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Contract Number

24-1052

SAP Number

Regional Parks Department

Department Contract Representative	<u>Beahta R. Davis</u>
Telephone Number	<u>909-387-2340</u>
Contractor	<u>Raindance, LLC</u>
Contractor Representative	<u>Xavier Canale</u>
Telephone Number	<u>562-824-5628</u>
Contract Term	<u>November 6, 2024 – November 5, 2029</u>
Original Contract Amount	<u>\$72,000</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$72,000</u>
Cost Center	<u>6522021000</u>
Grant Number (if applicable)	_____

IT IS HEREBY AGREED AS FOLLOWS:

This concession and lease Agreement is for a period of five years, commencing November 6, 2024, through November 5, 2029, for the use of the premises commonly known as the Calico Print Shop ("Premises") located in the Calico Ghost Town Regional Park ("Park"), 36600 Ghost Town Road, Building No. 14 in Yermo, California.

**SAN BERNARDINO COUNTY
REGIONAL PARKS DEPARTMENT
CALICO GHOST TOWN REGIONAL PARK
CALICO PRINT SHOP
CONCESSION AND LEASE AGREEMENT**

This concession and lease agreement ("Lease" or "Agreement") is between the SAN BERNARDINO COUNTY, a political subdivision of the State of California ("COUNTY"), and Raindance, LLC ("CONCESSIONAIRE").

For and in consideration of the mutual covenants and agreements herein contained, it is mutually agreed as follows:

1. AREAS AND FACILITIES TO BE LEASED

- A. COUNTY hereby leases to CONCESSIONAIRE the property described herein and grants the concession rights, hereinafter specified, to be exercised within a portion of the premises commonly known as **The Print Shop** ("Premises") located in the **Calico Ghost Town Regional Park** ("Park") and described in **Exhibit "A," Lease Area Map**. CONCESSIONAIRE will have full right to the use of the Premises during the term of this Lease for the purposes set forth in this Lease. CONCESSIONAIRE accepts the Premises in its existing condition, must provide all maintenance, repair and replacement, unless otherwise provided herein, and will return it to COUNTY at the end of this Lease in same or better condition, excepting normal wear and tear.

2. TERM

- A. The initial term ("Initial Term") of this Lease is for **five (5) years**, commencing on **November 6, 2024, through November 5, 2029**, unless sooner terminated or extended as hereinafter provided.
- B. CONCESSIONAIRE is granted the option to renew for two additional **five (5) year** periods ("Extended Term"). The Lease fee for each Extended Term shall be negotiated prior to each extension. As additional consideration for the option for the Extended Term, CONCESSIONAIRE must pay an option fee ("Option Fee") of **two hundred fifty dollars (\$250.00)**. CONCESSIONAIRE must give notice of intent to exercise the option ("Option Notice") and concurrently pay the Option Fee to COUNTY at least six (6) months but not more than twelve (12) months before the expiration of the Initial Term. If CONCESSIONAIRE fails to pay the Option Fee concurrently with the Option Notice or is in default on the date of giving the Option Notice, the Option Notice will be totally ineffective. If CONCESSIONAIRE is in default on the date the Extended Term is to commence, the Extended Term will not commence, and this Lease will expire at the end of the Initial Term. CONCESSIONAIRE further understands and agrees that in the event of any default or breach described in Paragraph 22, TERMINATION OF LEASE, occurring at any time during the Initial Term, COUNTY may, in its sole discretion, reject the CONCESSIONAIRE's exercise of the option, and such rejection shall be deemed a reasonable withholding of consent, and shall be binding on the CONCESSIONAIRE, and any assignee or successor of/to CONCESSIONAIRE. If the parties have not agreed upon the rent for the Extended Term by the date the Extended Term is to commence, the Extended Term will not commence, and this Lease will expire at the end of the Initial Term. If the Extended Term does not commence for any reason, CONCESSIONAIRE shall not be entitled to any refund of Option Fee. Upon proper exercise of the option, the COUNTY will prepare and amendment to this Lease for approval and execution by CONCESSIONAIRE and the COUNTY's Board of Supervisors. CONCESSIONAIRE shall have no other right to extend the term beyond the above-extended term.

3. CONCESSION RIGHTS GRANTED

CONCESSIONAIRE will have the right and obligation to develop, maintain and operate **Calico Print Shop** ("Concession") within the premises defined on **Exhibit "A," Lease Area Map**. CONCESSIONAIRE shall have the right to sell items directly related to the theme of an 1880's print shop, noted as "**Theme Items**" in **Exhibit "B"- Authorized Sale Items**, attached hereto and incorporated by this reference. Permission to sell items that fall outside of the Concession's theme may be allowed (Noted as additional items on Exhibit "B") on a case-by-case basis by the County and that permission may be rescinded by the County on 10 days' notice when in conflict with the themed sales of another concession.

- a. Regardless of whether or not an item is part of the store's theme, **final approval of the right to sell an item rests solely with the COUNTY.**
- b. COUNTY's grant of permission or approval to sell a particular product or products shall not be construed as an exclusive right or permission to sell such product(s).
- c. Concession will have the right to operate after park hours providing services to the general public and to park campers with notice to the park staff and receipt of approval for any after hour's activities.
- d. All concession rights cease upon the termination of this Lease. The concession rights granted herein may only be utilized in conjunction with the authorized use of the Premises, except as may be agreed by the Parties in an amendment to this Lease.
- e. **CONCESSIONAIRE will not adjust fees without COUNTY written approval.** This will be coordinated with improvements and enhancements.

4. CONCESSION REQUIREMENTS

CONCESSIONAIRE shall comply with the Management Plan ("Management Plan") for the Concession. The Management Plan must be updated and submitted to COUNTY for review and approval by the Director of Regional Parks or his/her designee prior to **July 31** of each year of this Lease, commencing with the update for **respective next year, beginning in 2025**. The Management Plan shall be effective only after approval by the Director of Regional Parks Department or his/her designee. Changes in revenue that result from changes in the Management Plan may result in Lease Fees adjustments. In the event any portion of the Management Plan conflicts with this Lease, this Lease (without reference to the Management Plan) will control. The Management Plan will allow the COUNTY to coordinate the operation of the various concessions in the park, and to assist the COUNTY to maintain the general overall theme of the Park.

- a. The Management Plan should (1) include areas such as operation and merchandising program, promotional plans, new development or programs for business enhancement for current term; and (2) include goals, objectives, implementation.
- b. CONCESSIONAIRE must comply with all environmental and health agency controls and regulations.

5. CONCESSION AND LEASE FEE

- A. LEASE FEE: In consideration for rights granted CONCESSIONAIRE will pay minimum monthly fee of **one-thousand two hundred dollars (\$1,200.00)** or **nine percent (9%)** of gross income, whichever is greater for the term of this Lease.

- B. **ADVERTISING FEE:** In addition to the above Lease fee, CONCESSIONAIRE, for and during the entire term of this Lease must pay COUNTY three and one-half percent (3.5%) of the monthly Gross Income, defined as an advertising fee to defray all direct advertising and promotional expenses incurred by COUNTY for the advertising and promotion of the Park. Advertising fees are included in the term "Lease payment" as it appears in this Lease. The CONCESSIONAIRE, through representation on an established Concessionaire Advertising and Promotion Committee ("Advertising Committee"), may make recommendations to the COUNTY on methods for advertising and promotion of the Park. COUNTY retains the right, in its sole discretion, to approve or disapprove any of the recommendations submitted by the Advertising Committee or CONCESSIONAIRE, and the right to approve how the advertising funds shall be dispersed.
1. COUNTY agrees to pay a monthly sum equal to a minimum of **one and a half (1-1/2)** times the total 3.5% collected from all Park concessionaires into the advertising trust account.
 2. COUNTY shall expend the advertising funds in a business-like manner consistent with the promotion of the Park and in a manner intended to promote the Park.
- C. **PAYMENT DATE:** All Lease payments are due and payable on or before the tenth day of the calendar month following the month to which such payments relate and must be accompanied by the monthly report required by Paragraph 9, RECORDS AND ACCOUNTS. COUNTY has the right to require that any payment be made by money order or cashier check.
- D. **LATE PAYMENT PENALTIES:** If any monthly lease payment is not received when due and payable, or postmarked when due and payable and received within ten (10) days thereafter, such payment is late and CONCESSIONAIRE must pay to COUNTY an additional **Fifty Dollars (\$50.00)** each as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by CONCESSIONAIRE. Acceptance of a late charge will not constitute a waiver of CONCESSIONAIRE's default with respect to the overdue amount nor prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. Lease fees not paid when due will bear simple interest from the date due until paid in full at the rate of five-hundredths percent (0.05%) per day. If monthly lease payments are late three or more times in a twelve month period or four (4) times during the active term, then COUNTY may terminate this Lease.
- E. **GROSS INCOME:** The term "Gross Income", as used in this Lease, is defined as all money, cash, receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, rentals, sponsor payments, fees and commissions made, or earned, and all gross sums received by CONCESSIONAIRE, its subtenants, assignees, or successors in interest, when collected or accrued, from any business, use or occupation, or any combination thereof, originating, transacted or performed, in whole or in substantial part, on the Premises, including, but not limited to, rental, the rendition or supplying of services, and the sale of goods, wares or merchandise, coin machines or devices of any nature. Gross Income in credit card transactions shall include only the actual amount received by CONCESSIONAIRE from the credit card issuer. Gross Income shall not include returns and exchanges.
1. There will be no deduction from Gross Income of any overhead or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, advertising, interest, debt amortization, discount, collection, insurance and taxes, except as specifically provided for herein.
 2. Gross Income will include the amount of any manufacturer's or importer's excise tax included in the prices of any property or material sold, even though the manufacturer or importer is also the retailer thereof; and it is immaterial whether the amount of such excise tax is stated as a separate charge.

