

**ATTACHMENT 1**

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**Concession Agreement**

Project: Smoke on Water Cachuma Lake  
Café Concession  
APN: 145-160-072  
Folio No.: 003750

## **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

SMOKE ON WATER, LLC a Limited Liability Company, hereinafter referred to as "CONCESSIONAIRE,"

with reference to the following:

**WHEREAS**, the United States has constructed the Cachuma Project, (hereinafter the "Project,") including Bradbury Dam and Cachuma Reservoir (also known as "Lake Cachuma"), the Tecolote Tunnel, the South Coast Conduit, and related facilities and appurtenances, pursuant to section 9(a) of the Reclamation Project Act of 1939, for diversion, storage, conveyance and distribution of waters of the Santa Ynez River and its tributaries for irrigation, municipal, domestic, and industrial uses; additionally, non-reimbursable funds were allocated for providing flood control, recreation and fish and wildlife benefits; and

**WHEREAS**, COUNTY has agreed to manage the recreation resources at Lake Cachuma pursuant to the Agreement Between the United States of America Department of the Interior, Bureau of Reclamation (hereinafter referred to as "Reclamation") and the COUNTY, Contract No. 11-LC-20-0223. The Agreement is made in accordance with the Act of June 17, 1902, (32 Stat. 388), Public Law 89-72 (79 Stat. 213), as amended particularly by Title XXVIII of Reclamation Recreation Management Act of October 30, 1992 and amendatory and supplementary Acts collectively referred to as Federal Reclamation Laws for the Administration, Operation, Maintenance, and Development of Recreation at Lake Cachuma (hereinafter referred to as "Master Agreement"). The Master Agreement promotes the development and operation of recreation and fish and wildlife enhancement at Lake Cachuma (hereinafter referred to as "Park"), as shown on Exhibit "A", attached hereto and incorporated herein by reference; and

**WHEREAS**, the Master Agreement allows COUNTY to issue and administer concession contracts and third party permits to persons or associations for the purpose of providing appropriate

and necessary services, goods, and facilities for the use of the visiting public consistent with the intent and conditions of the Master Agreement; and

**WHEREAS**, in accordance with the Master Agreement, COUNTY has solicited proposals and has determined that the goods and services provided by CONCESSIONAIRE will provide a benefit to the visiting public and are consistent with the directives and standards set forth in the Master Agreement; and

**WHEREAS**, Reclamation has approved this Agreement between COUNTY and CONCESSIONAIRE, subject to the terms, conditions, exceptions, and reservations in the Master Agreement.

**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 COUNTY'S Parks Department (hereinafter "Director"). The Director 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, as well as the equipment described in Exhibit "C", also attached hereto and incorporated herein by this reference. All rights granted herein shall be subordinate to the prior rights of Reclamation and its agents, to use any portion of the Park for the primary purposes of the Project pursuant to Federal Reclamation Law. 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. No facility, service, or site determined by Reclamation to be exclusive shall be allowed. 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 right to engage in any or all of the following activities in accordance with CONCESSIONAIRE's operating plan (hereinafter "Operation and Maintenance Plan"), which is attached hereto as Exhibit "D", and incorporated herein by reference:

- a) Obligation and exclusive right to operate an indoor dining facility with attached outdoor patio area selling food and beverages, including beer, wine, and other alcoholic beverages, which have been approved by the Director; and
- b) Non-exclusive right to offer food and beverage lake cruises; and
- c) Non-exclusive right to provide food and beverage at the Cachuma Lake pools; and
- d) Non-exclusive right to provide food delivery to campsites; and
- e) Non-exclusive right to sell barbeque packages; and
- f) Non-exclusive right to cater events at the Cachuma Clubhouse.

Any products sold on the Premises or surrounding Lake Cachuma grounds, shall comply in all respects with all applicable County, State and Federal laws, ordinances and regulations. In no event shall CONCESSIONAIRE sell any personal property (other than the approved concession inventory) such as vehicles, manufactured or mobile homes, travel trailers, boats, or personal watercraft within the Park. 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 and the surrounding Lake Cachuma grounds, subject to the Reservations set forth in Section 4 hereof to operate, manage, maintain, and improve the Premises in accordance with the Operation and Maintenance Plan and Section 2 *RIGHTS GRANTED*. CONCESSIONAIRE has the right to collect fees for such goods and services in accordance with the pricing set forth in the Operation and Maintenance 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 have non-exclusive use of the Lake Cachuma.

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 major U.S. holidays. Notwithstanding, the proposed hours of operation may be amended from time to time by CONCESSIONAIRE and the Director of Parks. In the event of accident or injury, the name of CONCESSIONAIRE staff, and the names, addresses, and phone numbers of all CONCESSIONAIRE patrons and related witnesses shall be collected and immediately made available to COUNTY. Failure to report any and all accidents or other incidents may result in immediate termination of this contract. COUNTY reserves the right to fully investigate serious incidents, injuries and accidents.

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 "E", 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 following conditions and reservations:

- a) Existing land uses, rights, or interests within the Park that are lawfully held by Reclamation or persons or entities not party to this Agreement, such as but not limited to private rights which have lawfully attached to all lands prior to the date of this Agreement; the rights-of-way for ditches and canals provided by the Act of August 30, 1890 (26 Stat 391); and the rights-of-way heretofore acquired or initiated for highways, railroads, irrigation works, or for any other purposes.
- b) The right of Reclamation, its employees, agents and assigns, to enter the Park on official business without charge, for the purpose of enforcing, protecting, and exercising the rights of Reclamation and also to protect the rights of those not party to this Agreement.
- c) The right of Reclamation, its agents, employees, assigns, contractors, lessees, or permittees, to remove from the Park, any and all materials necessary for the construction, operation, and maintenance of Project Works and facilities. All such removal activities shall not encroach on developed sites without mutual agreement of the parties hereto.
- d) The right of Reclamation, and its assigns, permittees, or lessees to prospect for, extract, and carry on the management of oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals under the Act of February 25, 1920 (41 Stat. 437), and amendatory acts, the Act of August 4, 1939 (53 Stat. 1187), as amended, and the Act of August 7, 1947, (61 Stat. 913).
- e) 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, in accordance with COUNTY'S reporting obligations to Reclamation under the Master Agreement.

5. **TERM:** The term of this Agreement shall commence upon final execution of this Agreement by COUNTY, (hereinafter "Commencement Date"), and shall continue for a period of approximately ten (10) years (hereinafter "Initial Term"), and expire on March 31, 2029, unless otherwise terminated pursuant to the provisions hereof.

