete Proposal. The Proposal requirements in this section are not meant to limit creativity in the presentation of a Proposal, rather to list the minimum elements that must be included in the Proposal. It is the Proposer's responsibility to incorporate all pertinent information to effectively present a Proposal and to communicate the Proposer's concept and qualifications.

1. Cover Letter

The cover letter shall state general information which Proposer desires to include regarding their business organization.

2. Properly Executed Proposer's Declaration (Attachment A)

Enclose the executed original letter with the original Proposal.

3. Experience of the Proposer

Describe the Proposer's specific experience with the ownership, management or operation of food and beverage facilities. Proposer's experience description must include a representative list of its food and beverage location(s), the duration of time it has owned, managed or operated each location(s), and the gross receipts earned at each location over the past five (5) years. Provide a valid and current reference contact familiar with the Proposer performance for each location.

4. Concept and Brand

The proposal shall include information in sufficient detail to clearly define the proposed concept. Information provided should focus on the following:

- a. Describe in detail
 - i. The operating name, concept and/or theme proposed for the concession.
 - ii. The rationale for selecting the proposed name and concept.
 - iii. Operating hours detailing seasonal variation.
 - iv. How your concept will provide quality products, value, and service for the customer.
 - v. How your concept will contribute toward the creation of a casual and welcoming ambiance.
- b. Submit the brunch, lunch, happy hour and dinner menus and prices for the concession.
 - i. In addition, the type of service for each meal period: i.e. Full-service; Host to seat; server to take order; limited service; order at counter; guest retrieve food when called; no service / automated kiosk; food delivered to table. etc.
- c. Describe your interest and ability to provide catering services for public and private events on-site, in the park, and other special events.
- d. Describe your proposed alcohol and beverage service and prices.

5. Percentage Rent - Gross Sales and Alcohol Sales

Proposer shall bid both the Percentage of Gross Sales, not including alcohol, and Percentage of Alcohol Sales in the proposal. For purposes of this RFP, the bid for Percentage of Gross Sales must be at least ten percent (10%) of gross sales not including alcohol. The bid for Alcohol Sales must be at least fifteen percent (15%) of alcohol sales. Any offer below these minimums will result in proposal disqualification.

6. Leased Premises Design and Quality of Improvements

Submit the following concept plans in sufficient detail to facilitate evaluation of the quality and design of the proposed tenant.

- a. One (1) original and two (2) copies of a conceptual rendering or image board of the lease space, indicating:
 - i. The overall design theme/concept for the space.
 - ii. General visual and color scheme.
 - iii. Fixtures and equipment and casework.
- b. A projected timeline / plan indicating all considerations required to ensure that the Restaurant would be open for business in 120 days from beginning of the Initial Term.

7. Proposed Management and Operations Plan

Customer service, product quality, value for money and efficiency of service are primary concerns of the County for this concession lease. Submit sufficient information to allow the County to evaluate how your Management and Operations Plan will achieve the goal of operating a high-quality operation.

- a. Proposed Staffing. Please illustrate how the proposed location will be managed:
 - i. Organizational chart.
 - ii. Experience of the management team.

8. Proposed Marketing Plan

Provide a plan for marketing and advertising the Leased Premises that addresses:

- a. Target customers for brunch, lunch, happy hour and dinner services, with reference to any market research completed.
- b. Proposed menu and pricing to meet the needs of the target markets identified.
- c. Annual financial commitment to marketing activities.
- d. Branding, advertising and promotional plans to increase awareness and drive more visitors to the Leased Premises.
- e. Proposed interaction with the other users of Goleta Beach and the general area.
- f. Other third-party partnerships and affiliations with local or other organizations.
- g. Other items offered for sale in Leased Premises.

9. Proposed Minimum Leased Premises Build-Out Investment

Provide plans that demonstrate clear understanding of County goals for the Restaurant Concession space at Goleta Beach in determining the fit and finish for the space. Proposer shall submit details with accurate budgetary estimates for all facility build out including all cost estimates for materials, labor, permitting and professional services.

10. Capital Investment (Attachment B)

Submit a financing plan and indicate the source of funding to be used for Leased Premises build-out tenant improvement and working capital requirements, using Attachment B, Project Cost Analysis Form.

11. Financial Projections (Attachment C)

Provide a Pro-forma Operating Statement which shall indicate Proposer's projected gross sales and expenses, on the forms provided in Attachment C. The Cash-Flow projection will be evaluated for reasonableness, demonstrated understanding of the proposed brand / concept; viability of the proposed operation; rent payable to the County; and ability to fund initial investment and ongoing operational costs from cash flows generated by the business. Please include a list of assumptions supporting sales projections and operating costs as per the categories in the 10-year and monthly pro-forma schedules. The Proposal must indicate separately the revenue and cost of sales assumptions for Breakfast, Lunch, Dinner and any Catering services as indicated in Attachment C.

12. Financial Background Information

Include the following historical information for Proposer:

- a. Audited Balance Sheet and income statements for last two (2) fiscal years prepared in accordance with generally accepted accounting principles and reflecting the current financial condition of Proposer.
- b. Describe the ownership of Proposer listing all voting members and voting rights.
- c. Owners of closely held corporations must submit a personal financial statement current within three months from the date of submittal verified by suitably qualified finance professional, CPA / Independent Financial Advisor etc.
- d. At least two (2) financial references.

SECTION 5 - Evaluation of Proposal

A. Evaluation Criteria

The evaluation factors listed below are not in any particular order of importance and are not of equal value or decision weights.

1. Concept

Based on the perceived strength and quality of the proposed concept, your rationale for selecting the proposed concept, the proposed menus / product lists, and anticipated contribution of the proposed concept toward the creation of a casual and welcoming ambiance.

2. Capital Investment

Based on the Proposed Capital investment and plans submitted for the build out of the Leased space. The minimum amount committed in Attachment B, and the financing plan and source(s) of funds. Amounts accounted for any ongoing refurbishment identified during the Primary Term.

3. Experience and Quality of Past Performance

Based upon years of related experience, and quality of past performance in ownership, management or operation of food and beverage facilities.

4. Leased Premises Design and Quality of Improvements.

Based upon the proposed design, quality of materials, functionality and development schedule.

5. Financial

Based on the perceived reasonableness of Pro-Forma Operating Statements and financial returns to the County. The underlying assumptions supporting sales forecasts, an assessment of ability to sustain and grow projected sales, the perceived ability to financially undertake the terms and conditions of the Agreement throughout the entire Term, and the ability to fund operations and capital from cash flows.

6. Management and Operations Plan

Based on the experience of the management team, the proposed staffing plan, the proposed labor and training practices, the proposed plan for marketing and advertising the Concession, the proposed interaction with the other activities at Goleta Beach, the proposed procedures for ensuring high quality customer service.

B. Selection Process

1. Late Proposals

Any Proposal received after the Proposal due date will be considered late and not be eligible for consideration by the County.

2. Changes to Proposal

Except as specifically provided in the RFP, no changes to the Proposal may be made by the Proposer during the evaluation period.

3. Evaluation of Proposals

- a. Proposals failing to meet Minimum Qualifications including completeness, format and content, will be rejected without further evaluation and Proposer will be informed in writing.
- b. Each Proposal meeting the Minimum Qualifications will be evaluated by a selection committee as designated by the County.
- c. Each Proposal will be evaluated against the criteria listed in Section 6A.
- d. The County reserves the right to make changes to the highest-ranking Proposals as the County may determine at its sole discretion
- e. Selected Proposers may be asked to appear before the selection committee to explain the Proposal in more detail and respond to questions.

4. County's Right to Negotiate Agreements

The County reserves the right to negotiate agreements.