3. Gross Income, however, will not include Federal, State of California ("State"), Municipal sales and excise taxes, required to be collected by CONCESSIONAIRE, its subtenants, assignees or successors in interest in connection with the rendering or supplying of services, goods, wares or merchandise, or other taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid periodically by CONCESSIONAIRE to a governmental agency, accompanied by a tax return or statement. But, the amount of such taxes will be shown on the books and records elsewhere herein required to be maintained.

6. SECURITY DEPOSIT

- A. Pursuant to Contract No. 18-893, CONCESSIONAIRE paid a security deposit of one thousand dollars (\$1,000) and prior to the commencement date of this Lease, CONCESSIONAIRE shall deposit with COUNTY an additional amount of **two hundred dollars (\$200)** to secure compliance with lease terms for a total security deposit amount of one thousand two hundred dollars (\$1,200.00).
- B. If CONCESSIONAIRE defaults in payment of rent or any of the terms, provisions, covenants and conditions of this Lease, COUNTY may use, apply, or retain the whole or any part of this security for the payment of any rent in default or for any other sum which the COUNTY may spend or be required to spend by reason of CONCESSIONAIRE's default.
- C. Should CONCESSIONAIRE fully and faithfully comply with all the terms, provisions, covenants and conditions of this Lease, the security or any balance of the security shall be returned to CONCESSIONAIRE after the expiration of the Lease term.
- D. COUNTY may require, at any time that the security deposit be increased in proportion to the amount that minimum monthly rent has increased.
- E. In the event COUNTY uses part or all of the security deposit as provided herein, CONCESSIONAIRE shall replenish the security deposit in the amount used within ten (10) days of notice from COUNTY.

7. IMPROVEMENTS AND ALTERATIONS

- A. CONCESSIONAIRE may make improvements or alterations to the Premises only after first having requested in writing and received written approval from COUNTY.
- B. All improvements and alterations to be added or modifications to be made to the Premises by CONCESSIONAIRE, and the plans and specifications therefore, must have prior written approval by COUNTY.
- C. CONCESSIONAIRE will, at its own expense unless otherwise provided herein, construct, perform, complete all work with trade specific, licensed contractors and maintain all construction and installations covered under this paragraph in a good and workmanlike manner and with high quality materials. CONCESSIONAIRE will furnish all tools, equipment, labor and material necessary to perform and complete the same, and hereby expressly warrants that all said materials and workmanship will be free from defects.
- D. All construction will meet the Building Code requirements of the County and any other governmental jurisdiction having authority over the work. All construction will be carried out and completed in strict compliance with the plans and specifications approved in writing by COUNTY and in accordance with the schedule for commencement and completion of such construction agreed to in writing by COUNTY and CONCESSIONAIRE. CONCESSIONAIRE is solely liable for the development and operation of the facilities and improvements/alterations. CONCESSIONAIRE is solely responsible for filing plans with the COUNTY Building & Safety, seeking approval, paying such fees and securing appropriate inspection(s). CONCESSIONAIRE is responsible for obtaining current Public Contracts Code and Labor Code standards as part of any construction project and to comply with the applicable

provisions for bidding (PCC Section 22038) and prevailing wages (Labor Code Section 1720. et seq and 1770 et seq.)

Concessionaire certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work..." If the work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Concessionaire agrees to fully comply with such Prevailing Wage Laws. Concessionaire shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the Concessionaire's principal place of business and at the project site. Concessionaire will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Concessionaire shall defend, indemnify and hold the County, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Attachment B, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Concessionaire shall comply with all applicable terms and conditions in Attachment B. The applicable general prevailing wage determinations are on file with the County and are available to any interested party on request. Concessionaire shall post a copy of the applicable prevailing wage determinations at the job site.

- E. CONCESSIONAIRE agrees that, in addition to any other inspectors, the COUNTY's Regional Parks Department ("Department") may have on the site at any time during the construction period an inspector who will have the right to access the Premises and the construction work. CONCESSIONAIRE understands that this inspector's presence on site in no way constitutes approval of facilities being constructed. CONCESSIONAIRE must, at the commencement of the construction work, notify the COUNTY in writing of the identity, place of business, and telephone number of CONCESSIONAIRE's on-the-job construction representative. Said construction representative will be CONCESSIONAIRE's prime consultant for the inspectors of COUNTY and Department.
- F. CONCESSIONAIRE must purchase performance and payment bonds from corporations duly authorized to issue surety bonds by the State before constructing any works or improvement upon the Premises. Each bond must name CONCESSIONAIRE as principal, company as surety, and COUNTY as obligee thereon. The payment bond will also inure to the benefit of all claimants, as said term is presently defined by Section 3085 of the State Civil Code, or as may hereafter be amended, so as to give such persons a right of action to recover thereon in any suit brought to foreclose the liens provided for in Title 15 of Part of Division 3 of said Civil Code (Section 3082, et. Sec.) or in a separate suit brought upon the bond. Each bond must be in a sum equal to one hundred percent (100%) of the costs for construction of the works of improvement to be located upon the Premises, as estimated by COUNTY, which shall not exceed 110% of the bid price. The condition of the performance bond will be such that if the principal well and truly performs the construction herein required, pursuant to the approved plans and specifications therefore, then surety will no longer be bound thereon. The condition of the payment bond will be such that if the principal well and truly pays, or cause to be paid, all claims for labor, material, appliances, teams, or power, or either or all, performed, furnished, or contributed in connection with said works of improvement, then surety will no longer be bound thereon. Said bonds are subject to approval by the COUNTY as to sufficiency and liability of sureties named thereon. Said bonds must be maintained in full force and effect by CONCESSIONAIRE until said works of improvement have been completed and claims for labor and materials have been paid. COUNTY may, but is not required to, waive Performance Bonds if the

amount of COUNTY's estimated construction costs are below \$10,000 or upon written request from CONCESSIONAIRE showing just cause.

- G. OWNERSHIP OF IMPROVEMENTS: All improvements and alterations made by CONCESSIONAIRE remain the property of the CONCESSIONAIRE during the operation of the concession, but will remain in the Premises and become the property of the COUNTY at the end of the term and/or upon any termination of this Lease, unless otherwise agreed upon in writing prior to commencing construction of the improvement/alteration. Furnishings, fixtures and equipment brought on to the Premises by CONCESSIONAIRE shall remain the property of the CONCESSIONAIRE and may be removed by the CONCESSIONAIRE during the term(s) of this lease, provided that the CONCESSIONAIRE restores the Premises to the condition as it existed at the commencement of this lease, reasonable wear and tear excluded, or the CONCESSIONAIRE in its sole discretion may elect to surrender all or part of such shelving, fixture, improvements and alterations to the COUNTY, in which case CONCESSIONAIRE shall have no duty to restore the Premises. Any such election to surrender must be in writing and accepted by COUNTY to be effective. Cost of fixtures shall not be considered in Concessionaire's initial investment for purposes of decreasing rent during term.