6. **OPTIONS TO EXTEND:** Provided CONCESSIONAIRE is in compliance with all terms and conditions of this Agreement, CONCESSIONAIRE may, by mutual agreement of the parties, have one (1) eight (8) year option to extend the Agreement from April 1, 2029 through March 14, 2037.

CONCESSIONAIRE may request the option to renew by providing written notice to COUNTY at least ninety (90) days prior to expiration of the then current term. Such notice may be approved by the Director identified in Section 1 *ADMINISTRATION AND ENFORCEMENT*. The

term of this Agreement may not exceed the term of the Master Agreement between COUNTY and Reclamation. Upon renewal of a Master Agreement, CONCESSIONAIRE shall have right of first refusal to enter into another Agreement with the COUNTY.

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.

In the event the Master Agreement is terminated, Reclamation shall not stand in the stead of COUNTY, and COUNTY shall have no further obligations hereunder. In such event, Reclamation may terminate or modify this Agreement, negotiate a new concession agreement with CONCESSIONAIRE, or take such other action as it deems appropriate in its sole discretion.

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") based on a percentage of CONCESSIONAIRE'S monthly income from the rights granted herein, according to the formula and timeframe set forth in this Section, or Five Hundred Dollars (\$500.00), whichever is greater. Concurrently with the payment of Fees, CONCESSIONAIRE shall submit to COUNTY, a written monthly report 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 (10<sup>th</sup>) day of the following month, and shall be delivered to COUNTY at the address stated herein in Section 31, *NOTICES*. The percentage of CONCESSIONER'S monthly income shall be calculated as follows:

a) **PERCENTAGE FEE:**

- i. 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, nor any amount collected from the sale of fishing licenses.

- ii. Beginning on the Commencement Date and through March 31, 2022, CONCESSIONAIRE shall pay to COUNTY eight percent (8%) of the gross income in any calendar month received from all of CONCESSIONAIRE'S operations on the Premises
- iii. Beginning April 1, 2022, and thereafter, CONCESSIONAIRE shall pay to COUNTY eight and one-half percent (8.5%) 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.
- iv. Upon the date CONCESSIONAIRE obtains a California Department of Alcoholic Beverage Control (ABC) liquor license, CONCESSIONAIRE shall pay to COUNTY fifteen percent (15%) of the gross sales derived from hard alcohol sales received from all of CONCESSIONAIRE'S operations on the Premises. The percentage paid to COUNTY for hard alcohol sales shall apply to distilled spirits only, and exclude sales from beer and wine. For purposes of this section, the COUNTY will use the definitions set forth in Chapter 1 Division 9 of the Business & Professions Code to define Distilled Spirits as an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof. "Distilled spirits" does not include "powdered alcohol," as defined in Section 23003.1. Upon CONCESSIONAIRE'S obligation to pay this 15%, all hard alcohol sales shall then be calculated separately from the gross income of other sales arising from CONCESSIONAIRE'S operations, as mentioned in 2.a.i. above.

b) MARKETING CREDIT:

- i. Upon the Commencement Date of this Agreement through March 31, 2022, COUNTY shall offer CONCESSIONER credits reducing the amount of its monthly Fee obligations for certain pre-approved marketing expenses (hereinafter, "Marketing Credit"). Approved marketing activities may include, but are not limited to: expenses towards signs and brochures, sponsorship or catering local events which generate publicity, radio and newspaper ads, live music events, and more (hereinafter, "Approved Marketing Activities").
- ii. CONCESSIONER shall request all Marketing Credit in writing and accompany the request with a copy of the corresponding estimate or invoice. COUNTY must provide written approval of the Marketing Credit. Approved Marketing Activities and Marketing Credit can be approved on a case-by-case basis, where COUNTY reserves the right to accept or reject any Marketing Credit which do not fit the parameters of the Approved

Marketing Activities listed in this Section. Outdoor signs or other forms of advertising must not be displayed on Federal land without the approval of Reclamation.

- iii. CONCESSIONER is authorized to receive Marketing Credit in an amount up to Five Hundred Dollars (\$500.00) per month, in which said Marketing Credit will reduce the amount of Fee's describes in Section 10, *SPECIAL USE FEES*. However, at no point shall the Marketing Credit reduce the monthly Fee's owed to an amount less than Five Hundred Dollars (\$500.00). Additionally, at no point shall the COUNTY owe CONCESSIONER a payment for any Marketing Credit.
- iv. Beginning April 1, 2022, CONCESSIONER is no longer authorized to receive any Marketing Credit, unless specifically authorized by COUNTY beyond this date.

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. **TAXES AND ASSESSMENTS:** This Agreement may confer a possessory interest tax 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.

13. **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 and/or Reclamation at all reasonable times. In addition, CONCESSIONAIRE shall complete (and submit to COUNTY) Reclamations' Annual Financial Report form(s).

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.

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 10 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 and/or Reclamation 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 and/or Reclamation any costs incurred by COUNTY and/or Reclamation as a result of such audit and/or inspection.

14. **MAINTENANCE AND REPAIR:** CONCESSIONAIRE agrees to keep the Premises, including all buildings, improvements, landscaping, and all equipment in good maintenance and repair. 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 and maintenance 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.

CONCESSIONAIRE has examined the Premises, as well as the equipment described in Exhibit C, and has determined such to be suitable for the needs and operations of CONCESSIONAIRE. CONCESSIONAIRE hereby accepts the Premises and the items listed in Exhibit C in their current condition. Prior to the Commencement Date, COUNTY and CONCESSIONAIRE shall inspect the Premises and items listed in Exhibit C and provide an inventory of the condition.

CONCESSIONAIRE and COUNTY shall be responsible for maintenance and repair of the Premises as set forth in Exhibit "F", attached hereto and incorporated herein by reference. In the event CONCESSIONAIRE has not performed the necessary maintenance which causes the equipment items or infrastructure to fail, CONCESSIONAIRE shall be responsible for the replacement or repair, at its sole cost and expense.

In the event of an emergency such that the Premises requires immediate maintenance or repair that would otherwise be COUNTY's responsibility according to Exhibit "F" and CONCESSIONAIRE's operations would be negatively impacted by any delay, CONCESSIONAIRE may independently contract for such maintenance or repair. In such an event, CONCESSIONAIRE shall ensure that any maintenance or repair will conform to COUNTY maintenance standards, to be determined by COUNTY, and the cost of such maintenance or repair shall be allocated according to the responsibilities set forth in Section 10, *Special Use Fee*. Prior to contracting for any maintenance or repair that is COUNTY's responsibility, CONCESSIONAIRE shall provide COUNTY with notice of the emergency and an opportunity to respond to the emergency in a timely manner, according to the emergency contact information provided by COUNTY.

