

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

19-542

SAP Number

## Regional Parks

Department Contract Representative  
Telephone Number

Beahta R. Davis  
909-387-2340

Contractor

Rebecca Daugherty and Tonya  
Edwards

Contractor Representative  
Telephone Number

Rebecca Daugherty  
760-221-2629

Contract Term

5 Year Term

Original Contract Amount

Amendment Amount

Total Contract Amount

Cost Center

6522021000

### IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

#### FOR COUNTY USE ONLY

Approved as to Legal Form

A handwritten signature in blue ink, appearing to read "Dawn Martin".

Dawn Martin, Deputy County Counsel

Date 7/24/19

Reviewed for Contract Compliance

A handwritten signature in blue ink, appearing to read "Patrick Scalzitti".

Patrick Scalzitti, Community Services Operations  
and Finances Chief

Date 7-24-19

Reviewed/Approved by Department

A handwritten signature in blue ink, appearing to read "Beahta R. Davis".

Beahta R. Davis, Director, Regional Parks  
Department

Date 7/24/2019

**COUNTY OF SAN BERNARDINO LEASE AGREEMENT**

**Basic Lease Terms - Reference Pages**

**COUNTY OF SAN BERNARDINO**

**LEASE AGREEMENT**

**COUNTY:** COUNTY OF SAN BERNARDINO  
Regional Parks Department  
777 East Rialto Avenue  
San Bernardino, CA 92415-0764

**CONCESSIONAIRES:** Rebecca Daugherty and Tonya Edwards

**REGIONAL PARK:** Calico Ghost Town Regional Park

**PREMISES:** Calico Building #1

**COUNTY CONTRACT NO:**

**REGIONAL PARK:** Calico Ghost Town Regional Park  
3660 Ghost Town Rd.  
PO Box 638  
Yermo, CA 92398

**COUNTY:** County of San Bernardino

**COUNTY'S NOTICE ADDRESS:** County of San Bernardino  
Regional Parks Department  
777 E. Rialto Avenue  
San Bernardino, California 92415-0831

**TENANT:** Rebecca Daugherty and Tonya Edwards

**TENANT'S NOTICE ADDRESS:** Rebecca Daugherty  
14779 Aspen Street  
Hesperia, Ca 92345

and

Tonya Edwards  
14576 Drysdale Circle

# COUNTY OF SAN BERNARDINO LEASE AGREEMENT

## Basic Lease Terms - Reference Pages

Adelanto, Ca 92301

**TENANT'S TELEPHONE NO.:** 760-221-2629

or

562-413-8385

**PREMISES:** Building #1, Calico Ghost Town Regional Park with approximately 760 square feet of commercial space available. See Exhibit "A" and Exhibit "A-1".

**USE:** The purpose of this Lease is to establish a contractual relationship whereby Rebecca Daugherty and Tonya Edwards (Concessionaires) will manage for the County the Calico Building #1, hereafter referred to as Odessa Red's Parlour Crafts and Curiosities ("Management Area") of Calico Ghost Town Regional Park.

**LEASE COMMENCEMENT DATE:** Upon mutual execution of this Lease.

**RENT COMMENCEMENT DATE:** Upon mutual execution of this Lease.

**LEASE TERM** Commencing on the Lease Commencement Date and expiring five (5) years after with one (1) five (5) year option unless earlier terminated in accordance with this Lease

**OPTION TO EXTEND LEASE TERM:** One (1) option to extend the Lease Term for a period of five (5) years.

**IMPROVEMENTS:** No improvements have been identified.

**RENT (or Franchise Fee):** \$400 a month or 8% of gross income, whichever is greater. See Paragraph 4, **Concession and Lease Fee**.

**SECURITY DEPOSIT:** \$500

## EXHIBITS

|       |                                 |            |
|-------|---------------------------------|------------|
| "A"   | Premises 1                      | Applicable |
| "A-1" | Premises 2                      | Applicable |
| "B"   | Items Approved for Sale         | Applicable |
| "C"   | Wedding Packages                | Applicable |
| "D"   | Concession Inventory            | Applicable |
| "E"   | List of Former County Officials | Applicable |
| "F"   | Prevailing Wage                 | Applicable |

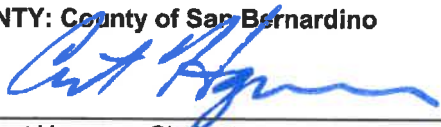
## COUNTY OF SAN BERNARDINO LEASE AGREEMENT

### Basic Lease Terms - Reference Pages

The Reference Pages are incorporated into and made a part of the Lease. In the event of any conflict between any terms on the Reference Pages and the terms in the Lease, the terms in the Lease shall control. This Lease includes the foregoing Exhibits all of which are made a part of this Lease.