C. Award of Agreement

Following selection of a Proposal, the County will work with Proposer to complete an Agreement within 30 days of notification in writing. If both parties are unable to reach agreement within this time, County may commence negotiations with next qualified Proposer who in turn will work with the County to reach an agreement within 60 days of notification.

D. Construction

Restaurant space is available April 2021. Construction of the Concession space may begin following:

1. Execution of the Agreement by all parties
2. The Initial Term of the Agreement commences
3. Approval of Proposer's design, construction drawings and construction schedule by the County
4. Proposer's receipt of all necessary approvals and permits from local, State and federal agencies.

SECTION 6 - Design Approval and Construction

A. Design Review

Following the approval of the Agreement by the Santa Barbara County Board of Supervisors, the Concessionaire shall promptly submit plans for design review to the County. The design review process is to ensure that plans conform and are in accordance with the Proposal accepted by the County. Upon request by the County, the Concessionaire shall implement any design modifications requested in order to bring the plans into compliance with any and all local, State and federal requirements. Modified designs and layouts shall be resubmitted until approved by the County.

B. Construction Permit Review

Following design review and approval, the Concessionaire shall begin preparing the construction document drawings. Construction permits are issued by the Santa Barbara County Planning and Development Department, at 123 Anapamu Street, Second Floor, Santa Barbara, CA 93101.

C. Initial Term

It is the intention of the County to make the concession space available for construction at least one hundred and twenty (120) days prior to the commencement of the Primary Term which coincides with the first day the Leased Premises is open to the Public.

D. Condition of Space at Commencement of Initial Term

1. The Restaurant Concession space was recently operating as a full-service restaurant in good condition and will be delivered "as is" to concessionaire. Utilities will be in working condition as they were for the previous concessionaire and include water, sewer, gas, and electrical. All interior wall, ceiling, lighting, equipment, ventilation, cabinetry, finishes, furniture, etc. will be provide by the Concessionaire. The Concessionaire will be responsible, at its cost, for the design, construction and equipping the leased space.
2. Outdoor dining area is immediately outside the dining room area. Tenant to furnish and equip the outdoor dining area. The space will be finished to the extent as it was utilized by the previous concessionaire in "as-is" condition.
3. The designated patio space will need to be cordoned off or separated in order to allow for alcohol sales and consumption in this area.
4. AutoCAD and Architectural plans in PDF are available upon request, and Proposer is assumed to have reviewed these plans as part of the submittal of the Proposal.

E. Commencement and Completion of Construction

Proposer shall promptly commence construction upon receipt of all required approvals, permits and pursuant to an Agreement. It is the County's intent that Proposer complete construction as expeditiously as possible and within the timeline identified in the final Agreement.

F. Coordination of Construction Activities

During construction, the Proposer will be required to coordinate its activities with the County to avoid delays and obstruction of public access to other areas of the park which are not part of the Premises.

G. Construction Drawings

As-built drawings in a pdf and AutoCAD format must be submitted to the County by Proposer upon

completion of construction and prior to the Primary Term.

H. Mid-Term Refurbishment

Proposer is encouraged to plan for re-investment in facilities to replace worn and damaged finishes. This mid-term refurbishment is not intended for general maintenance items, but a commitment to renew and replace items as a new capital investment.

SECTION 7 - Other Requirements

A. Maintenance Requirements

The County expects that the Concessionaire will comply with any County requirements for regular leasehold fixture and equipment inspections as well as required schedules for routine cleaning, repair and wear- and-tear refurbishment. This includes landscaping immediately adjacent to the building and Premises.

B. Insurance and Agreement Surety

Proposer, as a Concessionaire, must purchase and maintain, throughout the Initial Term and Primary Term of the Agreement, insurance and agreement surety of the types and in the amounts as shall be prescribed in the Agreement. Exhibit G, details the County's Insurance requirements.

Performance Security

Performance Security. Prior to commencement of construction of the Leasehold Improvements pursuant to this Agreement, Concessionaire shall provide County with performance security for the construction of the Leasehold Improvements in one or more of the following forms:

1. One or more fully executed Performance Bonds ("Performance Bond") issued by a surety or sureties ("Surety") approved by the County, which approval shall not be unreasonably withheld, pursuant to which the Surety shall agree to guaranty Concessionaire's obligations to complete the construction of the Leasehold Improvements in accordance with the Approved Plans. The Performance Bond shall remain in effect for a period of one (1) year after the substantial completion of the Leasehold Improvements. After the substantial completion of the Leasehold Improvements, the Performance Bond will continue to guaranty the full, complete and satisfactory repair and replacement of any defects in the Leasehold Improvements that become evident during the period of one (1) year after issuance of the Final Certificate of Occupancy. Upon full and proper performance of the bonded obligations, substantial completion of the Leasehold Improvements, and expiration of the one (1) year period following the substantial completion, the Performance Bond may terminate.
2. One or more fully executed irrevocable letters of credit ("Letter of Credit") in an amount equal to the estimated cost of construction of the Leasehold Improvements, issued by one or more financial institutions approved by the County Community Services Department CFO, and conditioned for payment upon written demand by the County Finance Director stating that Concessionaire has failed to perform its obligations pursuant to this Agreement with respect to the construction of the Leasehold Improvements or that an issue of performance has occurred that requires the County Community Services Department CFO to hold the proceeds in order to secure performance of the construction of the Leasehold Improvements by Concessionaire. The Letter of Credit shall remain in effect until one (1) year after the substantial completion of the Leasehold Improvements. If the Letter of Credit has a term that ends less than one (1) year after the substantial completion of the Leasehold Improvements, the Letter of Credit shall be conditioned for automatic payment to County forty-five (45) days before the end of the term without further notice or action by County. Concessionaire may satisfy this security requirement

with successive Letters of Credit each conditioned as described herein. After the substantial completion of the Leasehold Improvements, the Letter of Credit will continue to guaranty the full, complete and satisfactory repair and replacement of any defects in the Leasehold Improvements that become evident during the period of one (1) year after issuance of the Final Certificate of Occupancy. Upon full and proper performance of the construction obligations, substantial completion of the Leasehold Improvements, and expiration of the one (1) year period following the substantial completion, the Letter of Credit may terminate.

3. One or more certificate(s) of deposit in an aggregate amount equal to the estimated cost of construction of the Leasehold Improvements, issued by one or more financial institutions approved by the County Community Services Department CFO, naming the County of Santa Barbara as an additional depositor. County shall have the right to withdraw upon the certificate of deposit upon Concessionaire's failure to satisfy its obligations pursuant to this Agreement with respect to the construction of the Leasehold Improvements. The certificate of deposit shall remain on deposit until one (1) year after the substantial completion of the Leasehold Improvements. Concessionaire may satisfy this security requirement with successive renewals of the certificate of deposit each conditioned as described in this subsection. After the substantial completion of the Leasehold Improvements, certificate of deposit will continue to guaranty the full, complete and satisfactory repair and replacement of any defects in the Leasehold Improvements that become evident during the period of one (1) year after issuance of the Final Certificate of Occupancy. Upon full and proper performance of the construction obligations, substantial completion of the Leasehold Improvements, and expiration of the one (1) year period following the substantial completion, County's interest in the certificate of deposit shall terminate. Concessionaire shall have the sole right to any interest earned on the certificate of deposit required by this provision.

In the event legal action is required to enforce the security interest required by this Article, Concessionaire will pay to County reasonable attorneys' fees as determined by the court.

C. Security Deposit

Upon execution of this Agreement. Concessionaire shall deposit with County a Security Deposit in the amount of \$15,000 as security for Concessionaire's faithful performance of its obligations under this Agreement.