8. MANAGEMENT REQUIREMENTS

- A. CONCESSIONAIRE will operate and manage the Concession, its service and facilities in a professional, business-like manner. CONCESSIONAIRE must, at all times conduct themselves in a professional manner to customers, COUNTY agents or its employees, or other CONCESSIONAIRES, and conform to all applicable rules, regulations, and requirements now in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY.
- B. CONCESSION EMPLOYEES: CONCESSIONAIRE will ensure that its employees at all times conduct themselves in a professional manner, to customers, COUNTY agents or its employees, or other CONCESSIONAIRES, and that they conform to all applicable rules, regulations, and requirements now in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY. CONCESSIONAIRE must maintain a staff adequate to operate and administer all facilities located on the Premises in a safe and orderly manner. CONCESSIONAIRE agrees to replace personnel whenever demanded by COUNTY, when cause is shown. Employees of CONCESSIONAIRE will wear an easily identifiable visual uniform, (period dress) depicting 1880's era at Calico Ghost Town, which is clean, neat and presentable in appearance, so the public can recognize this person as associated with CONCESSIONAIRE. Every CONCESSIONAIRE and employee will wear an approved Name Tag. The COUNTY reserves the right to inspect and disapprove the uniform/period dress used by CONCESSIONAIRE to meet this requirement.
- C. BACKGROUND CHECKS FOR CONTRACTOR PERSONNEL: Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

- D. HOURS OF OPERATION: The Concession must be open for business during the published hours and days that the Park is open for business. COUNTY may reasonably adjust operating hours based on traffic levels and special events. The Park Superintendent or his/her designee is authorized, but not required to permit the Concession to close temporarily, open earlier and/or remain open later. Request for closure of more than two (2) hours must be made in writing to the COUNTY and must be requested a minimum of fifteen (15) days in advance. CONCESSIONAIRE may close for safety reasons at its discretion but must notify Park Superintendent or his/her designee and post signs designating duration of closure.
- E. NON-OPERATION FEE: CONCESSIONAIRE agrees to pay a non-operational fee of \$100 per day when the Concession, without COUNTY approval, is not opened during the agreed upon hours of operation consistent with conditions in Paragraph 8, sub paragraph C.
- F. MERCHANDISE AND EQUIPMENT: Consistent with Paragraph 8 subparagraph A, CONCESSIONAIRE will only sell merchandise and provide services that are within the main theme of its Concession and do not infringe upon another concessionaire's theme items. COUNTY retains the right to require CONCESSIONAIRE to discontinue sale or use of those items or services which COUNTY reasonably determines are not of high standards consistent with the current operations of Regional Parks, upon five (5) days' notice by COUNTY.
- G. ACCESS TO PRICES AND RATES: CONCESSIONAIRE must provide COUNTY access to and the right to inspect the prices and rates for goods sold or services rendered or performed upon the Premises. No later than **April 15 and October 15** of each year and within 30 days of the initial Lease signing CONCESSIONAIRE must provide COUNTY an inventory list and its proposed fees, rates and prices for the next six (6) months, including justification for any increase/decrease. CONCESSIONAIRE must keep a schedule of its fees, rates and prices in a conspicuous place on the Premises at all times.
- H. APPROVAL OF RATES AND CHARGES: All merchandise sold and services rendered in said Concession will be at prices and rates that compare favorably with prices and rates put upon similar merchandise and services by like businesses in Southern California. The amount of any and all prices and rates charged by the CONCESSIONAIRE for goods and services furnished or sold to the public are subject to the approval of County.
- I. MODIFICATION OF PRICES AND RATES: In the event that, after CONCESSIONAIRE has been advised and given a reasonable opportunity to confer with COUNTY and justify the prices and rates mentioned above, COUNTY determines that any price or rate is unreasonable or inappropriate for the services rendered or the goods sold, or that any portion or portions thereof are inadequate, the same will be modified as directed by Director or his/her designee.
- J. ADDITIONAL CHARGES: CONCESSIONAIRE agrees to provide required meters and pay all utility charges, such as, but not limited to, electric, gas, and telephone. CONCESSIONAIRE may tie into existing utility systems so long as such tie-in will not create an overload condition. With permission of the owner thereof, CONCESSIONAIRE may tie into an existing sewer or water system. Any cost associated with such tie-in, use or additional capacity required thereby will be borne by CONCESSIONAIRE. Permission to tie into existing utility, sewer and water system is subject to any and all restrictions or prohibitions, which may be imposed upon the COUNTY or upon the operators of such system by a court or regulatory authority of competent jurisdiction.

- K. **INTOXICATING BEVERAGES:** CONCESSIONAIRE must not give, provide or sell alcoholic beverages to persons who are under the legal age or to persons who appear to be intoxicated, under the influence of intoxicating liquor or narcotics, rowdy or unruly, or whose apparent condition or apparent actions may create a hazard to their own life or property or the life and property of others.
- L. **DRUG AND ALCOHOL FREE WORKPLACE:** In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, the CONCESSIONAIRE agrees that the CONCESSIONAIRE and the CONCESSIONAIRE's employees, while performing service for the County, on County property, or while using County equipment:

C.15.1 Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

C.15.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

C.15.3 Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where CONCESSIONAIRE or CONCESSIONAIRE's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The CONCESSIONAIRE shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the CONCESSIONAIRE has with the County, if the CONCESSIONAIRE or CONCESSIONAIRE's employees are determined by the County not to be in compliance with above.

- M. **CONTINUED OCCUPANCY:** CONCESSIONAIRE covenants and agrees to, and it is the intent of this Lease that the CONCESSIONAIRE will, continuously and uninterrupted, during normal business hours, during the term of this Lease, occupy the Premises for the purposes hereinabove specified, except while such Premises are untenable by reason of fire or other unavoidable casualty.
- N. **ANNUAL MEETING:** CONCESSIONAIRE or an authorized designee must attend a minimum of one (1) annual meeting of Park concessionaires and such other meetings as are reasonably required by the COUNTY. COUNTY shall give reasonable notice of the meeting(s).

9. RECORDS AND ACCOUNTS

- A. **RECORDS AND ACCOUNTS:** CONCESSIONAIRE covenants and agrees that it will, at all times during the term of this Lease, keep or cause to be kept at the Premises or other place agreed upon by COUNTY, true and complete books, records, and accounts of all financial transactions relating to Gross Income. The records must be supported by documents from which the original entry of the transaction was made, including sales slips or cash register tapes, or both.
- B. **RECORDATION OF SALES:** All sales and charges must be recorded by means of sales invoices, tickets or cash registers which display to the customer the amounts of the transactions and either physically or automatically issue receipts certifying the amounts recorded. All registers if not designed, must be covered to depict the type used in 1880's era. The approved forms or devices used in the recording of cash or charge sale transactions are as follows:

1. CASH REGISTERS: Cash registers must be of a type that displays to the customer the amount of each transaction if space permits. The register must be equipped with devices, which lock in sales total, transaction records, and with counters which are not resettable and which record on tapes the transaction numbers and sales details. Cash register readings must be recorded by CONCESSIONAIRE at the beginning and end of each business day.
 2. CASH RECEIPT AND CHARGE SALES BOOK: Cash receipt and charge sales books must be of the type that is electronically printed progressively or pre numbered by the system or manufacturer of said books; and the amounts of each transaction, to include the sales tax amount, must be recorded on the original and all copies thereof. The customer must be given a copy of the sales receipt that clearly records the total amount of the transaction. Sales must be recorded consecutively; one after the other, and the beginning and ending number of the receipt books must be duly recorded at the end of each business day.
 3. CASH TICKETS: Cash tickets may be used in conjunction with all admission charges, and must be of a type that is electronically printed progressively or pre-numbered by the manufacturer or system. The price of the tickets both for adults and children must be printed on each ticket. Tickets may be procured by the customer from a cashier's booth or station. CONCESSIONAIRE must, at the end of each business day, record the tickets sold for that day's business. All tickets must be sold consecutively, in numerical order, one after the other. Alternatively, CONCESSIONAIRE may utilize an electronic debit card system rather than printed tickets, duly recorded each day.
- C. MONTHLY REPORTS: CONCESSIONAIRE covenants and agrees to deliver to COUNTY, no later than the tenth (10th) day of each month, a true and correct certified statement of all Gross Income and Attendance figures for the preceding calendar month, showing separately the receipts from each activity conducted pursuant to this Lease. This report must be sent in with the monthly lease fee payment. At the same time, CONCESSIONAIRE shall remit a true and correct copy of any sales and use tax return as submitted from each business to the Board of Equalization (BOE), unless submitted quarterly to the BOE, in which case it shall be submitted quarterly.
- D. YEARLY REPORT: CONCESSIONAIRE covenants and agrees to deliver to COUNTY, no later than the last business day of July of each year of this Lease, commencing July 2020, a true and correct certified statement of all Gross Income for the preceding twelve months, except in the case of the first report, which shall be from the commencement date of this Lease to **July 30, 2019**, showing separately the receipts from each business, Concession service, or activity conducted pursuant to this Lease, and the amount of Lease fees paid for the same time period. CONCESSIONAIRE must prepare and deliver to COUNTY a similar report within thirty (30) days of any termination of this Lease.
- E. INVENTORY REPORT: CONCESSIONAIRE covenants and agrees to deliver to the Park Superintendent, no less often than yearly, no later than the last business day of January following the commencement date of this lease date, a true and correct inventory report for the period closing on the last day of the prior year. Additional inventory reports may be requested, no more often than quarterly, at the discretion of the County. Current concession owned inventory is identified on **Exhibit "B", Concession Inventory**.
- F. INSPECTION OF RECORDS: All books, records, and accounts of every kind or nature kept by CONCESSIONAIRE, agents or employees, licensees, or concessionaires, relating to the Gross Income, referred to herein as "Books and Records", must at all reasonable times be open and made available for inspection or audit by COUNTY, its agents or employees, upon prior request.

