



Contract Number

SAP Number

Regional Parks Department

Department Contract Representative	<u>Beahta R. Davis</u>
Telephone Number	<u>(909) 387-2340</u>
Contractor	<u>LandD Inc.</u>
Contractor Representative	<u>Daryl Schendel</u>
Telephone Number	_____
Contract Term	<u>December 20, 2023 –November 30, 2028</u>
Original Contract Amount	<u>\$18,000 Annual</u>
Amendment Amount	_____
Total Contract Amount	<u>\$18,000 Annual</u>
Cost Center	<u>6522021000</u>

IT IS HEREBY AGREED AS FOLLOWS:

This Concession Agreement (“Agreement” or “Lease”) is for a period of five years commencing December 20, 2023, through November 30, 2028, for Building Number 58 known as the Calico House Restaurant located in the Calico Ghost Town Regional Park.

**SAN BERNARDINO COUNTY
REGIONAL PARKS DEPARTMENT
CALICO GHOST TOWN REGIONAL PARK
CALICO HOUSE RESTAURANT
CONCESSION LEASE AGREEMENT**

This Concession Agreement is by and between SAN BERNARDINO COUNTY, a political subdivision of the State of California ("COUNTY"), and LandD, Inc. ("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

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 known as Calico House Restaurant in Building Number 58 ("Premises") located in the Calico Ghost Town Regional Park ("Park") and described in Exhibit "A." CONCESSIONAIRE will have full right to the use of the Premises during the term of this Agreement for the purposes set forth in this Agreement. 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 Agreement in the same or better condition, excepting normal wear and tear.

2. TERM

- A. The initial term ("Initial Term") of this Agreement is for **five (5) years**, commencing **December 20, 2023, through November 30, 2028**, unless terminated sooner as herein provided.
- B. CONCESSIONAIRE is granted the option to renew for two (2) additional three (3) year periods ("Extended Term"). The Lease fee for the 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 dollars (\$200.00). 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 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 21, TERMINATION OF AGREEMENT, 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.
- C. This Concession Agreement incorporates the terms and conditions included in Settlement Agreement No. 23-857 (Attachment B), executed by COUNTY and CONCESSIONAIRE on August 3, 2023 and incorporated herein. Failure of CONCESSIONAIRE to comply with any of the terms or conditions in Settlement Agreement No. 23-857 is a breach of this Agreement and may result in termination of this Concession Agreement by COUNTY.

3. CONCESSIONAIRE RIGHTS GRANTED

CONCESSIONAIRE will have the right and obligation to develop, maintain and operate Calico House Restaurant within the Premises. CONCESSIONAIRE shall have the right to operate a restaurant, serving freshly prepared breakfast, lunch, dinner, and beverages, to include beer and wine as permitted, and such prepared food on the Premises as do not conflict with merchandise allowably sold at other concession(s) within the Park. CONCESSIONAIRE is authorized to add, with COUNTY approval, new menu items including but not limited to BBQ and Fresh Baked Bread including the services and equipment as needed. CONCESSIONAIRE shall not use the Premises for any other purpose without COUNTY approval. Permission to sell additional items on a case-by-case basis may be authorized by the COUNTY, and that permission may be rescinded by the COUNTY upon notice if a conflict is determined.

1. Regardless of whether or not an item is part of the store's theme, final approval of the right to sell an item rest solely with the COUNTY.
2. 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).
3. All concession rights cease upon the termination of this Agreement. 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 Agreement.

4. CONCESSIONAIRE REQUIREMENTS:

CONCESSIONAIRE shall comply with the Management Plan ("Management Plan") for the Concession attached hereto as Exhibit "B." 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.