County shall not be required to keep the Security Deposit separate from its general accounts. Within thirty (30) days after the Premises has been vacated by Concessionaire, County shall return that portion of the Security Deposit not used or applied by County. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be a prepayment of any monies to be paid by Concessionaire under this Agreement.

D. Conflicts of Interest

Proposer or his/her associates shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the County for the purpose of influencing consideration of this proposal.

Any contact, initiated by any Proposer, between the Proposer, its agent(s), employee(s) or others on the Proposer's behalf, and the County and/or County staff which could influence the Agreement award process, outside of the process as provided in this RFP, may result in rejection of the Proposer's response.

E. County Contact Information:

Any questions regarding the RFP should be in writing via email to Jeff Lindgren, Parks Assistant Director, at GoletaBeachRestaurantRFP@sbparks.org.

SECTION 8 - Disclaimers

- A. Without limiting the foregoing statement, Proposer should recognize that the County's selection of a Concessionaire as herein set forth, will be made solely at the County's discretion regardless of the data submitted by Proposer. The County will evaluate the criteria listed, and such other factors as it considers appropriate, and will act with respect to its discussions, negotiations, and determinations as to whether or not to select a Concessionaire in accordance with its judgment and in its sole discretion in its determination of its interests and regardless of whether Proposer or any other interested person regards the County's determination as unreasonable, unfair, arbitrary, discriminatory or capricious.
- B. The County may consult all personal, business and financial references familiar with Proposer's prior operations and construction or management of prior projects. Submission of Proposer's response to this RFP shall constitute permission for the County to make such inquiries and authorization to third parties to respond thereto.
- C. Any information given to County staff in any correspondence, discussion, meeting or other communications between Proposer and County staff before, with or after the submission of the proposal, either orally or in writing, will not be or be deemed to have been, given in confidence and may be used or disclosed to others for any purpose at any time without obligation or compensation and without liability by the County of any kind whatsoever. The foregoing applies to any information, whether or not given at the invitation of the County. Any statement which is inconsistent with the foregoing provisions of this paragraph whether made as a part of, or in connection with, any information received from Proposer or otherwise made at any time in any fashion, and whether made orally or in writing, shall be deemed null and void and of no force or effect.
- E. Neither the County, nor any officer, agent nor employee thereof, shall be subject to personal liability as asserted or as may be asserted by Proposer or otherwise held liable by Proposer as a result of any term or provision under this RFP for a Food and Beverage Concession, or for any statement made herein.

EXHIBITS

Available on request, or the County's website, www.countyofsb.org/parks/procurement.sbc

- Exhibit A: Vicinity Map Identifying Location of Available Lease Space
- Exhibit B: Map of Restaurant and Snack Bar Location at Goleta Beach
- Exhibit C: Plans and Elevations of Lease Premises (available as PDF and .dwg files)
- Exhibit D: Insurance Requirements
- Exhibit E: Sample Concession Lease