- G. **AUDIT:** COUNTY has the right to during the term of this lease or within three (3) years after the expiration of this Lease and/or any extensions, to audit, at no cost to CONCESSIONAIRE except as hereinafter provided, the Books and Records for the purpose of verifying the payments required to be paid to COUNTY hereunder. In the event that such audit shows that CONCESSIONAIRE understated Gross Income by more than ten percent (10%), the reasonable cost of the audit shall be paid by CONCESSIONAIRE within ten (10) days after the audit report is furnished to CONCESSIONAIRE. Additionally, within such ten (10) days, CONCESSIONAIRE must pay to COUNTY the full amount of any underpayment demonstrated by such audit, together with interest on the amount of such underpayment at the rate of five hundredths percent (0.05%) per day from the original due date of the underpayment until the underpayment is paid in full. COUNTY reserves the right to install any accounting devices or machines, with or without personnel, for the purpose of accounting or audit. Books and Records must be maintained and safeguarded by CONCESSIONAIRE for a period of three (3) years from and after the date of the latest entry into such book, record or account.
- H. **COMPLIANCE COVENANT:** CONCESSIONAIRE covenants that it will comply with and require all its agents and employees to comply with the foregoing requirements.

10. REPAIRS AND MAINTENANCE

CONCESSIONAIRE agrees to maintain the Premises and County Property in a professional manner to industry standard(s) acceptable to COUNTY. CONCESSIONAIRE agrees to repair any non-structural damage to the Premises and County Property within ten (10) days of such damage, except that CONCESSIONAIRE must perform its obligations immediately if the nature of the problem presents a hazard or emergency. If CONCESSIONAIRE does not perform its obligations with the time limitations in this paragraph, COUNTY after giving CONCESSIONAIRE at least ten (10) days advance notice except in an emergency/hazard, may perform the repairs and have the right to be reimbursed for the sum it reasonably expends (including charges for COUNTY employees and equipment). CONCESSIONAIRE further agrees that it will make no major repairs or maintenance to said Premises or County Property without, in each case, the consent of COUNTY having first been obtained, including, but not limited to, structural, electrical and plumbing modifications. Further, that in the event any major repairs or maintenance to said Premises or County Property are made necessary for any reason whatsoever, CONCESSIONAIRE will submit proposed repairs or maintenance along with any required plans and specifications to COUNTY for approval thereof. If COUNTY determines that the repairs and maintenance are acceptable, CONCESSIONAIRE will hire and pay to the contractor all costs involved in completion of the approved requests. COUNTY reserves the right for its authorized agents, employees, or representatives to enter the Premises during normal business hours and at any time in an emergency/hazard, to inspect the same or any part thereof and to attend or protect the COUNTY's interest under this Lease. All work performed under this paragraph is subject to all of the conditions of Paragraph 7 IMPROVEMENTS AND ALTERATION. COUNTY agrees to repair any structural damage to the Premises, except damage legally caused by CONCESSIONAIRE's negligence or breach of any duty. The COUNTY currently will perform all maintenance, repair and replacement on evaporator cooler units associated with the concession, including all associated water and electrical connections. This arrangement is subject to change by the County with thirty (30) days' notice.

11. INSPECTION/EVALUATION

- A. COUNTY may make a detailed and formal inspection and evaluation at regular intervals and as necessary to ensure compliance with this Lease by CONCESSIONAIRE. Each such inspection will be followed by a report in writing, with a copy given to CONCESSIONAIRE. Satisfactory inspections/evaluations will be an integral part of COUNTY's decisions regarding Lease extensions.
- B. COUNTY will be notified by CONCESSIONAIRE of any inspections conducted by other County, State, and Federal agencies so that a Department staff member may be present. Additionally, any inspection reports received must be provided to the COUNTY within 10 business days of receiving the report.

12. CLEANING PREMISES

CONCESSIONAIRE must furnish all labor, services, materials, supplies, and equipment necessary to maintain the Premises and County Property in a clean, orderly, and inviting condition satisfactory to COUNTY. Within the meaning of this paragraph, "Premises" includes all areas of the Concession, fifteen (15) feet from outside walkway, which are directly affected by CONCESSIONAIRE's operations under this Lease. CONCESSIONAIRE will provide or obtain sufficient and regular trash removal services for the Premises throughout the term of this Lease unless otherwise provided. CONCESSIONAIRE will be responsible for disposing trash in COUNTY approved locations. COUNTY shall provide for CONCESSIONAIRE's use, sufficient receptacles for the deposit of trash and in reasonable locations.

13. TAXES

- A. CONCESSIONAIRE recognizes and understands that this contract may create a possessory interest subject to property taxation and that CONCESSIONAIRE may be subject to the payment of property taxes levied on such interest.
- B. CONCESSIONAIRE covenants and agrees to pay all taxes, including possessory interest tax, and assessments upon all improvements, fixtures, furniture, and other property owned by CONCESSIONAIRE and used in the exercise of CONCESSIONAIRE's rights under this Lease or levied by reason of the CONCESSIONAIRE's operations pursuant to this Lease.

14. CLAIMS FOR LABOR AND MATERIALS

- A. CONCESSIONAIRE, unless otherwise provided herein, must pay all costs of any alterations or additions, made by CONCESSIONAIRE to any building, structure, or improvement located on the Premises and must keep the Premises and the improvements located thereon free and clear of any and all claims and liens arising out of the performance of work or furnishing of materials.
- B. COUNTY has, at all times, the right to post and keep posted on the Premises such notices as may be provided for under and by virtue of the laws of the State of California for the protection of the Premises from mechanics liens or liens of a similar nature.

15. INSURANCE AND INDEMNIFICATION CLAUSE

- A. INDEMNIFICATION: The CONCESSIONAIRE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The CONCESSIONAIRE's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

EXEMPTION OF COUNTY FROM LIABILITY. COUNTY shall not be liable for any injury to CONCESSIONAIRE'S business or any loss of income or profit therefrom, or any special, incidental, consequential, or punitive damages allegedly sustained by CONCESSIONAIRE.

- B. **ADDITIONAL INSURED:** All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, **shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds** with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- C. **WAIVER OF SUBROGATION RIGHTS:** The CONCESSIONAIRE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONCESSIONAIRE and CONCESSIONAIRE's employees or agents from waiving the right of subrogation prior to a loss or claim. The CONCESSIONAIRE hereby waives all rights of subrogation against the COUNTY.
- D. **POLICIES PRIMARY AND NON-CONTRIBUTORY:** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.
- E. **SEVERABILITY OF INTERESTS:** The CONCESSIONAIRE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the CONCESSIONAIRE and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.
- F. **PROOF OF COVERAGE:** The CONCESSIONAIRE shall furnish Certificates of Insurance to Regional Parks Department Administration, 268 W Hospitality Lane, Suite 303, San Bernardino, CA 92408, **and** evidencing the insurance coverage, including additional endorsements, as required, prior to the commencement of activities or services covered under this contract. Said certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Regional Parks Department, and CONCESSIONAIRE shall maintain such insurance from the time CONCESSIONAIRE commences activities or services covered under this contract until the completion of such activities or services. Within fifteen (15) days of the commencement of this contract, the CONCESSIONAIRE shall furnish a copy of the Declaration page to Regional Parks Department Administration for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request. The COUNTY may modify the provisions of this Section on written notification.
- G. **ACCEPTABILITY OF INSURANCE CARRIER:** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- H. **DEDUCTIBLES AND SELF-INSURED RETENTION:** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- I. **FAILURE TO PROCURE COVERAGE:** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the COUNTY has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the COUNTY will be promptly reimbursed by the CONCESSIONAIRE or COUNTY payments to the CONCESSIONAIRE will be reduced to pay for COUNTY purchased insurance.
- J. **INSURANCE REVIEW:** Insurance requirements are subject to periodic review by the COUNTY. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Department of Risk Management determines that heretofore

unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

- K. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. CONCESSIONAIRE agrees to execute any such amendment within thirty (30) days of receipt.
- L. Any failure, actual or alleged, on the part of the COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the COUNTY.