COUNTY, its agents, employees and contractors reserve the right to enter the Premises at all reasonable times, upon at least twenty-four hour notice to LESSEE (except in the case of emergency) to perform maintenance and repair, as needed on the Property; provided COUNTY shall be cognizant of the activities in the Premises and shall make an effort to provide advance notice. This right extends to public utilities in regard to repair, maintenance, construction and demolition of utility infrastructure on the Property, including appurtenances.

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 therefrom. 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.

- a) OWNERSHIP OF IMPROVEMENTS: COUNTY shall retain ownership of all improvements on the Premises, as well as all items listed on Exhibit C hereof.
- b) 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 Master Agreement, and no financial obligation or risk shall reside in Reclamation for reimbursement for fixed assets or personal property as a result of this Agreement. In the event the Master Agreement expires or is terminated, CONCESSIONAIRE'S fixed assets and personal property must be removed from the Park unless an agreement is reached between Reclamation and CONCESSIONAIRE for a new concession agreement and Reclamation decides to keep the fixed assets.

17. UPDATE TO OPERATION AND MAINTENANCE PLAN: On January 1 of each and every year, CONCESSIONAIRE shall provide COUNTY with an update to the Operation and Maintenance Plan (described in Section 3, and attached hereto as Exhibit D). The updated Operation and Maintenance 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.

18. 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 pay 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.

The fee charged for utility services provided by Reclamation shall be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to electricity, gas, water waste disposal and communication systems.

19. **SIGNS**: CONCESSIONAIRE shall not erect any signs in the Park without express written consent of COUNTY. Reclamation's name and COUNTY'S name shall be displayed at the entrance to the Leased Premises.

20. **TRASH DISPOSAL**: CONCESSIONAIRE shall be responsible for the 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.

21. **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.

22. **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.

23. **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. In addition, CONCESSIONAIRE shall comply with the Environmental Requirements set forth in Exhibit "G", attached hereto and incorporated herein by reference.

Should any discharge, leakage, spillage, emission, or pollution of any type occur in the Park 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 and Reclamation 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 or Reclamation 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.

24. **TOXICS**: CONCESSIONAIRE shall not manufacture or generate hazardous wastes in the Park, 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 in the Park 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.

- a) On the Premises CONCESSIONAIRE shall not:
  - i. Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
  - ii. Carry-on any offensive or dangerous trade, business, or occupation; or
  - iii. 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) 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 notify COUNTY 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 CONCESSIONAIRE or others under its control, COUNTY may terminate this agreement immediately. Upon termination of this Agreement by COUNTY, all rights of CONCESSIONAIRE shall cease and CONCESSIONAIRE shall quietly and peacefully deliver to COUNTY, possession and interest in the property.
- e) CONCESSIONAIRE shall protect, indemnify, defend, and hold harmless the State, and Reclamation 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.

- f) Upon termination of this Contract, when requested by State, CONCESSIONAIRE shall provide to COUNTY certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Premises.

25. **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, and Reclamation Policies 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.

CONCESSIONAIRE shall comply with Executive Order 13658, establishing a minimum wage for contractors. CONCESSIONAIRE acknowledges that all rights and privileges extended through this Contract are subject to the terms, conditions, exceptions, and reservations memorialized in the "Management Agreement" attached to, and made a part of this Contract as Exhibit "K" the "Reclamation Manual, Directives and Standards, LND 04-02"

26. **PROTECTION OF THE WATERS OF THE LAKE:** It is understood by the CONCESSIONAIRE that the waters of the Cachuma Reservoir are to be used as a domestic water supply for the south coastal section of Santa Barbara County and that the continued permitted use of the Cachuma Recreation Area depends on COUNTY adequately protecting the waters of the reservoir and the area adjacent thereto 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 waters and adjacent land areas by CONCESSIONAIRE, its agents, servants or employees and by the general public.

27. **WATER LEVEL OF CACHUMA LAKE:** The water level of Cachuma Lake is subject to change and fluctuation from natural causes, and/or the use of waters for the reservoir for domestic water supply and other purposes. In the event that the Premises are permanently inundated, or imminently threatened with permanent inundation due to any cause whatsoever, such

that the rights granted to CONCESSIONAIRE hereunder can no longer be exercised, CONCESSIONAIRE may remove, at no cost or expense to COUNTY, such improvements as CONCESSIONAIRE has constructed hereunder to an alternate site mutually agreed upon in writing by COUNTY and CONCESSIONAIRE and this Agreement shall remain in effect for the remaining portion of the term. In the event of inundation precluding exercise of the rights granted to CONCESSIONAIRE hereunder, and a mutually agreed upon site for relocation of CONCESSIONAIRE'S improvements is not found in the Cachuma Recreational Area, CONCESSIONAIRE may remove and relocate its improvements to a site other than the Cachuma Recreational Area, and CONCESSIONAIRE shall retain ownership of such improvements.

28. **INDEMNIFICATION:** CONCESSIONAIRE shall defend, indemnify and hold harmless the COUNTY, its officers, agents, employees and volunteers, and Reclamation, including its officers, agents, employees, contractors and assigns from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the activities described herein, caused in whole or in part by any alleged negligent or intentional act, or error or omission of the CONCESSIONAIRE, his tenants, licensees, invitees, or his agents, employees or other independent contractors directly responsible to him for whose acts any of them may be liable, except where caused by the active, sole negligence, or willful misconduct of the COUNTY or Reclamation.

CONCESSIONAIRE shall notify the COUNTY in writing immediately after the occurrence of any accident causing damage or injury.

29. **INSURANCE:** Without limiting CONCESSIONAIRE'S indemnification of the COUNTY or Reclamation, CONCESSIONAIRE shall procure the following required insurance coverages at its sole cost and expense. Reclamation shall be named as an additional insured on all insurance certifications. All insurance coverages are to be placed with insurers which:

1. have a Best's rating of no less than A: VII, and
2. Are admitted insurance companies in the State of California.

All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONCESSIONAIRE in default. Upon request by the COUNTY, CONCESSIONAIRE shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

- a) **Workers' Compensation Insurance:** Statutory Workers' Compensation and Employers' Liability Insurance shall cover all CONCESSIONAIRE'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONCESSIONAIRE is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONCESSIONAIRE has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONCESSIONAIRE submits a written statement to the COUNTY stating that fact.