END

EXHIBIT A

Vicinity Map Identifying Location of Available Lease Space

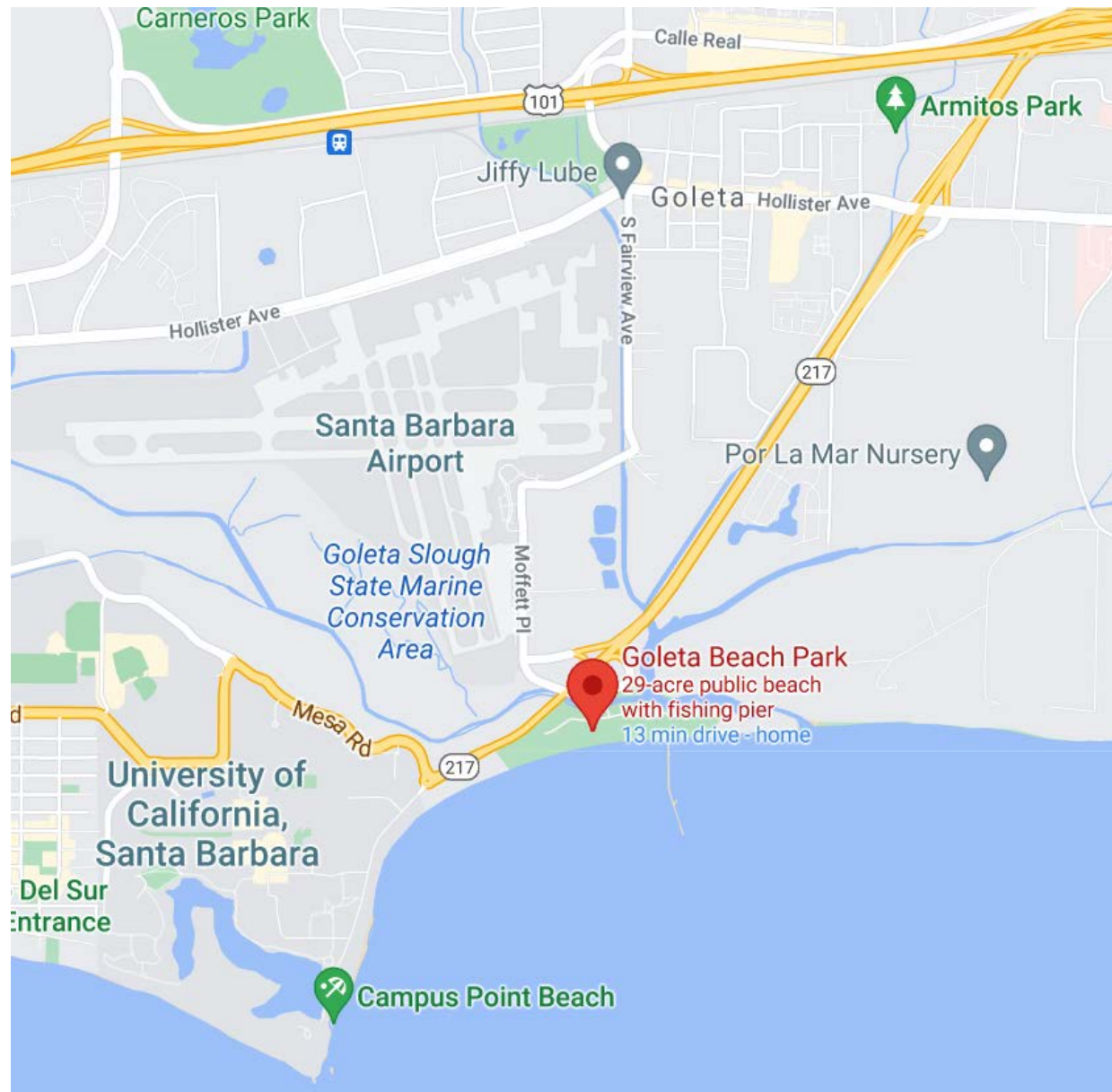


EXHIBIT B

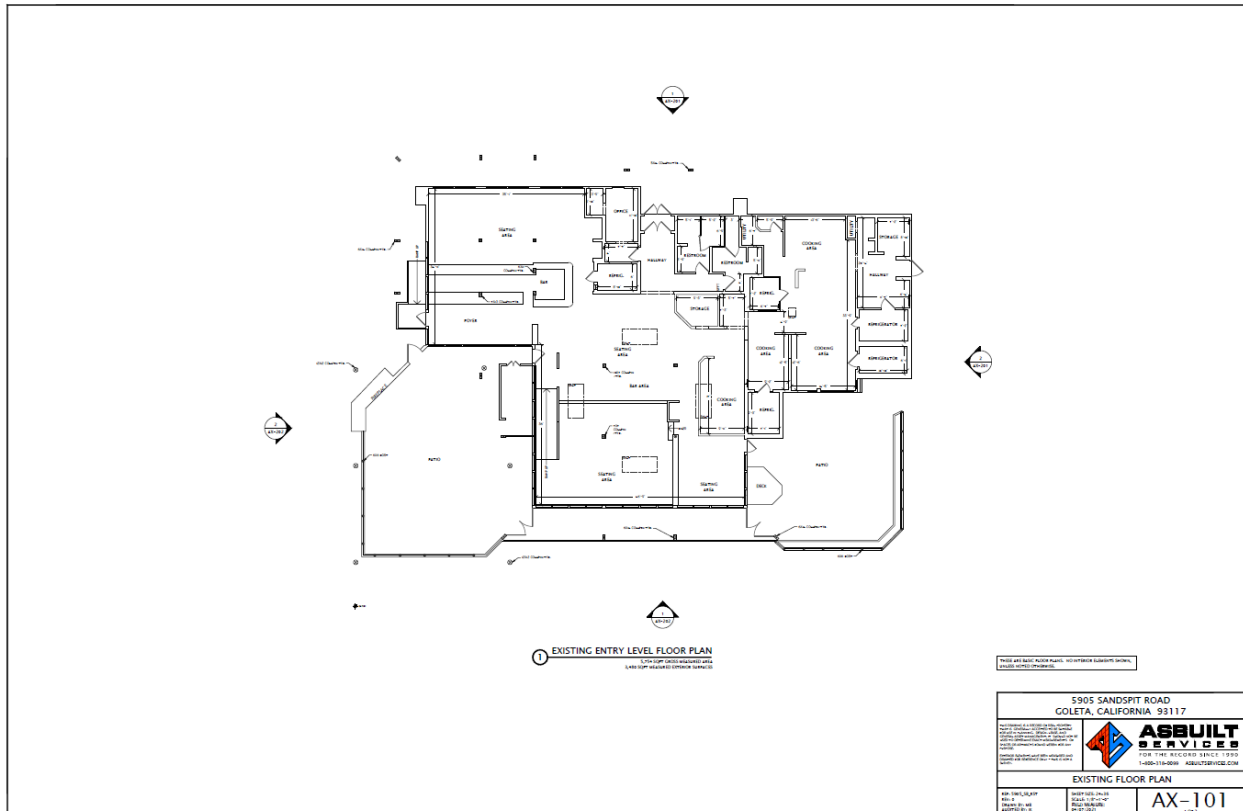
Map of Restaurant and Snack Bar Location at Goleta Beach



EXHIBIT C

Plans and Elevations of Lease Premises (available as PDF and .dwg files)

www.countyofsb.org/parks/procurement.sbc



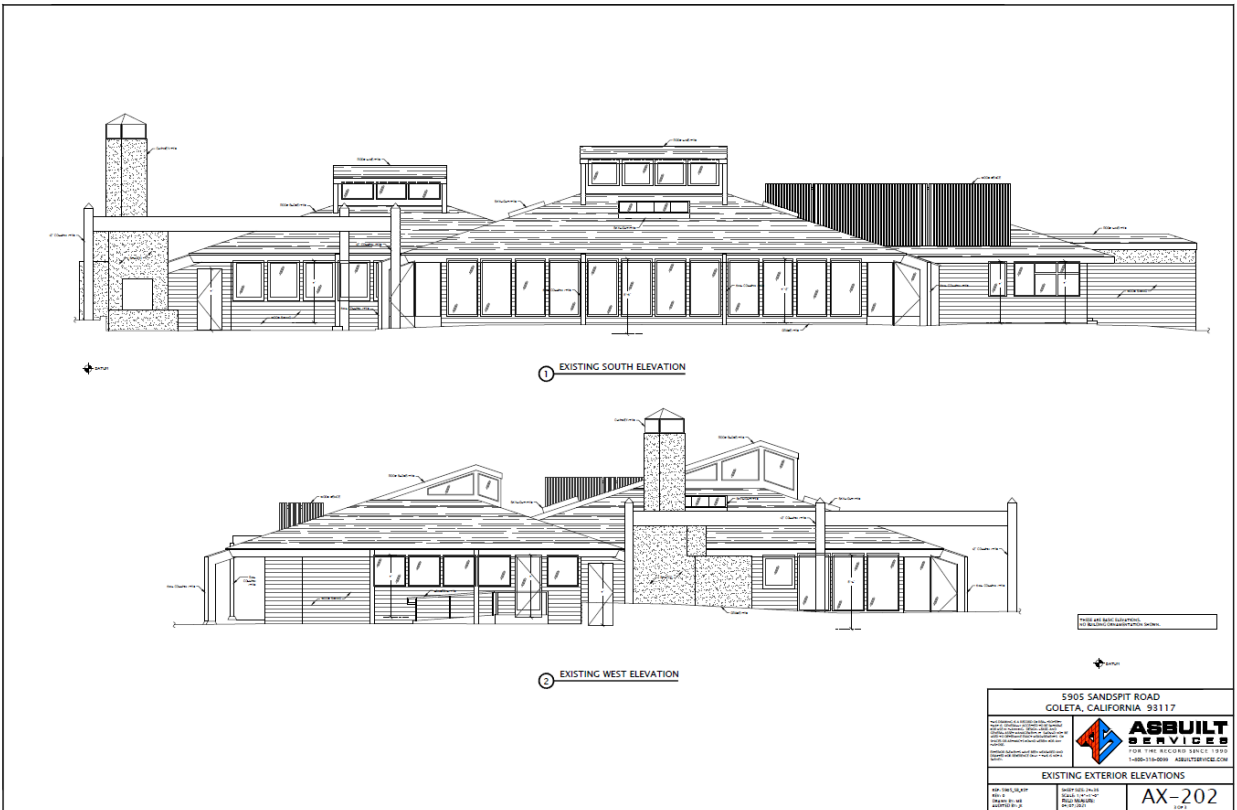
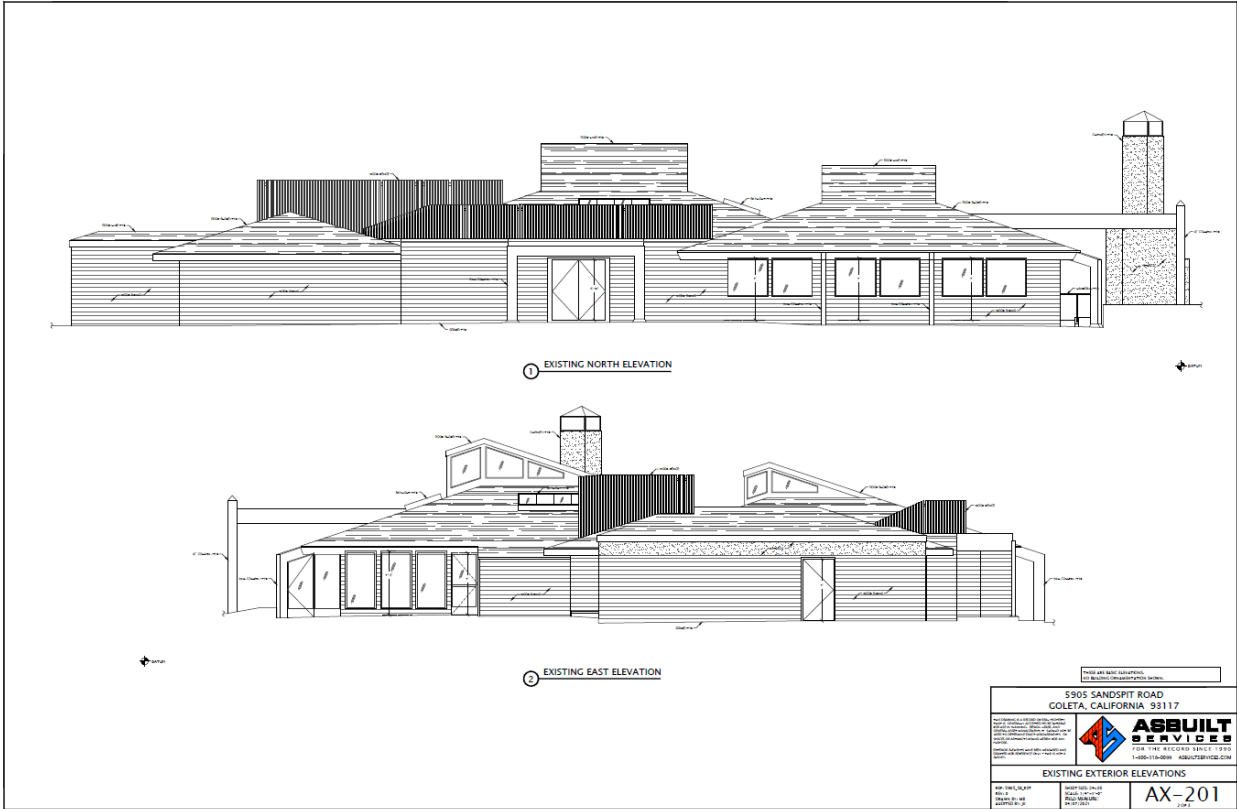