16. INSURANCE SPECIFICATIONS

- A. The CONCESSIONAIRE agrees to provide insurance set forth in accordance with the requirements herein. If the CONCESSIONAIRE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONCESSIONAIRE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.
- B. Without in anyway affecting the indemnity herein provided and in addition thereto, the CONCESSIONAIRE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
 - 1. WORKERS' COMPENSATION/EMPLOYERS LIABILITY: A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the CONCESSIONAIRE and all risks to such persons under this contract.
 - a. If CONCESSIONAIRE has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Risk Manager.
 - b. With respect to CONCESSIONAIREs that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - 2. COMMERCIAL/GENERAL LIABILITY INSURANCE: The CONCESSIONAIRE shall carry General Liability Insurance covering all operations performed by or on behalf of the CONCESSIONAIRE providing coverage for bodily injury and property damage with a combined single limit of not less than **one million dollars (\$1,000,000), per occurrence**. The policy coverage shall include:
 - a. Premises operations and mobile equipment
 - b. Products and completed operations
 - c. Broad form property damage (including completed operations)
 - d. Explosion, collapse and underground hazards

- e. Personal injury
 - f. Contractual liability
 - g. **\$2,000,000 general aggregate limit**
3. **AUTOMOBILE LIABILITY INSURANCE:** Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- a. If the CONCESSIONAIRE is transporting one or more non-employee passengers, in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.
 - b. If the CONCESSIONAIRE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
4. **UMBRELLA LIABILITY INSURANCE:** An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
5. **COMMERCIAL PROPERTY INSURANCE:** Coverage shall be obtained providing all risk coverage for the leased premises, building, fixtures, equipment and all property constituting a part of the premises. Coverage shall be sufficient to insure 100% of the replacement cost.

or

FIRE INSURANCE – Standard fire and extended peril coverage insurance adequate to cover CONCESSIONAIRE's personal property and improvements located on the leased premises

and

FIRE/LEGAL LIABILITY INSURANCE – Adequate to cover the full replacement cost value of the COUNTY's structure and property.

17. EMINENT DOMAIN

If any part of the Premises is taken by any paramount public authority under the power of eminent domain, then the term of this Lease will cease to the extent that it relates to the part so taken, without any right of recovery by CONCESSIONAIRE for such taking, from the day the possession of that part is required for public purpose. All Lease fees must be paid up to that day and from that day. If the whole or a substantial part of the Premises be so taken, then upon such taking, CONCESSIONAIRE has the right either to cancel this Lease and declare the same null and void, or to continue its operations on the remainder of the Premises under the terms herein provided.

18. DESTRUCTION OF BUILDINGS OR IMPROVEMENTS

- A. In the event that all of the improvements and/or equipment within the Premises are seventy-five percent (75%) or more destroyed or made unusable by fire, flood, or other causes and rendered irreparable, so as to make it impossible to carry on business thereon, this Lease and the provisions herein contained may be terminated by election of either COUNTY or CONCESSIONAIRE, delivered to the other party within thirty (30) days after the occurrence of such destruction and this Lease will

thereupon be of no further force and effect, except as to the provisions hereof which take effect in relation to termination of this Lease. In the event neither party terminates this Lease, CONCESSIONAIRE must restore the Premises to the condition prior to such destruction at its sole expense, including proceeds of CONCESSIONAIRE's insurance. All restoration must commence within thirty (30) days and must be completed in a reasonable time. No Lease fees are due and payable while Premises are not usable. In the event of termination pursuant to this paragraph because of fire or other insured occurrence, the proceeds of all CONCESSIONAIRE and/or COUNTY insurance payments paid or payable on account of destruction of COUNTY owned improvements and/or equipment will belong to COUNTY to be disbursed or retained on its sole discretion.

- B. In the event that the improvements and/or equipment are less than seventy-five percent (75%) destroyed by fire, flood, or other causes, CONCESSIONAIRE must repair or replace the destroyed improvements and/or equipment, at its sole expense, including proceeds of CONCESSIONAIRE's insurance, after first receiving approval from COUNTY. All fire or other insurance proceeds paid or payable on account of such destruction under COUNTY's insurance policies belong to COUNTY to be disbursed or retained on its sole discretion. The insurance proceeds from any insurance policy of CONCESSIONAIRE shall be used to repair the damage. CONCESSIONAIRE must continue to pay all Lease fees as set forth in Paragraph 5, CONCESSION AND LEASE FEE, of this Lease, unless COUNTY unreasonably refuses to allow the repairs, in which case the fees shall not be due and payable.

19. ASSIGNMENT AND SUBLETTING

- A. CONCESSIONAIRE must not voluntarily assign or encumber its interest in this Lease or in the Premises, or any options contained in this Lease, or sublease all or any part of the Premises, or allow any other person or entity (except CONCESSIONAIRE's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining COUNTY's consent. Any assignment, encumbrance, use, occupation or sublease without COUNTY's consent is voidable and, at COUNTY's election, will constitute a default. No consent to any assignment, encumbrance, or sublease will constitute a further waiver of the provisions of this paragraph.
 - 1. If CONCESSIONAIRE is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any partner, or the dissolution of the partnership, will be deemed a voluntary assignment.
 - 2. If CONCESSIONAIRE consists of more than one person, a purported assignment, voluntary, involuntary, or by operation of law, from one person to any other will be deemed a voluntary assignment.
 - 3. If CONCESSIONAIRE is a corporation, any dissolution, merger, consolidation, or other reorganization of CONCESSIONAIRE, or the sale or other transfer of a controlling percentage of the capital stock of CONCESSIONAIRE, or the sale of more than fifty percent (50%) of the value of the assets of CONCESSIONAIRE, will be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of and the right to vote stock possessing more than fifty percent (50%) of the total combined voting power of all classes of CONCESSIONAIRE's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is traded through an exchange or over the counter.
 - 4. If CONCESSIONAIRE is a limited liability company, any change in membership or designation of the primary contact person shall be deemed a voluntary assignment.
- B. CONCESSIONAIRE immediately and irrevocably assigns to COUNTY, as security for CONCESSIONAIRE's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease. COUNTY, as assignee and as attorney-in-fact for CONCESSIONAIRE, or a receiver for CONCESSIONAIRE appointed on COUNTY's application, may collect such rent and apply it toward CONCESSIONAIRE's obligations under this Lease. Provided

that, until the occurrence of an act of default by CONCESSIONAIRE, CONCESSIONAIRE has the right to collect such rent. In the event CONCESSIONAIRE assigns this Lease, or any option herein ten percent (10%) of any sums to be paid by an assignee to CONCESSIONAIRE in consideration of the assignment of this Lease or any option herein (but not including any amounts paid for inventory or any other property of the CONCESSIONAIRE sold as part of the assignment) shall be paid to COUNTY.

- C. In the event CONCESSIONAIRE assigns this Lease, or any extended term herein during the term, ten percent (10%), of any sums to be paid by an assignee to CONCESSIONAIRE in consideration of the assignment of this Lease or any option herein (but not including any amounts paid for inventory or any other property of the CONCESSIONAIRE sold as part of the assignment) shall be paid to COUNTY.
- D. In the event CONCESSIONAIRE subleases all or substantially all of the Premises for all or substantially all of the remaining term of this Lease, seventy-five percent (75%) of all rent received by CONCESSIONAIRE from its subtenants in excess of the rent payable by CONCESSIONAIRE to COUNTY under this Lease must be paid to COUNTY. It is the intent of the parties in interpreting this subparagraph, that CONCESSIONAIRE may enter into subleases with other parties to provide food and drink services, labor, management services, retail sales and marketing services, and other items and services without being subject to this subparagraph, but that CONCESSIONAIRE is to remain the operator of the facility. Any subleases which, by themselves or in conjunction with other subleases, would effect a substantial change in the operator of the facility would be subject to this paragraph.
- E. If CONCESSIONAIRE requests COUNTY to consent to a proposed assignment or subletting, CONCESSIONAIRE must pay to COUNTY, whether or not consent is ultimately given, COUNTY's reasonable costs incurred in connection with each such request, including, but not limited to, reasonable attorney's fees. If CONCESSIONAIRE does elect to request consent to any assignment, COUNTY will provide an estimate of the fees under this paragraph.
- F. No interest of CONCESSIONAIRE in this Lease is assignable by operation of law (except that the transfer of this Lease by testacy or intestacy will be considered a voluntary assignment). Each of the following acts will be considered an involuntary assignment.
 - 1. If CONCESSIONAIRE is, or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which CONCESSIONAIRE is the bankrupt; or, if CONCESSIONAIRE is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;
 - 2. If a writ of attachment or execution is levied on this Lease, which is not removed within thirty (30) days of its issuance.
 - 3. If, in any proceeding or action to which CONCESSIONAIRE is a party, a receiver is appointed with authority to take possession of the Premises.
- G. An involuntary assignment will constitute a default by CONCESSIONAIRE and COUNTY has the right to elect to terminate this Lease, in which case this Lease must not be treated as an asset of CONCESSIONAIRE, unless the involuntary assignment is cured as follows:
 - 1. If a writ of attachment or execution is levied on this Lease, CONCESSIONAIRE will have thirty (30) days in which to cause the attachment or execution to be removed.
 - 2. If any involuntary proceeding in bankruptcy is brought against CONCESSIONAIRE, or if a receiver is appointed, CONCESSIONAIRE will have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

3. Except as provided in G(1) and G(2) above, CONCESSIONAIRE has no right to cure any involuntary assignment.

20. NO INCORPORATION OF PRIOR LEASE

This Lease contains all of the agreement of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior Lease or understanding pertaining to any such matter is effective for any purpose.

21. AMENDMENTS

No provision of this Lease may be amended or added to except by an amendment to the Lease in writing signed by the parties hereto or their respective successor in interest, expressing by its terms an intention to modify this Lease.