1. The Management Plan should (a) include areas such as operation and merchandising program, promotional plans, new development or programs for business enhancement for current term; and (b) include goals, objectives, implementation.
2. 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 shall pay a minimum monthly fee of one thousand five hundred dollars (\$1,500.00) or five percent (5%) of gross income as defined in Paragraph 5E whichever is greater.
 1. In the event that the Concession is mandated to close for a month or more directly because of a fire, flood, earthquake, acts of God, disaster, or pandemic, the minimum lease fee will be reduced to two hundred dollars (\$200) per month for the duration of the mandated closure.
- 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 half percent (3.5%) of the monthly Gross Income, defined in 5E as an advertising fee to be used for 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. COUNTY will provide at least semiannually an accounting of the disbursement of the advertising funds, including such detail as reasonably requested by Concessionaires Association Executive Committee ("Executive Committee"). The Executive Committee may, at its own expense, review or audit the advertising funds, at any time during the term of this Lease.
- C. PAYMENT DATE: All Lease payments are due and payable on or before the tenth (10th) day of the calendar month following the month in 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 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 occurrence 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 two 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. CONCESSIONAIRE shall make a deposit with the COUNTY the amount of **One thousand dollars (\$1,000)** within 30 days execution of this Agreement.
- 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 ALTERATION

- 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, and 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 1720.2 and 1770 et seq.)

- 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 improvements 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 the 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 the 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 Agreement term 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 Agreement, 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 Agreement, 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 payments during the term.

8. MANAGEMENT REQUIREMENTS

- A. CONCESSIONAIRE will operate and manage the use, its service and area in a professional, business-like manner. CONCESSIONAIRE must, at all times conduct themselves in a professional manner to customers, COUNTY agents or its employees, concessionaires or other CONCESSIONAIRE's, 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. CONCESSIONAIRE'S 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 or other CONCESSIONAIRE's, 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 dress used by CONCESSIONAIRE to meet this requirement.
- C. 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.
- D. CONTINUED OCCUPANCY: CONCESSIONAIRE covenants and agrees to, and it is the intent of this Agreement that the CONCESSIONAIRE will, during normal business hours, during the term of this Agreement, occupy and operate the Premises for the purposes hereinabove specified, except while such Premises are untenable by reason of fire or other unavoidable casualties.
- E. HOURS OF OPERATION: The Concession shall be open for business during the published hours and days that the Park is open for business. Short term closures in exception to this rule will be considered with notice given to the Park Superintendent prior to closure. CONCESSIONAIRE will post signage as to duration of closure.
- F. MANAGEMENT AND EQUIPMENT: Consistent with Paragraph 3, 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. Upon request, CONCESSIONAIRE shall provide copies of the Consignment Agreements to the Park Superintendent.
- 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. **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 annual meeting.

9. RECORDS AND ACCOUNTS

- A. **RECORDS AND ACCOUNTS:** CONCESSIONAIRE covenants and agrees that it will, at all times during the term of this Agreement, 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 business, Concession service, or activity conducted pursuant to this Agreement. This report must be

sent in with the monthly lease fee payment with a copy to the Park Superintendent. 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 REPORTS:** CONCESSIONAIRE covenants and agrees to deliver to COUNTY, no later than the last business day of July of each year of this Agreement, commencing July 2024 a true and correct certified statement of all Gross income for the preceding twelve months, 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 REPORTS:** 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 Agreement, 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.
- 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 Agreement or within three (3) years after the expiration of this Agreement 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

- A. CONCESSIONAIRE agrees to perform normal maintenance sufficient to keep the Premises maintained in a professional manner up to industry standard(s) and acceptable to COUNTY. CONCESSIONAIRE shall be responsible for all regular maintenance, which shall include all minor repairs or maintenance which are defined by the examples below:
 - 1) Replacement of a broken or faulty light fixture with a similar fixture is considered minor repair or maintenance, whereas replacement of a broken or faulty light fixture with a differing fixture (like a single bulb fixture being replaced by a multi-bulb fixture) is considered major repair or maintenance.
 - 2) Replacement of exposed plumbing or plumbing fixtures (like trap pipes or sink mounted faucets) is considered minor repair or maintenance, whereas replacement of plumbing that requires access behind drywall or under the floor is considered major repair or maintenance.