EXHIBIT D

Insurance Requirements

Indemnification and Insurance Requirements (For Lease Agreements)

INDEMNIFICATION

LESSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. LESSEE's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

Lessee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (This applies to lessees with employees).
4. **Property Insurance:** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision

If the LESSEE maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the LESSEE.

Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance at (least as broad as ISO Form CG 20 10.
2. **Primary Coverage** – For any claims related to this contract, the LESSEE's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the LESSEE's insurance and shall not contribute with it.
3. **Legal Liability Coverage** – The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.
4. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
5. **Waiver of Subrogation Rights** – LESSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
6. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LESSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
7. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
8. **Verification of Coverage** – LESSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LESSEE's obligation to provide them. The LESSEE shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LESSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT E

Sample Concession Lease

Project:

APN:

Agent:

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter "Agreement") is made by and between the

COUNTY OF SANTA BARBARA, a
political subdivision of the State of California,
hereinafter referred to as "COUNTY,"

and

PARTY NAME, hereinafter referred to as
"CONCESSIONAIRE,"

with reference to the following:

NOW, THEREFORE, in consideration of the promises, covenants, and conditions contained herein, the parties agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Agreement shall be administered and enforced for the COUNTY through the Director of Community Services Department (hereinafter "Director"). The Director, County Board of Supervisors and the United States Bureau of Reclamation shall have authority to issue or deny any COUNTY approvals required by this Agreement.

2. **RIGHTS GRANTED:** COUNTY hereby grants to CONCESSIONAIRE and CONCESSIONAIRE hereby takes from COUNTY the right to use the area shown on Exhibit "B", attached hereto and incorporated herein by this reference (hereinafter "Premises"), including all facilities existing thereon at the time of execution of this Agreement. Nothing contained in this Agreement shall be construed as purporting to transfer or convey any interest in the land, water or any public facilities to CONCESSIONAIRE. In addition, CONCESSIONAIRE shall, at all times, be subject to all requirements and provisions set forth in the various exhibits attached to this Agreement.

CONCESSIONAIRE shall have the obligation and the exclusive right to engage in all of the following activities in accordance with CONCESSIONAIRE'S operating plan, which is attached hereto as Exhibit "C", and incorporated herein by reference:

a) Provide _____,

b) Location _____ in the Park as approved by Director.

Any products sold on the Premises shall comply in all respects with all applicable County, State and Federal laws, ordinances and regulations. CONCESSIONAIRE may only sell programs or services listed in this agreement and approved by Director. CONCESSIONAIRE agrees to make all facilities, as well as all products and services provided at the Premises available to the public without discrimination and at reasonable rates.

3. **PURPOSE AND USE:** CONCESSIONAIRE shall have the right to use the Premises, subject to the Reservations set forth in Section 4 hereof, to operate, manage, maintain, and improve the Premises in accordance with the Operation Plan, for the purpose of providing Park guests with the opportunity to enjoy guided recreational and educational activities, and the right to collect fees for such goods and services in accordance with the pricing set forth in the Operation Plan. CONCESSIONAIRE shall pay all operating costs related to its use of the Premises, and hereby agrees that there is no guarantee of a profit from its provision of such goods and services. CONCESSIONAIRE shall not use the Premises for any other purpose without the express written consent of COUNTY.

CONCESSIONAIRE shall provide quality recreation facilities, appropriate visitor goods and services at reasonable rates and accessible to the visiting public, including persons with disabilities in accordance with the Americans with Disabilities Act, as it may be amended from time to time. Reasonable rates shall be based on charges for comparable goods and services provided by the private sector in similar situations. CONCESSIONAIRE shall use its best efforts to maximize income at the Premises and shall be open for business on a daily basis beginning when the lake opens in the morning until it is closed each night. CONCESSIONAIRE may close on Christmas Day. Notwithstanding, the proposed hours of operation may be amended from time to time by CONCESSIONAIRE and the Director of Community Services or his/her designee.

CONCESSIONAIRE shall not install or construct any improvements on the Premises until such has been approved by COUNTY in accordance with Section 16, IMPROVEMENTS/ALTERATIONS, hereof. Operations at the Premises shall provide for the protection, conservation, and preservation of natural, historical, and cultural resources.

CONCESSIONAIRE shall require all employees to conduct themselves in a polite, professional and courteous manner when conducting business in the Park, and to comply with the Employee Conduct and Conditions detailed in Exhibit "C", attached hereto and incorporated herein by reference. CONCESSIONAIRE is responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure the Premises are managed in compliance with Federal, State, and local laws, rules and regulations.

4. **RESERVATIONS:** All activities conducted by CONCESSIONAIRE in the Park shall be subject to the right of COUNTY and its successors and assigns to periodically access and inspect the Premises, and to monitor CONCESSIONAIRE'S operations at the Premises.

5. **TERM:** The term of this Agreement shall commence upon final execution of this Agreement and CONCESSIONAIRE'S submittal of the deposits described in Section 12 hereof, (hereinafter "Commencement Date"), and shall continue for a period of _____ (____) YEARS (hereinafter "Initial Term").

6. **EXTENSION:** Upon approval of the COUNTY based on CONCESSIONAIRE'S prior performance and adherence and development of maintenance plan listed under section 18 extended for an additional _____ (____) years, and upon approval of the County based on CONCESSIONAIRE'S prior performance and adherence and development of operation plan listed under section 18, herein below.

7. **ASSIGNMENT/SUBLEASE/SUBCONTRACT:** CONCESSIONAIRE shall not voluntarily assign, sublease, subcontract or otherwise encumber any rights granted hereunder, or allow any other person or entity to occupy or use all or part of the Premises without the written consent of COUNTY. Any attempt to assign, sublease, subcontract, hypothecate or otherwise encumber the rights granted hereunder without such consent shall be void and without legal effect, and render this Agreement terminable at the option of COUNTY.

8. **ACCESS TO THE PREMISES:** CONCESSIONAIRE shall only access the Premises using the existing roads and parking lot in the Park. COUNTY shall not be responsible for maintaining access to the Premises and shall not be liable to CONCESSIONAIRE for lack of such access, however, in the event that the Premises becomes inaccessible as a result of natural causes, COUNTY shall, to the extent reasonably necessary, cooperate with CONCESSIONAIRE in restoring access in a timely fashion.