22. TERMINATION OF LEASE

- A. **DEFAULT:** In the event that CONCESSIONAIRE violates any of the terms and conditions of this Lease, COUNTY may give CONCESSIONAIRE notice of specific violation and demand for correction.
- B. CONCESSIONAIRE agrees that COUNTY may immediately suspend this Lease, and further, CONCESSIONAIRE agrees to immediately cease operations at the Premises if CONCESSIONAIRE fails to meet the insurance requirements, as stated herein or for good cause as determined by the COUNTY.
- C. **TERMINATION FOR DEFAULT:** If, within ten (10) days after notice and demand, other than insurance or the payment of money due to COUNTY, CONCESSIONAIRE has not corrected the violation or shown acceptable cause therefore, COUNTY has the right to immediately terminate this Lease and pursue any and all remedies provided by law. COUNTY has the right to terminate this Lease on account of failure by CONCESSIONAIRE to correct a default in insurance or the payment of money owed to COUNTY within three (3) days after notice and demand for correction. In the event of termination for default, COUNTY has the right of immediate ownership of all buildings and improvements within the Premises.
- D. **TERMINATION FOR CRIMINAL CONVICTION:** COUNTY may give CONCESSIONAIRE notice of termination of this Lease which will be effective upon delivery and the COUNTY may pursue any and all avenues provided by law to obtain proper compensation for all losses incurred or damages should CONCESSIONAIRE be found guilty of any criminal activity related directly or indirectly to the use of the facilities or opportunities provided by this Lease, and sentenced (whether actually served or not) to a jail term of ninety (90) days or more.
- E. **LIABILITY FOR BREACH:** Termination for default will not excuse CONCESSIONAIRE from any liability for breach of contract.
 1. On any termination of this Lease for default by CONCESSIONAIRE, COUNTY may recover from CONCESSIONAIRE all of the following:
 - a. The worth at the time of the award of any unpaid rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Paragraph 5 subparagraph E, LATE PAYMENT PENALTIES, but in no case greater than the maximum amount of interest permitted by law;
 - b. The worth at the time of the award of the amount by which the unpaid rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid rent that CONCESSIONAIRE proves could reasonably have been avoided,

to be computed by allowing interest at the rate set forth in Paragraph 5 subparagraph E, LATE PAYMENT PENALTIES, but in no case greater than the maximum amount of interest permitted by law;

- c. The worth at the time of the award of the amount by which the unpaid rent for the balance of the Lease term after the time of the award exceeds the amount of unpaid rent that CONCESSIONAIRE proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);
 - d. Any other amount necessary to compensate COUNTY for all the detriment proximately caused by CONCESSIONAIRE's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new CONCESSIONAIRE (whether for the same or a different use), and any special concessions made to obtain a new concessionaire;
 - e. Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law
- F. TERMINATION FOR CONVENIENCE: Either party shall have the right to terminate this Lease for its convenience at any time, on at least thirty (30) days written notice prior to the effective date of termination, given to the other party as required herein in the Paragraph 24, NOTICE.
- 1. In the event either party terminates this Lease pursuant to this paragraph, the COUNTY shall have the right to receive from CONCESSIONAIRE the amount of rent that will have been earned at the effective date of termination of this Lease. Such amounts are due in lump sum on the date all such rent payments are due under this Lease.
- G. COUNTY'S REMEDIES AFTER ABANDONMENT: In the event of default by CONCESSIONAIRE, which has not been cured after notice, COUNTY shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the landlord may continue the Lease in effect after the tenants breach and abandonment and recover rent as it becomes due. Accordingly, if COUNTY does not elect to terminate this Lease on account of any default by CONCESSIONAIRE, COUNTY may enforce all of COUNTY's rights and remedies under this Lease, including the right to recover all rent as it becomes due.
- H. The receipt by the COUNTY of any rent or of any other sum of money paid by CONCESSIONAIRE after any default, the termination and forfeiture of this Lease for any reason, or after the giving by COUNTY of any notice to effect such termination, shall not waive the default, reinstate, continue or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by COUNTY to the CONCESSIONAIRE prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the COUNTY. Neither acceptance of the keys nor any other act of the COUNTY or its agents or employees during the term of this Lease shall be deemed to be an acceptance of a surrender of the Premises, excepting an amendment to the Lease in writing signed by the COUNTY agreeing to accept such surrender.

23. SURRENDER OF PROPERTY AND TERMINATION OF LEASE CONDITIONS

- A. COUNTY PROPERTY: CONCESSIONAIRE must, upon termination for any reason, surrender the Premises, in a condition equal to that when received, normal wear and tear excepted.
- B. CONCESSIONAIRE PROPERTY: CONCESSIONAIRE further agrees, in addition to the above, upon termination for any reason, to remove all goods, chattels, fixtures and equipment belonging to CONCESSIONAIRE from the Premises, listed as part of CONCESSIONAIRE's Management/Business Plan. Following the removal of such goods, chattels, fixtures, and equipment belonging to CONCESSIONAIRE, CONCESSIONAIRE must repair said Premises or to any building, structure, or improvement located thereon to the same or better condition as existed before the installation or removal. In the event that said goods, chattels, fixtures, and equipment are not removed within Fifteen (15) days after the expiration of this Lease or its termination for any other reason, CONCESSIONAIRE will be deemed to have abandoned to COUNTY the facilities, equipment, fixtures, goods, chattels, and any other property not so removed, at option of COUNTY. If COUNTY enters the Premises but elects not to exercise its option of having said property revert to COUNTY, COUNTY may, at the expense of the CONCESSIONAIRE, remove the unclaimed property and dispose of it.

24. NOTICE

- A. The parties consent and agree that all notices, approvals, consents or other communications required or permitted to be given under this Lease or under the unlawful detainer statutes of California will be given to the respective parties in writing, and may be delivered by registered or certified mail, postage prepaid or personally as follows:
 - 1. If to COUNTY: San Bernardino County
Regional Parks Department
268 W. Hospitality Lane Suite 303
San Bernardino, CA 92415-0763
 - 2. If to CONCESSIONAIRE: Raindance, LLC
419 Shoreline Drive, Suite K
Long Beach, Ca 90802
- B. Notices may be given at such other address or to such other persons as either of the parties may from time to time designate by notice given as herein provided.
- C. Notices, etc., given by registered or certified mail shall be deemed delivered two (2) COUNTY business days after being mailed.
- D. CONCESSIONAIRE is responsible to provide COUNTY with current addresses within ten (10) days of change. Any mail that is returned as undeliverable will be subject to Paragraph 24, Notices subparagraph C.

25. EASEMENTS, TRUSTS AND WARRANTIES

- A. EXISTING ENCUMBRANCES: It is expressly understood and agreed that this Lease and all rights and privileges hereunder granted are subject to all easements and rights-of-way now existing in, to, under, or over the Premises for any purposes whatsoever. It is further understood and agreed that this Lease and any of the rights and privileges herein granted is subject to any and all grants, reservations, conditions, Leases, restrictions, and trusts upon which the Premises is held by COUNTY; and CONCESSIONAIRE covenants and agrees, any provision in this Lease to the contrary notwithstanding, that it will not use or permit the Premises to be used for any purpose inconsistent with any of the grants, reservations, conditions, Leases, restrictions and trusts upon or under which

said lands are held by COUNTY, the terms of which are hereby incorporated into this Lease as if set forth in full.

- B. NO WARRANTIES: COUNTY makes no warranties, except as specifically provided in this Lease. In the event that this Lease or any provision thereof is determined to be null and void by a court of competent jurisdiction, neither COUNTY nor any of its officers, agents, or employees will be liable to CONCESSIONAIRE, or to any person holding under or through CONCESSIONAIRE for any claim, loss or damage of any nature whatsoever suffered or alleged to be suffered by CONCESSIONAIRE or such person by reason of such determination.
- C. ASSUMPTION OF RISK: CONCESSIONAIRE assumes all risks incident to the use or occupation of the Premises in their present condition or in any condition thereof which may prevail during the term of this Lease. This paragraph shall not relieve COUNTY for the actions of its own agents or employees occurring after the commencement of this Lease.
- D. DETRIMENTAL MANDATES: Any changes in the operation of the Concession which are or may be mandated by a court or government agency of competent jurisdiction, which operates to the substantial detriment of COUNTY or CONCESSIONAIRE, and which are beyond the control of CONCESSIONAIRE and COUNTY, will make the affected terms of this Lease subject to renegotiation.