- b) General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage; shall afford coverage for all premises, operations, products and completed operations of CONCESSIONAIRE; and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed herein by CONCESSIONAIRE, including, but not limited to Section 28, *INDEMNIFICATION*, hereof. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONCESSIONAIRE pursuant to CONCESSIONAIRE'S activities hereunder. CONCESSIONAIRE shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY and Reclamation, their officers, agents, and employees shall receive Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."*

If the policy providing liability coverage is on a 'claims-made' form, CONCESSIONAIRE is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage, and shall expressly state that the insurance carrier shall have no right of subrogation against the United States (including Reclamation,) or against COUNTY.

The above insurance requirements are subject to periodic review by COUNTY. The COUNTY'S Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of the Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONCESSIONAIRE agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.



30. **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. These provisions are incorporated herein as if they were fully set forth. CONCESSIONAIRE shall also comply with the Equal Opportunity requirements set forth in Exhibit "H", attached hereto and incorporated herein by reference, the requirements regarding non-segregated facilities set forth in Exhibit "I", attached hereto and incorporated herein by reference, and Title VI of the Civil Rights Act of 1964, set forth in Exhibit "J", attached hereto and incorporated herein by reference.

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.

31. **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 Parks Department  
123 Anapamu Street, 2nd Floor  
Santa Barbara, CA 93101  
(805) 568-2461  
[contact@sbparks.org](mailto:contact@sbparks.org)

CONCESSIONAIRE: Smoke on Water, LLC  
3140 Glengary Road  
Santa Ynez, CA 93460  
(805) 403-9136  
[craislingham@gmail.com](mailto:craislingham@gmail.com)

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.

32. **ABANDONMENT:** If CONCESSIONAIRE abandons the Premises, 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 therefor.

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

34. **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.

35. **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.

36. **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 expiration or earlier termination of the Master Agreement; or
- c) Upon abandonment of the Premises as provided in Section 32, *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 33, *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.

In addition to COUNTY'S rights to terminate this Agreement, Reclamation shall have the right to terminate this Agreement, for cause, upon sixty days written notice to CONCESSIONAIRE of a material breach of this Agreement, and the failure of CONCESSIONAIRE to cure such breach in a timely manner.

Upon expiration or termination of this Agreement, CONCESSIONAIRE shall return the Premises and the equipment and personal property described in Exhibit C to COUNTY in the same condition as existed prior to the Commencement Date, ordinary wear and tear excepted. 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 from COUNTY partial reimbursement for such improvements, subject to the method for determining the amount of such reimbursement described in Exhibit C. In the event the Master Agreement expires or is terminated, CONCESSIONAIRE'S fixed assets and personal property must be removed from the Park unless an agreement is reached between Reclamation and CONCESSIONAIRE for a new concession agreement and Reclamation decides to keep the fixed assets.

37. **REMOVAL OF PROPERTY UPON TERMINATION:** Upon termination of this Agreement, CONCESSIONAIRE shall vacate and return possession of the Premises and those items listed in Exhibit C to COUNTY. 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.

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

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

40. **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.

41. **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.

42. **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.

43. **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.

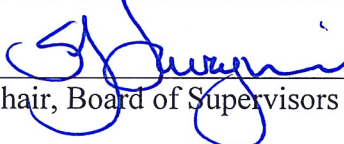
44. **CONSTRUCTION:** The parties to this Agreement agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against 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.

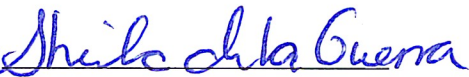
Project: Cachuma Lake Concession  
APN: 145-160-072  
File No.: 003750

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:  
MONA MIYASATO  
CLERK OF THE BOARD

By:   
Chair, Board of Supervisors

By: 

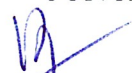
Date: 5-7-19

“CONCESSIONAIRE”

  
Craig Lingham


member/owner  
Title

“CONCESSIONAIRE”

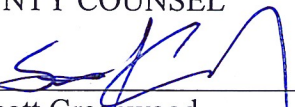
  
Dustin Earnham

MEMBER/OWNER  
Title

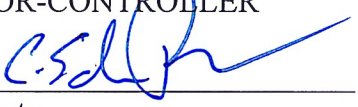
APPROVED:

  
Director, Community Services Dept.

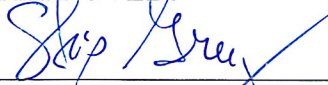
APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By:   
Scott Greenwood  
Deputy County Counsel

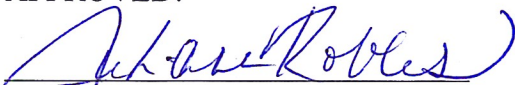
APPROVED AS TO ACCOUNTING FORM:  
BETSY SCHAFFER, C.P.A.  
AUDITOR-CONTROLLER

By:   
Deputy

APPROVED:

  
Skip Grey, Assistant Director  
Real Property Division

APPROVED:

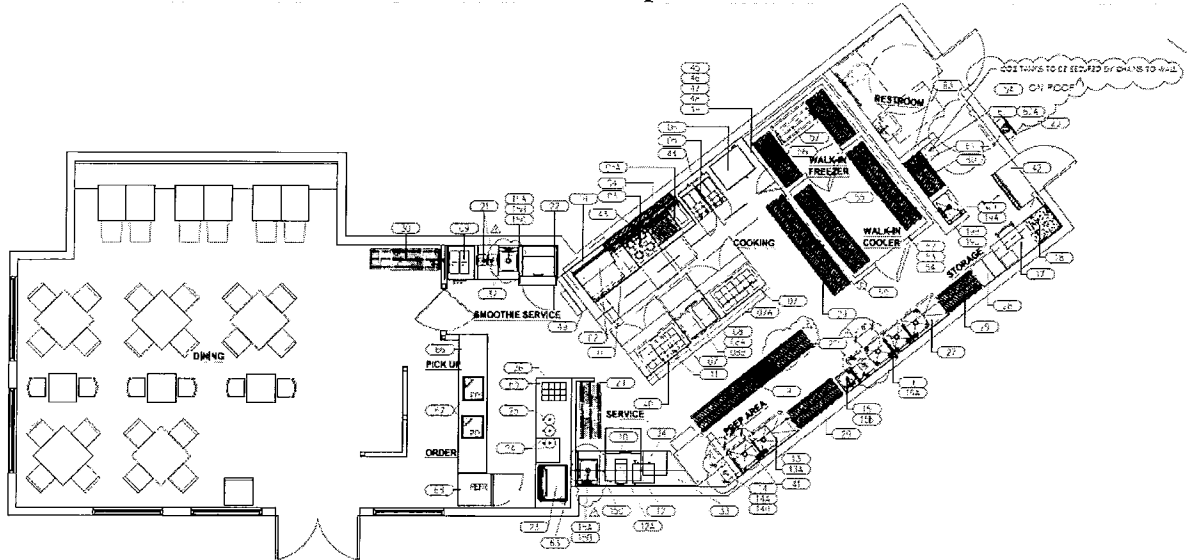
  
Ray Aromatorio, ARM, AIC  
Risk Manager





# Exhibit B "Premises"

## Interior Floorplan



**FOOD SERVICE EQUIPMENT FLOOR PLAN**  
SCALE 1/4" = 1'-0"



**EXHIBIT C**  
**Equipment List**

Item	Description	#	Equipment Supplied by County	Comments
1	Countertop Griddle	1	-	
1A	Safety-Moveable Gas Connector	1	-	
1B	Refrigerated Equipment Stand	1	-	
2	Cheesemelter	1	-	
3	Countertop Hotplate	1	-	
3A	Safety-Moveable Gas Connector	1	-	
4	Charbroiler	1	-	
4A	Safety-Moveable Gas Connector	1	-	
5	Fryer	2	-	
5A	Safety-Moveable Gas Connector	2	-	
5B	French Fry Warmer	1	-	
6	Convention Oven	1	-	
6A	Safety-Moveable Gas Connector	2	-	
7	Refrigerated Sandwich Unit	2	-	
7A	Pick Up Counter	1	-	
8	Hot Food Well	1	-	
8A	Worktop Freezer	1	-	
8B	Top for Freezer	1	-	
9	Soft Serve Machine	1	-	
10	Free Standing Warming Drawer	1	-	
11	Conveyer Toaster	1	-	
12	Coffee Brewer	1	-	
12A	Tea Brewer	1	-	
13	Two (2) Compartment Sink	1	SUPPLIED	Stainless Steel - Prep Area
13A	Faucet - Compartment Prep Sink	1	SUPPLIED	Stainless Steel
14	Ice Cuber	1	-	
14A	Water Filter, incl. in item 14	1	-	
14B	Ice Bin, incl. in item 14	1	-	
15	Hand Sink	1	SUPPLIED	Stainless Steel - Prep Area
15A	Drop-In Sink	2	SUPPLIED	Stainless Steel - Service Areas
15B	Soap Dispenser	3	SUPPLIED	
15C	Hand Sink Splashes	3	SUPPLIED	Stainless Steel
16	Three (3) Compartment Sink	1	SUPPLIED	Stainless Steel - Prep/Cook Area
16A	Faucet - 3 Compartment Sink	1	SUPPLIED	Stainless Steel
17	Office Shelving and Furniture	1	-	
18	Undercounter Safe	1	-	
19	Mop Sink	1	SUPPLIED	Stainless Steel
19A	Faucet - Mop Sink	1	SUPPLIED	Polished Chrome



19B	Overshelf - Janitor	1	SUPPLIED	Stainless Steel
19C	Mop Broom Holder	1	SUPPLIED	Aluminum
20*	Tankless Water Heater	1	SUPPLIED	
21	Bar Blender	2	-	
22	Refrigerated Sandwich Unit-Smoothies	1	-	
23*	Soda Dispenser	1	-	
24*	Coffee Air Pots	2	-	
25*	Iced Tea Dispenser	1	-	
26*	Condiment Area	1	-	
27	Overshelf - Pot Sink	1	SUPPLIED	Stanless Steel
28	Locker	2	-	
29	Wire Shelving - Dry Storage	5	-	
30	Wire Shelving - Dry Storage Dining	5	-	
31	Work Table	1	-	Stainless Steel Top
32	Smoothie Counter	1	-	
32A	Wall Shelves - Smoothies	2	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
33	Wall Shelves - Wait Counter	2	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
34	Wait Station	1	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
41	Overshelf	2	SUPPLIED	Stainless Steel
42	Air Curtain	1	SUPPLIED	Black Powder Coated
43	Tubular Wall Shelves - Cook Line	2	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
44	Wall Flashing - Cooks Line	1	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
45	Exhaust hood w/PSP - Cooks Line	1	SUPPLIED	Per Sheet FS-1.0, Stain Stl Const.
46	Exhaust and Make Up Air Systems	1	SUPPLIED	Per General Contractor (per Plans)
47	Exhaust and Make Up Air Ductwork	1	SUPPLIED	Per General Contractor (per Plans)
48	Exhaust Hood Structural Support	1	SUPPLIED	Per General Contractor (per Plans)
49	Fire Suppression System - Cooks Line	1	SUPPLIED	Per Sheet EQ2.10
52	Walk In Cooler/Freezer	1	SUPPLIED	Per General Contractor (per Plans)
53	Remote Refigeration	2	SUPPLIED	Per General Contractor (per Plans)
53A	Evaporative Coil - Walk In Cooler/Freez	1	SUPPLIED	Part of Item #52
54	Strip Curtain	1	SUPPLIED	Part of Item #52
55	Wire Shelving - Walk In Cooler	5	-	

56	Wire Shelving - Walk In Freezer	5	-	
57	Dunnage Rack	1	-	
60	Bag N Box Rack	1	-	
61	Carbonator and Pumps	1	-	
62	CO2 Tanks	2	-	
63	6" Conduit - Soda	1	SUPPLIED	Per General Contractor (per Plans)
65	Back Service Counter	1	SUPPLIED	Per General Contractor (per Plans)
66	Main Service Counter	1	SUPPLIED	Per General Contractor (per Plans)
67	POS Units and Printers	1	-	
68	Display Case	1	-	

\* = Items in the "Supplied by County" column are the only items to be supplied by the County - all else will be the vendor/concessionaire's responsibility. County will use these specs to identify what the vendor/concessionaire will have to supply (minimum standards and power supply, etc.)

## **EXHIBIT D**

### **Operation and Maintenance Plan**

#### **I. Operations Plan**

##### **Business Hours:**

Sunday – Thursday 7 AM to 5PM

Friday & Saturday 6AM to 8PM

##### **Breakfast Service:** 7am to 11am

1 cook – 5AM - 2PM

1 host - 5AM - 2PM

1 busser/food runner 5AM - 2PM

##### **Lunch Service:** 11AM to 5PM (8pm fri/sat)

1.5 cook/expedite 10am – 6pm (8 fri/sat)

1.5 front/cook 10am – 6pm (8 fri/sat)

1 busser/food runner 10am – 6pm (8 fri/sat)

All kitchen staff shall be Food Handler Safety Certified

1 cook per shift shall be a Certified Professional Food Safety Manager

Being a new restaurant, procedure, staffing numbers, and business hours will evolve with demand and necessity.