9. **NONINTERFERENCE:** CONCESSIONAIRE agrees to not use, nor permit those under its control, including, but not limited to, its employees, tenants, licensees, invitees, agents and/or contractors, to use any portion of the Premises in any way which interferes with public use. Such interference shall be deemed a material breach, and CONCESSIONAIRE shall terminate said interference immediately upon notice from COUNTY. In the event CONCESSIONAIRE fails to stop such interference within FIVE (5) days of receipt of notice from COUNTY, this Agreement shall terminate at the option of COUNTY.

10. **SPECIAL USE FEES:** In consideration of the rights granted herein, CONCESSIONAIRE shall pay to COUNTY a monthly fee (hereinafter "Fee(s)") based on a percentage of CONCESSIONAIRE'S monthly income from the rights granted herein, or a monthly base fee, whichever is greater, according to the formula set forth in this Section. Concurrently with the payment of Fees, CONCESSIONAIRE shall submit to COUNTY, a written monthly report, prepared by a Certified Public Accountant (CPA), of all gross income derived from CONCESSIONAIRE'S operations at the Premises. Fees shall begin to accrue on the Commencement Date, and shall be due and payable for each month of the term. All fees due to COUNTY shall be paid on a monthly basis, on or before the tenth (10th) day of the following month, and shall be delivered to COUNTY at the address stated herein in Section 32, NOTICES.

PERCENTAGE FEE: CONCESSIONAIRE shall pay to COUNTY a percentage of the gross income on all sales, income or receipts arising from CONCESSIONAIRE'S operations at the Premises. Gross income shall not include any amount collected for State or Federal taxes. CONCESSIONAIRE shall pay to COUNTY _____ percent (____%) of the gross income in any calendar month received from all of CONCESSIONAIRE'S operations on the Premises. CONCESSIONAIRE shall provide a monthly financial report that includes gross receipts and a calculation of the percentage Fee.

MONTHLY BASE FEE: In the event CONCESSIONAIRE'S percentage Fee, as defined herein, is less than TWO HUNDRED FIFTY DOLLARS (\$250) for any given calendar month during the Term,

CONCESSIONAIRE shall pay to COUNTY, in lieu of any percentage Fee, a base monthly Fee of TWO HUNDRED FIFTY DOLLARS (\$250).

11. **REIMBURSEMENT OF FEES:** In no event shall COUNTY or Reclamation be responsible for reimbursement of any fees paid by CONCESSIONAIRE'S patrons, invitees or guests.

12. **SECURITY DEPOSITS:** CONCESSIONAIRE shall deposit with COUNTY the sum of _____ DOLLARS (\$____) within ten days of execution of this Agreement to secure CONCESSIONAIRE'S last month's Fees. COUNTY shall retain the deposit toward last month's Fees throughout the term of this Agreement. Upon either party giving notice of termination of this Agreement, CONCESSIONAIRE may apply the deposit to the last month's Fees. In the event CONCESSIONAIRE owes more than _____ for the last month of the Term, CONCESSIONAIRE shall pay the difference according to this Section. In the event the entire deposit is not required for the last month's Fees, COUNTY shall return any unused portion to CONCESSIONAIRE.

13. **TAXES AND ASSESSMENTS:** This Agreement may confer A POSSESSORY INTEREST on CONCESSIONAIRE and CONCESSIONAIRE shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which, due to CONCESSIONAIRE'S operations, may be levied upon the Premises during the term of this Agreement.

14. **ACCOUNTING:** CONCESSIONAIRE shall keep and maintain good and sufficient books and records of any and all business conducted under the terms of this Agreement, and shall keep financial records in accordance with generally accepted accounting principles. CONCESSIONAIRE shall keep such books of account, cash receipts and other pertinent data for a period of not less than six (6) years following the end of each year of the term of this Agreement. Such books and records shall be available for inspection by officers, employees and agents of COUNTY at all reasonable times.

CONCESSIONAIRE shall scrupulously endeavor to keep all receipts and accounts for the business conducted under the terms of this Agreement separate and apart from any other business enterprise. All business income derived from the operation of this concession shall be attributed to the gross income under this Agreement. Accounts for revenues from business enterprises owned by CONCESSIONAIRE at other locations than the Premises described herein shall be segregated from those of the Premises to allow accurate audit of income source, including provision of separate bank accounts.

PERCENTAGE FEE: For the purpose of ascertaining the amount payable as percentage Fees, CONCESSIONAIRE agrees to prepare accurate records showing inventories and receipts of merchandise at the Premises, and to show daily receipts from all sales and other transactions conducted from the Premises by CONCESSIONAIRE or any third party conducting business from the Premises. CONCESSIONAIRE shall record at the time of the sale and in the presence of the customer, all receipts from sales or other transactions for cash in a cash register that continuously records a cumulative total.

In addition to the monthly report required in Section 9 hereof, CONCESSIONAIRE shall submit, within thirty (30) days of the end of the fiscal year for each and every year of the term, including any extension thereof, an annual financial report that includes gross receipts and an accounting of all transactions, prepared by a licensed Certified Public Accountant (CPA), and certified to be correct by an officer of CONCESSIONAIRE.

COUNTY shall have the right, within twelve months after receipt of the annual financial report, to inspect all of the books of account and supporting data relating to gross receipts, and may, at COUNTY'S sole discretion, conduct of audit of CONCESSIONAIRE'S entire business affairs and records relating to CONCESSIONAIRE'S operations at the Premises. CONCESSIONAIRE, on fourteen days written notice, shall make all financial records available to COUNTY during regular business hours. In the event that any such inspection or audit discloses that CONCESSIONAIRE has not paid COUNTY the proper amount of Percentage Fees, CONCESSIONAIRE shall promptly pay the additional Fees due, together with interest computed from the date such Percentage Fee became due at the rate of TEN PERCENT (10%) per annum, or may conduct an independent audit of CONCESSIONAIRE'S entire business affairs and records relating to CONCESSIONAIRE'S operations at the Premises, certified by a certified public accountant or licensed public accountant. In the event of such an audit, should the gross receipts shown by CONCESSIONAIRE for the period covered by such audit be found to be understated by more than FIVE PERCENT (5%), CONCESSIONAIRE shall pay to COUNTY any costs incurred by COUNTY as a result of such audit and/or inspection.

15. **FACILITIES:** CONCESSIONAIRE shall pay all costs of construction and installation of any and all improvements to the Premises incidental to the activities contemplated herein; including but not limited to landscaping and maintenance.

16. **IMPROVEMENTS/ALTERATIONS:** CONCESSIONAIRE agrees that any improvements, alterations, equipment, utilities, or utility infrastructure constructed or placed on the Premises, either permanent or temporary in nature, or any alterations or additions made to the Premises shall be subject to prior written approval by COUNTY. Concurrently with CONCESSIONAIRE'S request for approval of any CONCESSIONAIRE-built fixed-asset improvements to the Premises, CONCESSIONAIRE may propose an amortization schedule be applied to such improvement. COUNTY and CONCESSIONAIRE shall agree to any amortization schedule proposed pursuant to this Section prior to COUNTY'S issuance of written approval of the improvement. All improvements or alterations must be harmonious in form, line, color and texture with the surrounding landscape.

If COUNTY approves any new proposed improvement plans, such approval shall be deemed conditioned upon CONCESSIONAIRE acquiring permits or clearances from the appropriate governmental agencies, and the submission of such to COUNTY prior to commencement of work. CONCESSIONAIRE shall comply with all conditions of said permits or clearances in a prompt and expeditious manner. Any and all permits or clearances required shall be granted only on the merits of the application thereof, and nothing in this Agreement shall be construed to require COUNTY, or any other governmental agency, to grant such permits or clearances.