- 3) Replacement of baseboards, crown molding, wall coverings (e.g. paint, wallpaper, etc) or patching of holes in drywall from common incidents (like a hole caused by a doorknob hitting the wall) is considered minor repair or maintenance, whereas replacement of a large section of drywall due to exposure to water or heavy damage is considered major repair or maintenance.
- B. CONCESSIONAIRE agrees that it will make no major repairs or maintenance to said Premises 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 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 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 subsection is subject to all of the conditions of Paragraph 7 IMPROVEMENTS AND ALTERATION.
 - C. CONCESSIONAIRE agrees to repair any non-structural damage to the Premises 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).
 - D. CONCESSIONAIRE agrees to maintain the Premises and County Property in a clean, orderly, and inviting condition satisfactory to the COUNTY, as described in Section 12 of this agreement. This includes, but is not limited to, pest control services within the premises. "Premises" includes all areas of the Concession, fifteen (15) feet from the outside walkway, which are directly affected by CONCESSIONAIRE's operations under this Agreement. CONCESSIONAIRE shall keep the Premises free and clear of all vermin and other pests and shall be responsible for contracting and paying for preventative and response requested pest control services exclusively serving the Premises, if deemed necessary to maintain a clean, orderly, and inviting condition satisfactory to the COUNTY. COUNTY shall be responsible for areas outside of Premises, as defined in this paragraph, and shall be responsible for contracting and paying for preventative and response requested pest control services if deemed necessary.

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 Agreement 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 Agreement 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 the outside walkway, which are directly affected by CONCESSIONAIRE's operations under this Agreement. 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 of 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 Agreement 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 Agreement or levied by reason of the CONCESSIONAIRE's operations pursuant to this Agreement.

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.
- 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 applied 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, Third Floor, Suite 303, San Bernardino, CA 92408 evidencing the insurance coverage, including 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.
- G. **ACCEPTABILITY OF INSURANCE CARRIER:** Unless otherwise approved by Risk Management, the 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.
- B. Without in any way 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 the 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 the 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, and 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 Agreement for Calico Ghost Town Regional Park Premises, building, fixtures, equipment, and all property constituting a part of the Calico Ghost Town Regional Park Premises. Coverage shall be sufficient to ensure 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 Agreements 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 Agreement 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 Leases fees must be paid up to that day and from that day. If the whole or a substantial part of Premises be so taken, then upon such taking, CONCESSIONAIRE has the right either to cancel this Agreement and declare the same null and void, or to continue its operations on 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 Agreement and the provisions herein contained may be terminated by the election of either COUNTY or CONCESSIONAIRE, delivered to the other party within thirty (30) days after the occurrence of such destruction and this Agreement will thereupon be of no further force and effect, except as to the provisions hereof which take effect in relation to termination of this Agreement. In the event neither party terminates this Agreement, CONCESSIONAIRE must restore 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. 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 the destruction 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.

19. ASSIGNMENT AND SUBLETTING

- A. CONCESSIONAIRE shall not voluntarily assign or encumber its interest in this Agreement or in the Premises, or any options contained in this Agreement, 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 Agreement. 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 Agreement. 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 Agreement, 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 Agreement 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. 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.
- E. No interest of CONCESSIONAIRE in this Agreement is assignable by operation of law (except that the transfer of this Agreement 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

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.
- F. An involuntary assignment will constitute a default by CONCESSIONAIRE and COUNTY has the right to elect to terminate this Agreement, in which case this Agreement 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 Agreement, 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 A(1) and A(2) above, CONCESSIONAIRE has no right to cure any involuntary assignment.