##### **Training Program Principles** (from interview session through longevity of employment)

- \*FOOD SAFETY – HAACP principles applied to all aspects of restaurant
- Customer Service
- Overall Cleanliness of kitchen, front room, patio, and employee restroom
- Workplace Safety
- Teamwork
- Reliability/Accountability
- Respect – Customer, co-workers, county staff, self

#### **II. Maintenance Plan**

The general Maintenance Plan/Concept is outlined in the proposal. Specific maintenance plans, logs, and routines will be implemented upon completion of full systems and equipment installation, check, and proper working assurance. This has been discussed with county staff and could be done as early as the week of 3/4/19. Industry professionals and service manuals will dictate the contents of the maintenance log. The maintenance log will specifically detail daily, weekly, monthly, quarterly, and yearly maintenance responsibilities. SB County Parks Dept will be provided with the log and its ongoing additions.

## **EXHIBIT E**

### **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 be 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 "F"**  
**MAINTENANCE AND REPAIR**  
**RESPONSIBILITIES**

ITEM NO.	ITEM	NOT APPLICABLE	COUNTY	CONCESSIONAIRE
<b>1. Building Exterior</b>				
	Repair Walls		X	
	Painted Surfaces*		X	
	Door and Window Trim		X	
	Doors, Hardware		X	
	Windows: Hardware and Screens		X	
	Locks		X	
	Roof		X	
	Rain Gutters		X	
	Flashing		X	
	Down Spouts		X	
	<b>Lighting</b>			
	Bulbs			X
	Fixtures		X	
	Transformers		X	
	Fluorescent Lights			X
	Ballast		X	
	Handrails		X	
	Signs (County Designation)			X
	Timers		X	
	Gutters		X	
	Decking Walkways	X		
	Exterior Patios			X
	Decking (Overdecking on roof top area)		X	
	Water Softener, Filter and Conditioner	X		
	Stairs	X		
	Roof Drains		Repair	Maintain
	Gates		X	
	Gas/Water Lines		X	
	Elect. Lines		X	
	Phone/ Computer Lines			X
	Sewer Lines		Repair	Maintain

ITEM NO.	ITEM	NOT APPLICABLE	COUNTY	CONCESSIONAIRE
<b>2. Building Interior</b>				
	Repair Walls			X
	Painted Surfaces			X
	Doors, Hardware			X
	Locks			X
	General Cleaning			X
	Floor, Sweeping and Cleaning			X
	Carpet, Vacuum and Cleaning			X
	Window Coverings			X
	<b>Lighting</b>			
	Bulbs			X
	Fixtures		X	
	Transformers		X	
	Fluorescent Lights			X
	Ballast		X	
	Handrails (ADA)		X	
	Signs			X
	Timers		X	
	Drinking Fountains	X		
	Ceiling		X	
	Showers	X		
	Toilet/Urinals (Replacement)		X	
	Toilet/Urinals (Maintenance)			X
	Sink & Faucets (Replacement)		X	
	Sink & Faucets (Maintenance)			X
	Gas Lines		X	
	Water Lines		X	
	Sewer Lines/Drains		X	
	Phone Lines & Jacks			X
	Computer Lines & Jacks			X
	T.V. Cable & Jacks			X
	Phones			X
	Towel Racks			X

ITEM NO.	ITEM	NOT APPLICABLE	COUNTY	CONCESSIONAIRE
	Garbage Disposal	X		
	Walk in Refrigerator/Freezer		Repair	Maintain
	Stove			X
	Counter Tops, replacement		X	
	Ice Machine		Repair	Maintain
	Grease Interceptor			X
	Dish Washer	X		
	Trash Compactor	X		
<b>3. Grounds</b>				
	Drinking Fountains		X	
	Mail Boxes		X	
	Fences		X	
	Trash Bins		X	
	Trash Enclosures		X	
	Bike Racks	X		
	Signs (County)		X	
	Litter Pick-up			X
<b>Lighting</b>				
	Parking Lot		X	
	Driveways		X	
	Walkways		X	
	Timers (external)		X	
	Timers (internal)		X	
	Signs		X	
	Cleaning, Sidewalks, Walkways, Parking Lot		X	
<b>4. Landscaping</b>				
	Trees		X	
	Shrubs		X	
	Flowers		X	
	Lawn		X	

ITEM NO.	ITEM	NOT APPLICABLE	COUNTY	CONCESSIONAIRE
	Watering		X	
	Sprinkler, Repair and Replace		X	
	Headers		X	
	Rodent/Pest		X	
	Seeding		X	
	Fertilizer		X	
	Plant Trimming		X	
	Plant Removal		X	
	Plant Replacement		X	
	Tree Care & Trimming		X	
<b>5. Mechanical Systems</b>				
	Electrical Panels, Breaker, Interior		X	
	Electrical Fuses, Interior		X	
	Electrical Receptacle, Switches, Interior		X	
	Electrical Central Switches		X	
	Elevator		X	
	Heating		X	
	Air Conditioning		X	
	Water Heater		X	
<b>6. Roadways/Parking Lots Repair &amp; Maintenance</b>				
	Striping		X	
	Handicap Signage		X	
	Asphalt Surface, Curbing		X	
	Cement Surface, Curbing		X	
	Wheel Stops		X	
	Drainage		X	
	Signs		X	



ITEM NO.	ITEM	NOT APPLICABLE	COUNTY	CONCESSIONAIRE
<b>7. Fire Equipment</b>				
	Sprinklers		X	
	Hoses		X	
	Extinguisher (interior)			X
	Alarm Systems		X	
	Smoke Detectors			X
<b>8. Other Items</b>				
	Paper supplies, dispensers, waste containers, soap in public restrooms			X
	Interior janitorial products and services			X
	Interior Floor Waxing, Sweeping			X
	Window Washing (interior & exterior)			X
	Exterior sweeping entry, sidewalks and walkways			X
	Janitorial service for public restrooms		X	
	Broken window glass or door glass**		X	
	Cleaning Storage Rooms, Utility Rooms			X
	Exterminating			X
	Carpet Replacement, Linoleum Replacement, and/or Tile Replacement			X
	Building Foundation		X	
	Flooring (wood & concrete)		X	
	Utility mains & appurtenances		X	

**EXHIBIT G**  
**Environmental Requirements**  
(Page 1 of 3)

The CONCESSIONAIRE shall operate, maintain, and manage the Leased Area, including all structures, facilities and equipment to minimize environmental consequences. Consideration will be given to alleviating potential harmful effects on landscape, soils, water, wildlife, cultural resources, timber, population, or other resources. Prior to any action which would modify the environment beyond those currently covered by existing NEPA documents, the CONCESSIONAIRE will submit any necessary environmental reports as directed by the United States. No such modifications of the environment shall be undertaken without prior written approval of the United States.