26. HAZARDOUS MATERIALS

- A. Definition. For purposes of this agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq., all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

- B. In connection with the Lease, (a) CONCESSIONAIRE agrees and acknowledges that it has had an opportunity to investigate all of the property identified on **Exhibit "A", Lease Area Map** Premises and their environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc. delivered by COUNTY to CONCESSIONAIRE preceding execution of this Lease are delivered to CONCESSIONAIRE as an accommodation and not with the intent that such items be relied upon by CONCESSIONAIRE, except to the extent that CONCESSIONAIRE has independently confirmed the validity of such items; and (c) CONCESSIONAIRE's decision to enter into this Lease is based upon the investigation, study and analysis of all of the property identified on **Exhibit "A", Lease Area Map**, the Premises and their environs made by CONCESSIONAIRE or its agents and/or independent contractors, and not upon oral or written statements or representations of COUNTY. It is expressly understood by CONCESSIONAIRE and COUNTY that all statements and representations made by COUNTY which are not included in this agreement (a) are intended by COUNTY to be made as an accommodation to CONCESSIONAIRE in COUNTY's investigation and not in lieu of CONCESSIONAIRE's investigation; and (b) are not to be relied and acted upon by CONCESSIONAIRE.
- C. CONCESSIONAIRE shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Premises of any hazardous substance, or the transportation to or from the Premises of any hazardous substance.
- D. CONCESSIONAIRE agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 15 INSURANCE AND INDEMNIFICATION**, herein, to indemnify, defend with counsel approved by COUNTY, protect and herein hold harmless COUNTY, its directors, officers, employees, agents, assigns, and any successor or successors to COUNTY's interest in the Premises as it relates to Hazardous Substances as defined in **subparagraph A.** from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Premises or any indemnified party directly or indirectly arising from or attributable to (a) any breach by the CONCESSIONAIRE or any of its agreements, warranties or representations set forth in this Lease, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Lease caused by CONCESSIONAIRE's use of the Premises, regardless of whether undertaken due to governmental action. To the fuller extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of CONCESSIONAIRE.
- E. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify COUNTY for any liability arising out of CONCESSIONAIRE's use of the Premises pursuant to such sections.

27. MISCELLANEOUS

- A. **USE OF NAME:** All advertising, promotion and notices related to the operation of Premises, which have not been approved as part of the Management Plan, must have the prior approval by COUNTY. This provision includes, but is not limited to, written and pictorial advertisement in television, radio, live simulcasts, ticket printing, handbills, posters, flyers, newspapers, and Internet Websites. Any and all advertising must bear/display the phrase "Approved Concessionaire of the San Bernardino County Regional Parks Department". After termination or abandonment of the Lease, the name of the concession and all rights related thereto belong to the COUNTY and CONCESSIONAIRE agrees

that CONCESSIONAIRE is not thereafter authorized to use the name of the concession in any business promotion or venture.

- B. SIGNS:** All signs, banners/flags, must be approved by COUNTY, as to design and must be placed on the Premises as designated by COUNTY, at CONCESSIONAIRE's expense, unless otherwise agreed. Other signs of sponsors and for CONCESSIONAIRE will be permitted on the Premises only with the prior approval of COUNTY in the Management Plan. All signs must comply with local city ordinances, CONCESSIONAIRE to provide proof of compliance.
- C. NO PARTNERSHIP:** It is expressly understood and agreed that COUNTY nor any of its officers, agents, volunteers or employees do not, in any way nor for any purpose, become a partner, agent, principle of, or a joint venturer with CONCESSIONAIRE by reason of any provision of this Lease.
- D. BINDING EFFECT:** Each and all of the covenants, conditions, and Leases herein contained will, in accordance with the context, inure to the benefit of COUNTY and apply to and bind CONCESSIONAIRE, its respective heirs, legatees, devisees, executors, administrators, successors, agents, assignees, subtenants, concessionaires and licensees.
- E. CAPTIONS:** The captions of articles and paragraphs of this Lease are for convenience only and do not in any way limit or amplify terms and provisions hereof.
- F. NO WAIVER:** No waiver by COUNTY at any time of any of the terms and conditions of this Lease will be deemed to operate as a waiver at any time thereafter of the same or of any other terms or conditions contained herein or of the strict and timely performance of such terms and conditions.
- G. REGULATIONS AND PERMITS:** CONCESSIONAIRE, employees, agents, and contractors, must conform to and abide by all rules and regulations relating to the operation herein authorized and is subject at all times to applicable rules, regulations, resolutions, laws, ordinances, and statutes of the County of San Bernardino, State of California, the federal government, and all other governmental agencies having jurisdiction over the Park, Premises and/or Concession operations. Where permits are required for such operations, the same must first be had and obtained from the regulating body having jurisdiction thereof, before such operations are undertaken. COUNTY must be notified in writing of use and controls implemented by CONCESSIONAIRE relating to the use of any hazardous materials, as defined or determined by current federal, state and/or local laws.
- H. PARKING:** During the published hours of operation, CONCESSIONAIRE must park its personal vehicles only in an approved parking lot. All vehicles in the Park which are directed, controlled, driven or invited by CONCESSIONAIRE must travel, stop or park only on public roads or approved parking lots except for the purposes of merchandise delivery during the hours of operation. Use of vehicles on Park streets during the hours of operation must obtain approval by Regional Parks Department.
- I. NO DISCRIMINATION:** During the term of the Contract, CONCESSIONAIRE shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONCESSIONAIRE shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- J. NO SEGREGATION:** CONCESSIONAIRE must not discriminate against or cause the segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in the occupancy, use, tenure or enjoyment of the Leased premise, nor may CONCESSIONAIRE or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with

reference to the selection, location, number, use or occupancy of or by any person within the Premises.

- K. HEALTH CERTIFICATE:** All CONCESSIONAIRE employees must comply with all city, COUNTY, state or federal health regulations.
- L. MATERIAL MISREPRESENTATION:** If during the course of the administration of this Lease, the County determines that the CONCESSIONAIRE has made a material misstatement or misrepresentation or that material inaccurate information has been provided to the County, this contract may be immediately terminated. If this contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.
- M. COMMON AREAS:** COUNTY, during the term of this Lease and any extension or renewals thereof, agrees to operate, maintain, and manage all parking areas, roads, sidewalks, landscaping, drainage and lighting fixtures, restrooms, and common areas located in the Park in a first-class manner. The manner in which such areas and facilities will be maintained, and the expenditures therefore will be at the sole discretion of COUNTY; and the use of such areas and facilities is subject to such reasonable regulations as COUNTY will make from time to time.
- N. DESIGNEE:** The Director of the Regional Parks Department and/or designee is responsible for the enforcement of this Lease on behalf of COUNTY, which responsibilities include, but are not limited to, the approval of the plans and specifications for the Regional Parks Department (does not eliminate approval by other governmental agencies), notices and other actions for enforcement or termination and other duties set forth in this Lease.
- O. TIME OF ESSENCE:** Except as otherwise specifically provided, time is of the essence of each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.
- P. PROVISIONS ARE COVENANTS AND CONDITIONS:** All provisions, whether covenants or conditions, on the part of either party will be deemed to be both covenants and conditions.
- Q. EXHIBITS:** All exhibits referred to in this Lease are attached to this Lease and incorporated by reference.
- R. CONSENT AND RULES:** Except otherwise provided, whenever review, consent or approval of either party is required, that party must not unreasonably review or unreasonably withhold such consent or approval. All rules and regulations enacted or imposed by COUNTY shall be reasonable and shall be for the purpose of continuing the theme of the Regional Parks Department and at the same time allow CONCESSIONAIRE to operate in a business-like manner.
- S. ADVERTISING:** COUNTY may, but is not required, to promote CONCESSIONAIRE's activities and the Concession in COUNTY's advertising notices of public events, and promotional literature and broadcasts.
- T. ATTORNEYS' FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph 15, INSURANCE AND INDEMNIFICATION CLAUSE.

- U. VENUE:** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.
- V. SEVERANCE:** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination will not affect any other provision of this Lease, and all such other provisions will remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision will have the meaning which renders it valid.
- W. SURVIVAL:** The obligations of the parties which, by their nature, continue beyond the term of this Lease, will survive the termination of this Lease.
- X. INTERPRETATIONS:** As this Lease was jointly prepared by both parties, the language in all parts of this Lease will be construed, in all cases, according to its fair meaning, and not for or against either party hereto.
- Y. DISCLOSURE OF INFORMATION:** All information received by the COUNTY from any source concerning this contract, including the contract itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 7920.000 et seq. (the "Public Records Act"). CONCESSIONAIRE understands that although all materials received by the COUNTY in connection with this contract are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a CONCESSIONAIRE has requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the CONCESSIONAIRE of the request and shall thereafter disclose the requested information unless the CONCESSIONAIRE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for nondisclosure and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. CONCESSIONAIRE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify CONCESSIONAIRE of any such disclosure request and/or releases any information received concerning the contract received from the CONCESSIONAIRE.
- Z. NO INTEREST OR ESTATE:** CONCESSIONAIRE agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in any County real or personal property by virtue of this Lease.
- AA. FORMER COUNTY OFFICIALS:** CONCESSIONAIRE must provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent your business. The information provided must include a list of former county administrative officials who terminated county employment within the last five years and who are now officers, principles, partners, associates, or members of the business. The information should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For the purposes of this section, "county administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, or any employee in the Exempt Group, Management Unit, or Safety Management Unit.