CONCESSIONAIRE shall pay when due all claims for labor or materials furnished or alleged to have been furnished to CONCESSIONAIRE for use on the Premises, which claims are or may be secured by any liens on the Premises or any interest therein. CONCESSIONAIRE shall give COUNTY no less than ten days written notice prior to the commencement of any work on the Premises, and COUNTY shall have the right to post Notices of Non-responsibility in or on the property as provided by law. If CONCESSIONAIRE contests in good faith the validity of any such lien, claim or demand, CONCESSIONAIRE shall, at its sole cost and expense, defend itself and COUNTY against the same, and shall pay and satisfy any such adverse judgment that may be rendered there from. Upon request by COUNTY, CONCESSIONAIRE shall furnish COUNTY with a copy of a surety bond satisfactory to COUNTY in an amount equal to such contested lien claim or demand indemnifying COUNTY from liability for same, and holding the property free and clear of the effect of such lien or claim.

OWNERSHIP OF IMPROVEMENTS: COUNTY shall retain ownership of all improvements on the Premises, except for those improvements to be removed pursuant to Section 38 of this Agreement.

CONCESSIONAIRE RIGHT TO REIMBURSEMENT: In the event this Agreement is terminated prior to CONCESSIONAIRE amortizing the cost of CONCESSIONAIRE-built fixed-asset improvements to the Premises, CONCESSIONAIRE may request partial reimbursement for such improvements pursuant to such prior agreement as may be reached between CONCESSIONAIRE and COUNTY in regard to an amortization schedule for each individual improvement. In no event shall any value be attributed to CONCESSIONAIRE'S ownership interest beyond the term of the Agreement, and no financial obligation or risk shall reside in COUNTY on for reimbursement for fixed assets or personal property as a result of this Agreement. In the event Agreement expires or is terminated, CONCESSIONAIRE'S fixed assets and personal property must be removed from the Park unless an agreement is reached between COUNTY and CONCESSIONAIRE.

17. **MAINTENANCE:** CONCESSIONAIRE agrees to keep the Premises, including all buildings, improvements, landscaping, and any CONCESSIONAIRE-installed infrastructure in good maintenance and repair, at CONCESSIONAIRE'S sole cost and expense. The Premises shall be maintained in a sanitary, orderly, attractive and safe condition. CONCESSIONAIRE shall coordinate all door and gate locks or combination codes with COUNTY, and keep the garbage area clean and all garbage containers closed to prevent birds and other animals from gaining access to the garbage.

CONCESSIONAIRE shall provide, prior to performing any work under this Agreement, an annual operation plan to be approved by COUNTY. The parties agree that this Agreement is intended to be at no cost to COUNTY and that COUNTY shall have no obligation to maintain the Premises nor any improvements or landscaping thereon. Notwithstanding, COUNTY reserves the right to enter the Premises at any time for emergency purposes or any other purpose related to the Park.

18. **UPDATE TO OPERATION PLAN:** On January 1 of each and every year, CONCESSIONAIRE shall provide COUNTY with an update to the Operation Plan (described in Section 2, and attached hereto as Exhibit "D"). The updated Operation Plan will contain a description of any changes in CONCESSIONAIRE'S intended business operations for the ensuing year, as well as a description of proposed improvements, repairs, and general maintenance plans, including facilities, equipment and landscaping. The description of business operations will include any changes in goods or services offered at the Park by CONCESSIONAIRE, a price list detailing the costs for all goods and services offered, an estimate of gross revenues for the ensuing calendar year, and a list of current officers or principals conducting business on behalf of CONCESSIONAIRE. CONCESSIONAIRE shall include proposed measures to be taken for the protection, conservation, and preservation of natural, historical, and cultural resources in the Park.

19. **UTILITY CHARGES:** Subject to COUNTY approval, CONCESSIONAIRE shall have the right to install any and all additional utility installations within the Premises that are required by the purposes contemplated herein. CONCESSIONAIRE shall arrange to separately meter and pay all charges for all CONCESSIONAIRE'S utilities such that all utility charges for CONCESSIONAIRE'S operations are independent of utility charges for the Park. CONCESSIONAIRE shall be responsible for maintaining any and all utilities to the Premises, and shall pay when due all charges for utilities now on the Premises, or constructed or placed on the Premises, for use by CONCESSIONAIRE.

20. **SIGNS:** CONCESSIONAIRE shall not erect any signs in the Park without express written consent of COUNTY.

21. **TRASH DISPOSAL:** CONCESSIONAIRE shall be responsible for the daily removal of all refuse, waste and rubbish from the Premises resulting from CONCESSIONAIRE'S operations and depositing such in proper receptacle which may be provided by COUNTY.

22. **WASTE:** No waste shall be committed in the Park, nor shall any nuisance or other acts be committed that disturb the enjoyment of the general public, the Park, its visitors, COUNTY, or any adjacent property owners.

23. **FIRE HAZARD:** CONCESSIONAIRE understands the Park covered herein is a "hazardous watershed fire area", as the same is defined in the Uniform Fire Code compiled by the California Fire Chiefs Association and adopted with modifications and amendments thereto by COUNTY, and shall take all reasonable fire precautions. CONCESSIONAIRE understands that portions of the Park may become subject to the jurisdiction of the U.S. Forest Service and to all of the fire prevention, control, and suppression laws, rules, and regulations of the Forest Service.

24. **ENVIRONMENTAL IMPAIRMENT:** CONCESSIONAIRE shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur on the Premises due to CONCESSIONAIRE'S use and occupancy, CONCESSIONAIRE shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction thereover. CONCESSIONAIRE shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, and consulting engineering and construction costs) incurred by COUNTY as a result of CONCESSIONAIRE'S breach of this Section, or as a result of any such discharge, leakage, spillage, emission or pollution due to CONCESSIONAIRE'S use and occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of COUNTY.

25. **TOXICS:** CONCESSIONAIRE shall not manufacture or generate hazardous wastes on the Premises, including but not limited to pesticides, herbicides, sewer effluents, petroleum products, and liquid waste (grey water). CONCESSIONAIRE shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by CONCESSIONAIRE, its agents, employees, or designees on the Premises during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. CONCESSIONAIRE shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

COUNTY shall not manufacture or generate, nor allow others under its control to manufacture or generate hazardous wastes on the property. COUNTY shall notify CONCESSIONAIRE immediately in the event of any release or threatened release of any such wastes, substances or materials. In the event that such wastes, substances, or materials are released upon the property by COUNTY or others under its control, CONCESSIONAIRE may terminate this Agreement. Upon termination of this Agreement by CONCESSIONAIRE, all rights of CONCESSIONAIRE shall cease and CONCESSIONAIRE shall quietly and peacefully deliver to COUNTY, possession and interest in the property.

26. **COMPLIANCE WITH THE LAW:** CONCESSIONAIRE and CONCESSIONAIRE'S customers, licensees, invitees or guests shall comply with all local, County, State, and Federal laws, rules, regulations, Executive Orders, affecting the property, now or hereafter in effect. CONCESSIONAIRE'S occupancy shall at all times be subject to County Park rules, regulations, and restrictions per Santa Barbara County Code, Chapter 26. CONCESSIONAIRE shall make a copy of the County Park Rules, including any subsequent amendments thereto, available to each customer, licensee, invitee or guest.

27. **PROTECTION OF COUNTY PROPERTY:** It is understood by the CONCESSIONAIRE that the COUNTY park property is to be used and protected against pollution, contamination or unsanitary conditions. CONCESSIONAIRE covenants that, in the conduct of its business and operations hereunder, it will diligently guard against the contamination or pollution of the land areas by CONCESSIONAIRE, its agents, servants or employees and by the general public.