Violation of any of the provisions of this Exhibit may constitute grounds for termination of this Agreement. Such violations require immediate corrective action by the CONCESSIONAIRE and shall make the CONCESSIONAIRE liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

The CONCESSIONAIRE agrees to include the provisions contained in this Exhibit in any subcontractor or third-party contract it may enter into pursuant to this Agreement.

Reclamation agrees to provide information necessary for the CONCESSIONAIRE using reasonable diligence, to comply with the provision of this Exhibit.

The CONCESSIONAIRE shall comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of California concerning the pollution of streams, reservoirs, ground water, or water courses.

In accordance with the National Historic Preservation Act of 1966 and Executive Order 11593, cultural resources will be given full consideration in any proposed actions initiated by the CONCESSIONAIRE beyond those approved in existing plans and documents. Cultural resources (including archaeological, historical, structural, and Native American resources) that may be impacted will be adequately considered and, if necessary, any identified adverse effects will be mitigated or minimized prior to development. If, during construction or development, cultural resources are exposed, activities in the surrounding area will be halted while the resource is evaluated. COUNTY and Reclamation will be notified immediately and will provide direction on how to proceed in compliance with 36 CFR 800.13. The cost of any recovery work, if necessary, and any required consultation between Reclamation and the State Historic Preservation Officer will be borne by the CONCESSIONAIRE. The CONCESSIONAIRE will provide Reclamation with copies of any cultural resource reports concerning the identification, evaluation, and treatment of cultural resources within the Recreation Area. Any cultural resources sites identified by the CONCESSIONAIRE during its management activities will be recorded on the appropriate CONCESSIONAIRE site record forms and copies provided to Reclamation. No surface disturbing operations can proceed until the requirements of the article have been met. This provision will be included in all construction contracts.

## **EXHIBIT G**

(Page 2 of 3)

The Endangered Species Act of 1974 will be given full consideration in all activities.

The CONCESSIONAIRE shall insure that recognized standards and proper uses are achieved on the lands covered by this Agreement. Land use planning and administration of the Federal Estate will conform to all applicable Federal laws, regulations, and Executive Orders. Following is a list of some of the more important of these:

Executive Order 11990, Protection of Wetlands.

Executive Order 11988, Floodplain Management.

Safe Drinking Water Act of 1974, (Public Law 93-523, U.S.C. 300, 88 Stat.1660).

Federal Land Policy and Management Act of 1976, (Public Law 94-579, 43 U.S.C. 1701).

Executive Orders 11664 and 11989 for Off-Road Use.

National Trails System Act, (Public Law 95-43, 16 U.S.C. 1241 Et seq.).

Fish and Wildlife Coordination Act, (Public Law 85-624, 16 U.S.C., 661, 662).

Antiquities Act of 1906, (34 Stat. 225, 16 U.S.C., 431).

National Historic Preservation Act of 1966 (NHPA), (Public Law 89-665, 80 Stat. 915, 16 U.S.C. 470) as amended by Public Laws 91-243, 93-54, 94-422, 94-458, and 96-515).

Archaeological Resources Protection Act of 1979, (Public Law 95-95, 93 Stat. 721).

Archaeological and Historic Preservation Act (Public Law 93-291).

Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

Executive Order 11593, Protection and Enhancement of the Cultural Environment

National Environmental Policy Act, (Public Law 91-190, 83 Stat. 852).

Endangered Species Act, (Public Law 93-205, 16 U.S.C. 1531 et seq.).

Executive Order 12088, Federal compliance with Pollution Control Standards.

The Clean Air Act, (Public Law 88-206, as amended, 42 U.S.C., 7401 et seq).

Clean Water Act of 1978, (Public Law 95-217, 33 U.S.C., 1288 et seq.).

## **EXHIBIT G**

(Page 3 of 3)

Resource Conservation and Recovery Act (RCRA), (Public Law 94-580).

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund), Public Law 96-510.

43 Code of Federal Regulation, Part 420 (off-road vehicle use on Bureau of Reclamation lands).

36 Code of Federal Regulation, Part 800, Protection of Historical and Cultural Properties.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. P.L. 100-460, 100-464, to 100-526 and 100-532).

Rehabilitation Act of 1973, Section 504, as amended (29 U.S.C. 700, et seq., P.L. 93-516 and P.L. 95-602).

Architectural Barriers Act of 1968, as amended (ABA) (42 U.S.C. 4151-4157, P.L. 90-480).

Uniform Federal Accessibility Standards (UFAS) (49 CFR 31528), August 7, 1984.

**EXHIBIT H**  
**Equal Opportunity Requirements**  
(Page 1 of 2)

During the performance of this Agreement, the CONCESSIONAIRE agrees as follows:

The CONCESSIONAIRE will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The CONCESSIONAIRE will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONCESSIONAIRE agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.

The CONCESSIONAIRE will, in all solicitations or advertisements for employees placed by or in behalf of the CONCESSIONAIRE, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

The CONCESSIONAIRE will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of the CONCESSIONAIRE's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONCESSIONAIRE will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The CONCESSIONAIRE will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant, thereto, and will permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the CONCESSIONAIRE's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, by the United States and/or COUNTY and the CONCESSIONAIRE may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

## **EXHIBIT H**

(Page 2 of 2)

The CONCESSIONAIRE will include the provisions of paragraphs 1) through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The CONCESSIONAIRE will take such action with respect to any subcontract or purchase order the United States may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the CONCESSIONAIRE becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the United States, the CONCESSIONAIRE may request the United States to enter into such litigation to protect the interests of the United States.

**EXHIBIT I**  
**Certification of Non-segregated Facilities**

The term segregated facilities means: any waiting rooms, work areas, restrooms and washrooms, restaurants or eating areas, time clocks, locker rooms, storage areas, dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habitat, local custom, or otherwise. The CONCESSIONAIRE certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The CONCESSIONAIRE agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. The CONCESSIONAIRE agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certification in its files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**EXHIBIT J**  
**Title VI of the Civil Rights Act of 1964**

The CONCESSIONAIRE agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the CONCESSIONAIRE receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the CONCESSIONAIRE by the United States, this assurance obligates the CONCESSIONAIRE; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates the CONCESSIONAIRE for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the CONCESSIONAIRE for the period during which the Federal financial assistance is extended to it by the United States.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the CONCESSIONAIRE by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The CONCESSIONAIRE recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the CONCESSIONAIRE, its successors, transferees, and assignees.