20. AMENDMENTS

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

21. TERMINATION OF AGREEMENT

- A. **DEFAULT:** In the event that CONCESSIONAIRE violates any of the terms and conditions of this Agreement, COUNTY may give CONCESSIONAIRE notice of specific violation and demand for correction.
- B. CONCESSIONAIRE agrees that COUNTY may immediately suspend this Agreement, 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. CONCESSIONAIRE agrees that all monthly minimum lease payments are due while operations are ceased due to failure to provide required insurance coverage.
- C. **TERMINATION FOR DEFAULT:** If, within ten (10) days after notice and demand, CONCESSIONAIRE has not corrected the violation or shown acceptable cause therefore, COUNTY has the right to immediately terminate this Agreement and pursue any and all remedies provided by law. COUNTY has the right to terminate this Agreement 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 improvements within the Premises.
- D. **TERMINATION FOR CRIMINAL CONVICTION:** COUNTY may give CONCESSIONAIRE notice of termination of this Agreement 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 Agreement, 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 Agreement for default by CONCESSIONAIRE, COUNTY may recover from CONCESSIONAIRE all of the following:
 - a. The worth at the time of termination of any unpaid money 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 money 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 money for the balance of the Lease term after the time of the award exceeds the amount of unpaid money 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 Agreement 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 Paragraph 24 NOTICE.
1. In the event either party terminates this Agreement pursuant to this paragraph, the COUNTY shall have the right to receive from CONCESSIONAIRE the amount of money that will have been earned at the effective date of termination of this Agreement. Such amounts are due in a lump sum on the date all such rent payments are due under this Agreement.
- 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 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 Agreement in writing signed by the COUNTY agreeing to accept such surrender.

22. HOLDING OVER

If the CONCESSIONAIRE continues in possession or occupancy of the Premises after the expiration of the Term or after any termination of this Lease prior to the expiration of the Term, and if said possession or occupancy is with the express written consent of the COUNTY, then CONCESSIONAIRE shall be deemed to be holding the Premises on a month-to-month tenancy subject to all of the provisions of this Lease provided that either party may terminate the Lease at any time during the holdover period by providing not less than thirty (30) days prior written notice to the other party.

23. SURRENDER OF PROPERTY AND TERMINATION OF AGREEMENT 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 the 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

The parties consent and agree that all notices, approvals, consents, or other communications required or permitted to be given under this Agreement 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:

- A. If to COUNTY: San Bernardino County
Department of Regional Parks
268 W. Hospitality Lane, Third Floor, Suite 303
San Bernardino CA 92408
- B. If to CONCESSIONAIRE: LandD Inc.
27522 Windy Pass
Barstow, CA 92311
Attn: Deryl Schendel

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.

Notices, etc., given by registered or certified mail shall be deemed delivered two (2) COUNTY business days after being mailed.

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 25, Notices.

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 Premise 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, Agreements, 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, Agreements, restrictions and trusts upon or under which said lands are held by COUNTY, the terms of which are hereby incorporated into this Agreement 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 Lease, 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", Agreement 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", Agreement 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 lease (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 **Paragraph 17 HAZARDOUS MATERIAL** 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 fullest 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 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 Agreement.
- D. **BINDING EFFECT:** Each and all of the covenants, conditions, and agreements 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 Agreement 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 Agreement 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, its 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, the State of California, the federal government, and all other governmental agencies having jurisdiction over the Parks, 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 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 Agreements 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 Agreement, 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 Agreement.
- O. **TIME OF ESSENCE:** Except as otherwise specifically provided, time is of the essence of each provision of this Agreement 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 Agreement are attached to this Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement is determined to be void by any court of competent jurisdiction, then such determination will not affect any other provision of this Agreement, 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 Agreement 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 Agreement, will survive the termination of this Lease.
- X. **INTERPRETATIONS:** As this Agreement 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"). 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 release any information received concerning the contract received from the CONCESSIONAIRE.
- Z. **CAMPAIGN CONTRIBUTION DISCLOSURE (SB 1439):** Contractor 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 Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor 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 Contractor 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 Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

AA. 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 Agreement.

BB. FORMER COUNTY OFFICIALS: CONCESSIONAIRE must provide information on former County 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.

CC. ENTIRE AGREEMENT: This Agreement, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.

DD. 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.

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

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SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
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

B
y _____
Deputy

LandD Inc.