BB. Improper Consideration

Concessionaire shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Concessionaire shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

CC. Improper Influence

CONCESSIONAIRE shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the CONCESSIONAIRE or officer or employee of the CONCESSIONAIRE.

DD. Conflict of Interest

CONCESSIONAIRE shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. CONCESSIONAIRE shall make a reasonable effort to prevent employees, CONCESSIONAIRE, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Concessionaire's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

EE. Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Concessionaire. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Concessionaire also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Concessionaire is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Concessionaire

will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Concessionaire is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Concessionaire will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

FF. Campaign Contribution Disclosure (SB 1439)

Concessionaire has disclosed to the County using Attachment A - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Concessionaire's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Concessionaire acknowledges that under Government Code section 84308, Concessionaire is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Concessionaire will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Concessionaire or by a parent, subsidiary or otherwise related business entity of Concessionaire.

GG. ELECTRONIC SIGNATURES

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

/
/
/
/
/
/
/

SAN BERNARDINO COUNTY

Dawn Rowe

Dawn Rowe, Chair, Board of Supervisors

Dated: NOV 05 2024

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By



Raindance, LLC

(Print or type name of corporation, company, contractor, etc.)

By

Xavier Canale

(Authorized signature - sign in blue ink)

Name

Xavier J. Canale

(Print or type name of person signing contract)

Title

Managing Member

(Print or Type)

Dated:

10/24/2024

Address

419 Shoreline Drive Suite K
Long Beach, CA 90802

FOR COUNTY USE ONLY

Approved as to Legal Form

Suzanne Bryant

Suzanne Bryant, Deputy County Counsel

Date 10/28/2024

Reviewed for Contract Compliance

Moe Yousif

Moe Yousif, Deputy Executive Officer

Date 10/28/2024

Reviewed/Approved by Department

Beahtha R. Davis

Beahtha R. Davis, Director, Regional Parks Department

Date 10/24/2024

EXHIBIT A

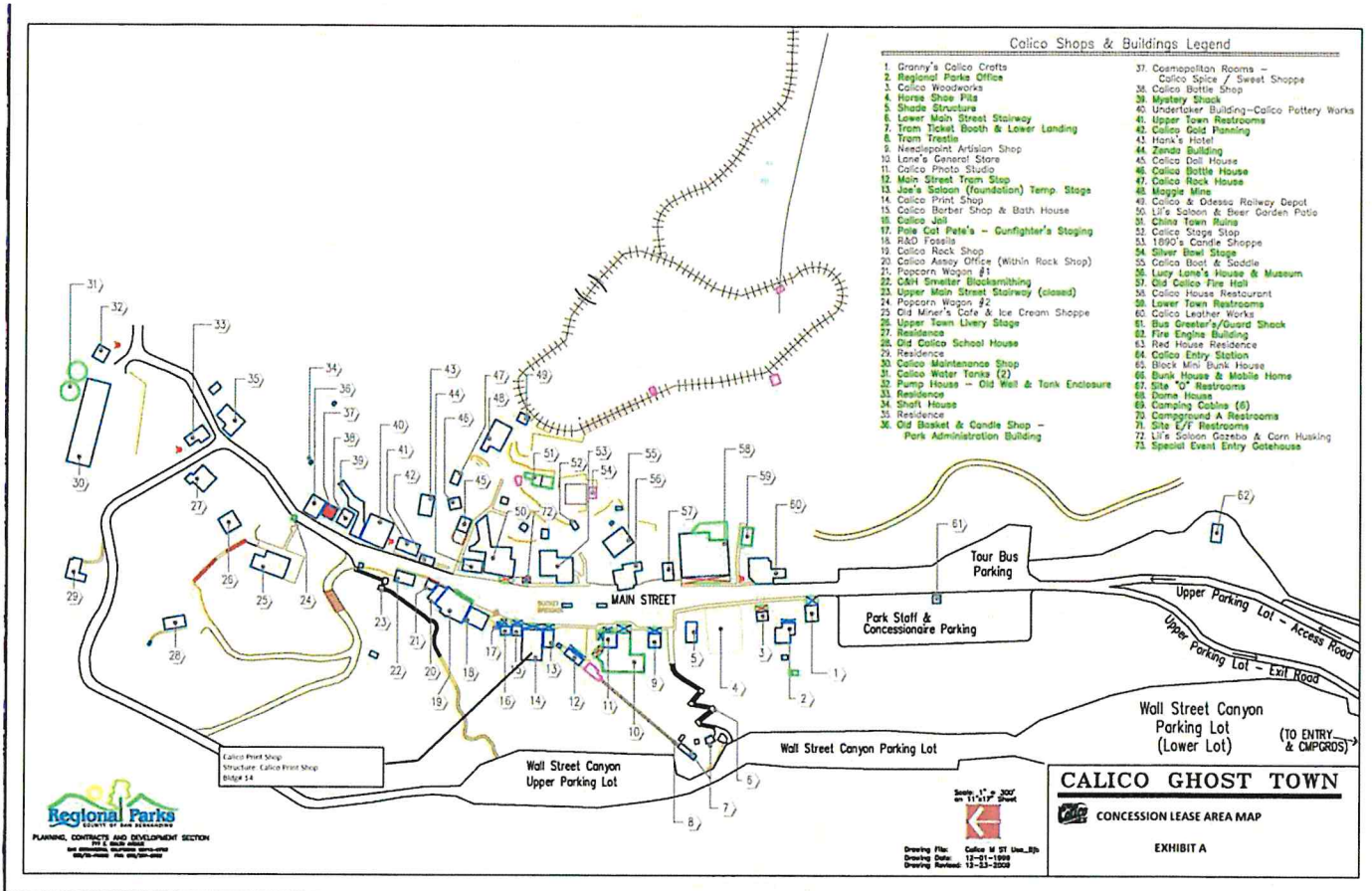


EXHIBIT B

Calico Print Shop Items approved for Sale

- a. Old newsprint press vending machine with complimentary Calico Print newspaper copied from original and more recent publications.
- b. Books of an historic nature, including:
 - i. Western history
 - ii. Mining history.
 - iii. Ghost Towns.
 - iv. Western cookbooks.
 - v. Hiking and trails guides.
- c. Old West, historical, mining history, ghost town children's books.
- d. Prints or posters of old classic Western movies, actors.
- e. Prints or posters of Americana subjects, including Route 66 and other historical pop culture subjects.
- f. Wanted posters both in their current format sold at the Print Store and a new computer-generated format with visitors actual "mug shot".
- g. T-Shirts. Printed in store and preprinted.
- h. Post cards.
- i. Wall Hangings including Tin plaques, Frames, Wall Art of American West, Americana theme (such as Harley Davidson, Ford, etc...), old Classic Western and Other classic American movies and actors, historical figures.
- j. US states License plates.
- k. Maps:
 - i. Road maps.
 - ii. Topographical maps
 - iii. Ghost town and mining maps.
 - iv. Souvenir maps.
- l. Old West and Southwestern themed souvenirs.
- m. Flags.
- n. Calico, USA, California themed souvenirs.
- o. Route 66 Themed Items and souvenirs.
- p. Souvenir themed caps with an emphasis on Calico ghost town.
- q. Toys consistent with Calico and the Print shop theme. (Items must be approved by Regional Parks staff prior to being included in the inventory.)

- r. Music coin machines
- s. Panoramic telescope.
- t. Gumball machine and distributor.
- u. Antique coin machines.
- v. Penny presses, coin operated old miner storyteller, Mummy shuffle



ATTACHMENT A

Campaign Contribution Disclosure (SB 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: Raindance, LLC
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes If yes, skip Question Nos. 3-4 and go to Question No. 5 No
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: Xavier
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): Xavier and Gabrielle Canale
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
N/A	N/A
N/A	N/A

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
N/A	N/A	N/A
N/A	N/A	N/A

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):
N/A	N/A	N/A
N/A	N/A	N/A

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
N/A	N/A
N/A	N/A
N/A	N/A

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No If **no**, please skip Question No. 10.

Yes If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: N/A

Name of Contributor: N/A

Date(s) of Contribution(s): N/A

Amount(s): N/A

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.

ATTACHMENT B

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Contract may require the payment of prevailing wages and compliance with the following requirements:

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

- b. Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
 - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
 - (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
 - (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
 - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.
 - (D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.
 - (E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:
 - (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
 - (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
- (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.
- (d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:
 - (1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.
 - (2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

- (A) At least monthly or more frequently if specified in the contract with the awarding body.
- (B) In a format prescribed by the Labor Commissioner.
- (4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.
- (5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.
- (b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:
 - (1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.
 - (2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.
- (c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.
- (d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
 - iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
 - v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see

<http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

- b. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
 - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or

- iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.
- 5. Contractor's Compliance:**
- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.