# EXHIBIT K

## Reclamation Manual – Directives and Standards

Department of the Interior Acquisition, Assistance, and Asset Policy (DOI-AAAP)  
 Office of Acquisition and Property Management (PAIS)  
 FINAL POLICY

Department of the Interior  
 Acquisition, Assistance, and Asset Policy (DOI-AAAP)

<b>Title</b>	<b>Minimum Wage Guidance</b>
<b>Reference Number</b>	0005
<b>Version Number</b>	01
<b>Function(s)</b>	Acquisition and other
<b>Author</b>	Olsen, Megan
<b>Source of this Requirement</b>	Executive Order 13658, <i>Establishing a Minimum Wage for Contractors</i>
<b>Regulatory Reference</b>	79 FR 9852; FAR 22.19

**Version Detail**

This section is completed in the following situations: (1) policies issued with versions greater than 01 or (2) the initial use of the DOI-AAAP to convert previous DOI Acquisition Policy Releases (DIAPR), DOI Property Policy Releases (DIPPR), or DOI Guidance (DIG) Releases.

Version Number	Date	Author	Description of Update

**Purpose:**

This policy provides guidance to Department of the Interior (DOI) employees for implementing Executive Order 13658, *Establishing a Minimum Wage for Contractors*. The Department of Labor and the Federal Acquisition Regulatory Council have issued implementing regulations as required by the Executive Order. If there is a conflict between those regulations and this document, those regulations will supersede this policy.

**Scope:**

This policy applies to certain contracts and contract-like instruments that are awarded by DOI.

The terms "contract" and "contract-like instruments" are defined below. However, the Executive Order minimum wage does not apply to all transactions that meet the definitions of contract and contract-like instruments. The subsequent sections of this policy provide details as to which actions fall under the Executive Order minimum wage requirement.

The following exclusions apply:

- Contracts with Tribes. The Executive Order minimum wage does not apply to any contracts or contract-like instruments with tribes.
- Grants. The Executive Order minimum wage does not apply to grants.

Effective date:

Effective upon signature.

**Background:**

Executive Order 13658, *Establishing a Minimum Wage for Contractors*, seeks to increase the efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing the hourly minimum wage paid by those contractors (see 79 CFR 9851). The Executive Order requires agencies to include a clause in applicable contracts and contract-like instruments that specifies, as a condition of payment, that the Executive Order minimum wage be paid to workers in the performance of the contract and any subcontracts.

**Action:**

- A. **Minimum Wage Clause.** An Executive Order minimum wage clause must be inserted in all contracts and contract-like instruments that meet the requirements outlined in the sections below. For procurement contracts, the Contracting Officer must include the clause as required by the Federal Acquisition Regulation. For concessions contracts, cooperative agreements, and other contract-like instruments, the employee who is signing the instrument must include the language in Attachment 1 to this policy. To the maximum extent practicable, the clause must be included in full text.
- B. **Review and Approval Process.** If the responsible individual believes that a concessions contract, cooperative agreement, or other contract-like instrument falls outside of the scope of the EO minimum wage requirement, then he or she must refer the instrument to the Bureau Procurement Chief for review. The Bureau Procurement Chief must approve the decision to exclude the clause.
- C. **Semi-Annual Report.** Bureau Procurement Chiefs shall provide a semi-annual report to the Senior Procurement Executive that details actions which have been awarded without the clause. The first report is due on July 1, 2015. Reports shall be submitted no later than July 1 and January 1 of each subsequent year.

**Technical or Process Guidance:**

- A. **Timing of Contract.** The clause must be inserted in all applicable actions (see below) where the solicitation is or will be issued after January 1, 2015, or where the award is or will be made after January 1, 2015 through a process not involving a solicitation.
- B. **Amendments or Modifications to Contracts.** When modifying or amending a contract or contract-like instrument that was originally awarded prior to January 1, 2015, the clause must be inserted if:
  - 1. The contract would otherwise have been subject to the Executive Order minimum wage had it been awarded after January 1, 2015; and

2. The modification is a renewal, an extension of the period of performance, or an out-of-scope change. The clause should not be included in modifications to exercise options that were priced at award.

C. Guidance for Specific Types of Transactions.

1. Procurement Contracts. Include the FAR clause in all actions where (a) the Davis-Bacon Act applies and the award is over \$2,000 or (b) the Service Contract Act applies and the award is over \$2,500, or (c) the Fair Labor Standards Act applies and the award exceeds the micropurchase threshold.
2. Concessions Contracts. Include the clause in all actions where the wages of workers under the contract are covered by either the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act (including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b).)
3. Cooperative Agreements and Contract-like Instruments. (Including but not limited to use and occupancy permits and licenses. See definition of contracts and contract-like instruments and the examples below.) Include the clause in all actions where: (a) the contract or contract-like instrument is entered into with the Federal Government in connection with Federal property or lands and relates to offering services for Federal employees, their dependents, or the general public and (b) the wages of workers under the contract or contract-like instrument are covered by either the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act.

D. Examples of Contract-like Instruments. The following are examples of non-procurement contracts that may fall under the Executive Order on minimum wage if they meet the requirements in Section C.3., above. This list is provided to assist employees in implementing this policy and is not exhaustive. Employees must refer to the Definitions to determine whether a transaction constitutes a contract or a contract-like instrument.

- A lease of space in a Federal building from a Federal agency to a business to operate a coffee shop, child care center, fitness center, or credit union.
- A contract with the Federal Government to operate a souvenir shop in connection with Federal property or lands.
- A use permit that allows a company to provide services to the general public in connection with Federal property or lands.

Definitions and References:

1. Concessions contract or contract for concessions means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term concessions contract includes but is not limited to a contract the principal purpose of which is to furnish food, lodging, vehicle fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.
2. Contract or contract-like instrument means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract that may be consistent with the definition provided in the Federal Acquisition Regulation (FAR) or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.
3. Davis-Bacon Act means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 et seq., and its implementing regulations.
4. Executive Order minimum wage means, for purposes of Executive Order 13658, a wage that is at least:
  - \$10.10 per hour beginning January 1, 2015; and
  - Beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary [of Labor] pursuant to section 2 of the Executive Order.
5. Fair Labor Standards Act (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq., and its implementing regulations.

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6. Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 et seq., and its implementing regulations.
7. Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

Attachments:

Attachment 1 - Contract Clause

Approval Signature

The signature provided in the table below serves as the digital signature for this document. By replacing the Block 1 and 2 with a name and date, the Deputy Director, Office of Acquisition and Property Management (PAM) approves the policy described in this document. (Use the following method to check signature authentication via revision history: on keyboard, press and hold Ctrl+Alt+Shift+G)

James McCaffery	12/29/2014
Deputy Director, Office of Acquisition and Property Management	Date