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

B
y ► _____
(Authorized signature - sign in blue ink)

Name Daryl Schendel
(Print or type name of person signing contract)

Title Owner/President
(Print or Type)

Dated: _____

Address 27522 Windy Pass
Barstow, CA 92311

FOR COUNTY USE ONLY

Approved as to Legal Form

► _____
Suzanne Bryant, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

► _____
Trevor Leja, Deputy Executive Officer

Date _____

Reviewed/Approved by Department

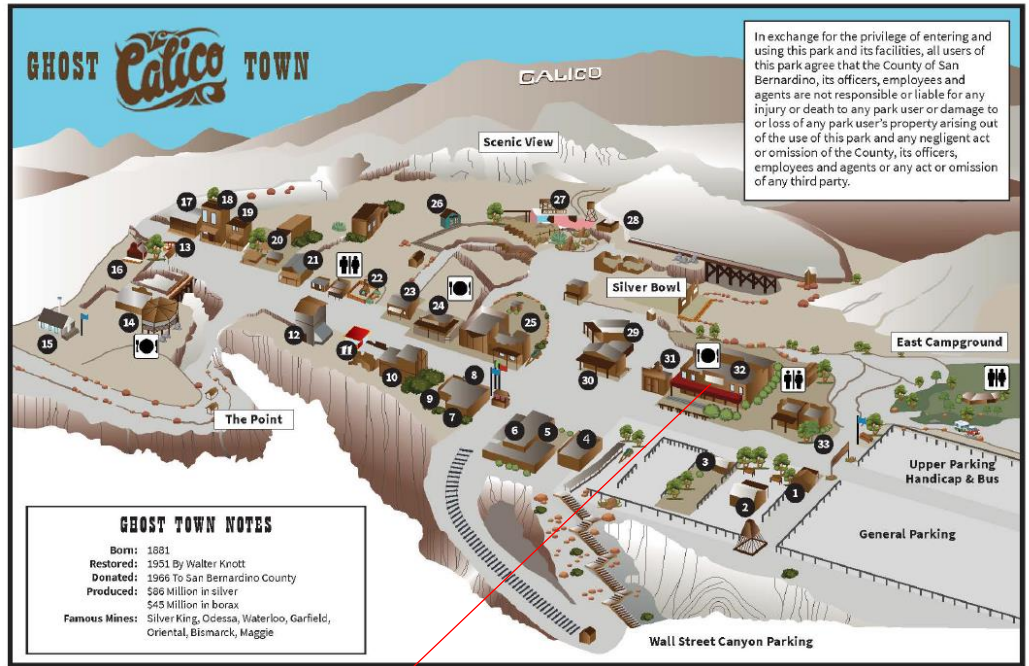
► _____
Beahta R. Davis, Director, Regional Parks
Department

Date _____

EXHIBIT "A"
PREMISES- Building #58- Approximately 4,387 square feet.

TOWN LEGEND

1. **Odessa Red's ParLOUR Crafts & Curiosities** - Handcrafted, decorated accessories and boutique items. Licensed officiate for Calico weddings. Licensed officiate for Calico weddings. Email Preacher Mozell tonyaedwards04@msn.com.
2. **Park, concessionaire and camping information.**
3. **Calico Woodworks** - Metal and wood puzzles and other woodworks handcrafted by local artisans. Offers the Silver King mine tour and 20 Mule Team Off-Road Adventure tour to Borate, visit calicohosttown.com.
4. **Town Hall**
5. **Lane's General Merchandise** - All items carried in a general store, including crafted sodas, soft drinks, water, ice, packaged food items, RV and camping supplies, and candy. Souvenir items, such as clothing, t-shirts, hats, mugs and bags. Sign up for ghost and historical tours at calicohosttown.com.
6. **Calico Photo Studio** - Dress up in 1800s period clothing and take an old-time photo (additional cost). Groups and pets welcome.
7. **Print Shop** - Newsprints, custom posters, books, signs, license plates and souvenirs. Hats, mugs and other novelty items.
8. **Calico Barber Shop & Bathhouse Display**
9. **Calico Jail** - Home of the infamous Calico Gunfighters and Marshal Bismarck Bob.
10. **Calico Rock & Gift Shop** - Minerals, rocks and tumbled stones, such as crystal quartz, calcite and amethyst. Himalayan salt lamps and chakras trees. Silver jewelry as well as turquoise and coral Navajo made silver. Calico Rocks & Fossils. Trilobites, fish fossils and mosasaurus skulls. Geode cracking.
11. **Popcorn Wagon**
12. **C & H Smelter Blacksmithing**
13. **Popcorn Wagon**
14. **Old Mine's Cafe** - Beer, wine, ice cream, soft drinks, burgers and deli sandwiches.
15. **School House** - A replica of the original school house of the 1880s.
16. **Livery Stable Stage**
17. **Vacant**
18. **Calico Sweet Shoppe** - Fudge made onsite with classic and seasonal flavors. Unique dips and seasonings, bulk candy and crafted sodas. Starbucks drinks made to order. Soft-serve ice cream. ATM location.
19. **Dorsey's Dog House** - Dog bakery, treats and accessories
20. **Mystery Shack** - See natural mysteries as you walk through this amazing adventure (additional charge).
21. **Pottery Shop** - Handcrafted clay pottery, metalwork and leaded glass items. All made in the U.S.A.
22. **Gold Panning** - Experience panning for gold and you may walk away with a little (additional charge).
23. **Mining Museum/Zenda**
24. **Lil's Saloon and Beer Garden Patio** - Pizza, wings and hot dogs. Popcorn, giant dill pickles. Beer on tap and bottled, crafted sodas, soft drinks and water. Boysenberry and sarsaparilla floats.
25. **Calico Candle and Bath** - Woven goods, basket fillers, candles, candle holders, handmade soaps, baths salts and lotions.
26. **Calico Bottle House** (The Other Side - Zombie and ghost souvenirs and collectibles).
27. **Maggie's Mine** - One of Calico's original mines and home of the "Glory Hole" (additional charge).