28. **INDEMNIFICATION AND INSURANCE:** CONCESSIONAIRE shall comply with the indemnification and insurance provisions as set forth in Exhibit "E" attached hereto and incorporated herein by reference.

31. **NONDISCRIMINATION:** CONCESSIONAIRE shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended.

Noncompliance with provisions of this Section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

32. **NOTICES:** Any notice to be given to the parties, by another, shall be in writing and shall be served, either personally or by mail to the following:

COUNTY: Santa Barbara County
Community Services Department
610 Mission Canyon Rd.
Santa Barbara, CA 93105
(805) 568-2461

CONCESSIONAIRE: NAME
ADDRESS

PHONE

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

33. **ABANDONMENT:** If CONCESSIONAIRE abandons the Premises for a period of 60 days, COUNTY may continue this Agreement in effect after CONCESSIONAIRE'S abandonment and recover Fees as they become due. If COUNTY chooses to terminate this Agreement, COUNTY may, but shall not be obligated to, remove the personal property of CONCESSIONAIRE and store same, at CONCESSIONAIRE'S expense. Alternatively, COUNTY may dispose of said property and shall have no liability therefore.

34. **DESTRUCTION:** If the Premises are partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY shall terminate.

35. **DEFAULT BY CONCESSIONAIRE:** Except as otherwise required herein, should CONCESSIONAIRE at any time be in default hereunder with respect to any covenant contained herein, COUNTY shall give notice to CONCESSIONAIRE specifying the particulars of the default and CONCESSIONAIRE shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, then, in addition to any other rights COUNTY may be entitled to at law, COUNTY may terminate the rights of CONCESSIONAIRE granted in this Agreement, unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case CONCESSIONAIRE shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

36. **WAIVER:** It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be, nor construed to be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

37. **TERMINATION:** This Agreement shall terminate and all rights of CONCESSIONAIRE shall cease and CONCESSIONAIRE shall quietly and peacefully deliver to COUNTY, possession and interest in the Premises:

- a) Upon expiration or earlier termination of this Agreement; or
- b) Upon abandonment of the Premises as provided in Section 33, ABANDONMENT, and COUNTY'S option to terminate this Agreement; or
- d) As provided for in Section 9, NONINTERFERENCE; or
- e) As provided for in Section 34, DESTRUCTION; or
- f) Upon COUNTY'S receipt of notice of CONCESSIONAIRE'S bankruptcy, insolvency, or the appointment of or taking possession by a bankruptcy trustee or custodian; or
- g) In the event CONCESSIONAIRE is found to be in non-compliance with any permits associated with this Agreement and such non-compliance is not resolved in a timely fashion; or
- h) Upon the failure of CONCESSIONAIRE to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement and COUNTY'S exercise of its right to terminate.

Upon expiration or termination of this Agreement, CONCESSIONAIRE'S fixed assets and personal property must be removed from the Park unless an agreement is reached between COUNTY and CONCESSIONAIRE.

38. **REMOVAL OF PROPERTY UPON TERMINATION:** Upon termination of this Agreement, CONCESSIONAIRE shall vacate the Premises. COUNTY may require CONCESSIONAIRE to remove any and all CONCESSIONAIRE constructed improvements, alterations and equipment. However, any improvements to the Premises that have been approved by COUNTY pursuant to Section 16 hereof, including utilities, shall remain property of the COUNTY. Any removal of property by CONCESSIONAIRE shall be completed within sixty (60) days of written request by COUNTY and shall be done at CONCESSIONAIRE'S sole cost and expense. CONCESSIONAIRE shall restore the Premises as nearly as possible to its original condition.

39. **AGENCY DISCLOSURE:** CONCESSIONAIRE acknowledges that the Community Services Department of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for CONCESSIONAIRE nor a dual agent in this transaction.

40. **AMENDMENTS:** This Agreement may only be amended by written consent of the County Board of Supervisors and such changes shall be binding upon the heirs or successors of the parties.

41. **CAPTIONS:** The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

42. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

43. **CERTIFICATION OF SIGNATORY:** The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and CONCESSIONAIRE to its terms and conditions or to carry out duties contemplated herein.

44. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

45. **CONSTRUCTION:** The parties to this Agreement agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The terms and conditions of this Agreement embody the parties' mutual intent, and this Agreement shall not be construed more liberally in favor of, nor more strictly against any party hereto.

///
///

Project:

APN:

Agent:

IN WITNESS WHEREOF, COUNTY and CONCESSIONAIRE have signed this Concession Agreement by the respective authorized officers as set forth below to be effective on the date executed by COUNTY.

“COUNTY”

COUNTY OF SANTA BARBARA

ATTEST:

CLERK OF THE BOARD

By: _____
Deputy Clerk

“CONCESSIONAIRE”

By: _____

APPROVED:

By: _____
Director of Community Services

APPROVED AS TO FORM:

COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED:

Real Property Manager

By: _____
CHAIR
Board of Supervisors

Date: _____

“CONCESSIONAIRE”

By: _____

APPROVED AS TO ACCOUNTING FORM:

AUDITOR-CONTROLLER

By: _____
Auditor-Controller

Advanced and Specialty Accounting

APPROVED:

Ray Aromatorio, ARM, AIC
Risk Manager

EXHIBIT “A”

(Park Property)

EXHIBIT “B”

(Premises)

EXHIBIT "C"

(EMPLOYEE CONDUCT and CONDITIONS)

The CONCESSIONAIRE shall agree to the following employee conduct and conditions policy. Harassment in any aspect of CONCESSIONAIRE employment, based on any legally protected characteristics or status, including sex, sexual orientation, race color, national origin, ancestry, religion, age, marital status, physical disability, mental disability, or medical condition is strictly prohibited. Any retaliation for opposing or filing a complaint about, or participating in an investigation of any harassment, along with aiding, abetting, inciting, compelling, or coercing any such harassment or retaliation, or attempting to do so is prohibited by this policy as well as state and federal laws.

The CONCESSIONAIRE will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrences. Any CONCESSIONAIRE employee found to have engaged in such misconduct will subject to disciplinary action, up to termination, and will be deemed to have acted outside the course and scope of his or her employment.

Harassment on the basis of sex is unlawful, and prohibited. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility toward the victim's gender, or toward the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may be either the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it, if he or she witnesses it in their immediate work environment.

In addition to prohibiting unlawful harassment based on sex or gender, this policy also prohibits unlawful harassment based upon sexual orientation, or upon any other legally protected characteristic or status, such as race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age. Harassment on the basis of such factors is subject to the same principles applicable to sexual harassment, stated above.

It is the responsibility of the CONCESSIONAIRE and its employees to represent themselves in a professional manner at all times, and regard customer satisfaction as their number one priority.

EXHIBIT “D”
(Operation Plan)

EXHIBIT "E"

Indemnification and Insurance Requirements (For Lease Agreements)

INDEMNIFICATION

LESSEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. LESSEE's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

LESSEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

Lessee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

C. Minimum Scope of Insurance
Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (This applies to lessees with employees).

4. **Property Insurance:** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision

If the LESSEE maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the LESSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

D. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance at (least as broad as ISO Form CG 20 10).
2. **Primary Coverage** – For any claims related to this contract, the LESSEE's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the LESSEE's insurance and shall not contribute with it.
3. **Legal Liability Coverage** – The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.
4. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
5. **Waiver of Subrogation Rights** – LESSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
6. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LESSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
7. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
8. **Verification of Coverage** – LESSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LESSEE's obligation to provide them. The LESSEE shall furnish evidence of renewal of

coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

9. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
10. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LESSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.