In exchange for the privilege of entering and using this park and its facilities, all users of this park agree that the County of San Bernardino, its officers, employees and agents are not responsible or liable for any injury or death to any park user or damage to or loss of any park user's property arising out of the use of this park and any negligent act or omission of the County, its officers, employees and agents or any act or omission of any third party.

GHOST TOWN NOTES

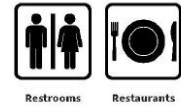
Born: 1881
 Restored: 1951 By Walter Knott
 Donated: 1966 To San Bernardino County
 Produced: \$96 Million in silver
 \$45 Million in borax

Famous Mines: Silver King, Odessa, Waterloo, Garfield, Oriental, Bismarck, Maggie

28. **Calico/Odessa Railroad** - A scenic ride with many points of historical interest (additional charge).
29. **Vacant**
30. **Lane House & Museum** - Learn more about the history of Calico.
31. **Old Calico Fire Hall**
32. **Calico House Restaurant** - Family-style sit down restaurant known for its fried chicken. Serves breakfast, lunch and dinner. Beer and wine served.
33. **Calico Leather Works and Indian Trading Post** - Scully leather apparel, Minnetonka moccasins, cowboy boots and gun holsters. Native American made beaded bracelets and jewelry, artifacts and gifts.

Due to the historic nature of the town, not all areas are ADA accessible.

A word of caution! The mines in the Calico area are extremely hazardous and must not be approached for any reason.



Restrooms Restaurants

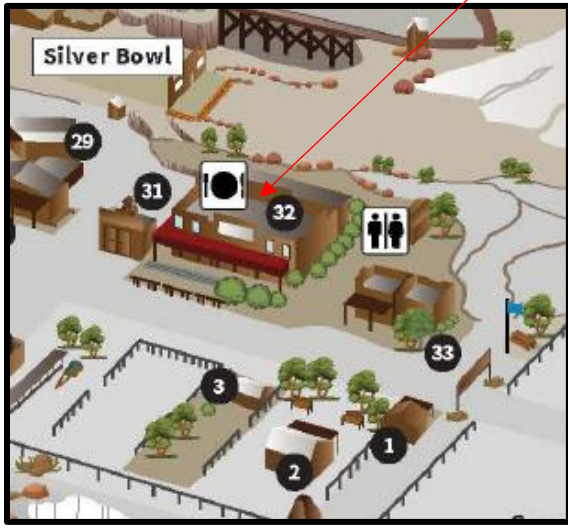


EXHIBIT "B"
"Management Plan"

To continue operation of the restaurant to the highest of standards, keeping in mind the history and makeup of the town. A desired and unique atmosphere, the highest degree of service and food quality. Our services and menu continue to meet the needs of the town and compliment the other food locations.

The restaurant is a full service, sit down dining experience at Calico offering breakfast, lunch and dinner menus. Menu stays stable (subject to the availability from suppliers) offering normal breakfast items such as pancakes, eggs, bacon, ham, sausage, country fried steak, breakfast burritos, omelets and more. Lunch and dinner menu consists of burgers (hamburger, cheeseburger, vegetarian, patty melt and salmon), sandwiches (tuna, grilled chicken, smoked pull pork, BLT, ham, turkey, grilled cheese...), chicken strips, fish and chips, fried chicken, steak, mesquite smoked pork ribs, smoked tri tip, homemade chili and soups, country fried steak, meatloaf and more. An array of desserts from pie to ice cream, specialty sarsaparilla floats, coffees to include cappuccino, mocha and espresso. The restaurant offers beer and wine, and is an excellent venue for parties... weddings, birthday, hail n farewell, graduation or family reunions. The restaurant can accommodate up to 175 people utilizing the inside and out back deck area. Campground catering is available, as is take out. The restaurant opens for breakfast at 0800 to accommodate campers who come to enjoy the unique outside dining experience with an awesome view of the back side of Calico and the train.

As bus traffic is a crucial element to the livelihood of Calico we are proud to say that during the 2023 season which goes from April to November, we took care of 22 different tour companies, and had a total of 283 buses. The 2024 bus season is already scheduling and numbers are already higher than expected. The restaurant staff are trained in high efficiency of service to the bus groups to be as fast as possible. This way the guests have time to visit and shop at Calico shops and attractions. As some groups only have a little over an hour in Calico to visit we do not want all that time spent eating. We work as a well tuned machine to the benefit of the whole town.

Barstow and the surrounding area have but 3 locations that can accommodate the numbers for events that the Calico House can. The choice of menu at these locations is limited to Mexican, Chinese or Italian. Sit down restaurants for dinner in this area are equally limited other than fast food. Besides the regular menu the Calico House Restaurant has a huge smoker in the back and it is requested with County approval to put it to good use starting with Friday and Saturday nights, smoked meat dinners. Our specialty is pork ribs with beans, coleslaw, corn, roll, drink and dessert. Patrons can sit on the back deck, enjoy the weather and the view. With County approval entertainment could also be provided as an additional lure and which could be Karaoke once a month, or a piano player for the in-house piano, live music or even a movie.

A special discounted dinner package could be offered in conjunction with those participating in the Calico Ghost Tours.

Another reason to expand dinner service is to accommodate our campers. After a hard day of work and then fighting with traffic to get here, sometimes being on the road for 3 to 4 hours, coming up to the restaurant would be so enticing and easy on them. Instead the other option is unhook and leave Calico and drive 10 miles back to town. This would be a great promotional quality and convenience while keeping the revenue in town. Making dinner is not something they want to do. Let the guests plan ahead with dinner at the restaurant at Calico, close, convenient, practical and relax to the towns atmosphere while enjoying ribs or tri tip.

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: LandD Inc

2. Name of Principal (i.e., CEO/President) of Contractor, if the individual actively supports the matter and has a financial interest in the decision:

Daryl Schendel

3. Name of agent of Contractor:

Company Name	Agent(s)
na	na
na	na

4. Name of any known lobbyist(s) who actively supports or opposes this matter:

Company Name	Contact
na	na
na	na

5. 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):
<u>na</u>	<u>na</u>	<u>na</u>
<u>na</u>	<u>na</u>	<u>na</u>

6. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes

No

7. Name of any known individuals/companies who are not listed in Questions 1-5, 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
na	na
na	na

8. 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 on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-7?

No If **no**, please skip Question No. 9.

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

9. Name of Board of Supervisor Member or other County elected officer: na

Name of Contributor: na

Date(s) of Contribution(s): na

Amount(s): na

Please add an additional sheet(s) to identify additional Board Members/County elected officer 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. 1-7 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.