IN WITNESS THEREOF, the parties executed this Lease.

COUNTY: County of San Bernardino

By:   
Curt Hagman, Chairman  
Board of Supervisors

Dated: 8-6-19

CONCESSIONAIRES:

By:   
Rebecca Daugherty

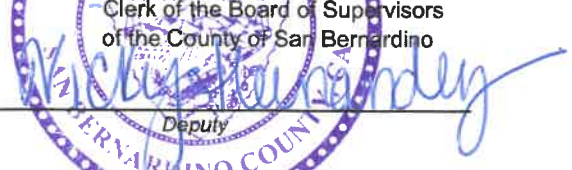
Dated: 7/19/19

By:   
Tonya Edwards

Dated: 7/19/19

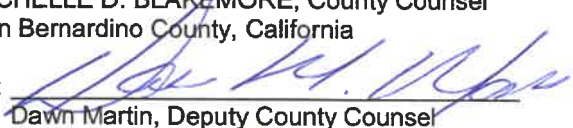
SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED TO  
THE CHAIRMAN OF THE BOARD

  
Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By:   
Deputy

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE, County Counsel  
San Bernardino County, California

By:   
Dawn Martin, Deputy County Counsel

Dated: 7/24/19

## COUNTY OF SAN BERNARDINO

### LEASE AGREEMENT

By this Lease, COUNTY OF SAN BERNARDINO (hereinafter "COUNTY"), as lessor, leases to CONCESSIONAIRE, identified in the Reference Pages, as lessee, and CONCESSIONAIRE leases from COUNTY the Premises set forth in the Reference Pages located at Calico Ghost Town Regional Park as set forth in the Reference Pages. The Reference Pages, including all terms defined thereon, are incorporated into and made a part of this Lease.

**1. PREMISES.** COUNTY, in consideration of covenants and conditions herein set forth, hereby leases to CONCESSIONAIRE and CONCESSIONAIRE leases from COUNTY the Premises located at Calico Ghost Town Regional Park (Park) as depicted in **Exhibit "A"** and **"A-1"**. The Premises are leased to CONCESSIONAIRE in its AS-IS condition, and is subject to all easements, reservations, restrictions, rights and rights-of-way.

**2. USE.** CONCESSIONAIRE shall use and occupy the Premises only for the Use set forth on the Reference Pages, and for no other purpose. CONCESSIONAIRE shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises, the Regional Park, or neighboring properties. CONCESSIONAIRE shall not do or permit anything to be done in, on, under or about the Premises which will in any way obstruct, interfere, injure, annoy, or disturb the rights of other CONCESSIONAIRES, or occupants of the Regional Park, or visitors to the Regional Park. CONCESSIONAIRE shall not sell or permit the sale of any alcoholic beverages from the Premises without the prior written consent of COUNTY. CONCESSIONAIRE shall not store any of CONCESSIONAIRE's personal property outside the buildings on the Premises without the prior written consent of COUNTY. If COUNTY authorizes CONCESSIONAIRE to store property outside, said property will be stored in a neat and orderly manner. Unattractive and/or unsightly outside storage shall not be permitted in public view under any circumstances. CONCESSIONAIRE shall comply with all laws, ordinances and regulations applicable to the use of the Premises. CONCESSIONAIRE shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with Premises, at CONCESSIONAIRE's sole expense. Upon use of Premises by CONCESSIONAIRE the same shall conclusively be deemed to be fit and proper for the purposes for which CONCESSIONAIRE shall use the Premises.

**3. TERM.** The obligations of the Parties pursuant to this Lease shall commence on the Lease Commencement Date and shall expire on upon the expiration or earlier termination of the Lease Term as set forth in the Reference Pages.

#### **4. CONCESSION AND LEASE FEE**

A. LEASE FEE: In consideration for rights granted CONCESSIONAIRE will pay minimum monthly fee of **four hundred dollars (\$400.00)** or **eight percent (8 %)** of gross income, whichever is greater for the term of this Lease.

B. USE FEES: All fees collected for the use of Calico Campground, School House, Silver Bowl and/or Livery Stage for wedding ceremonies will be reported and paid to the COUNTY on a monthly basis in addition to the Lease fee.

C. ADVERTISING FEE: In addition to the above Lease fee, CONCESSIONAIRE, for and during the entire term of this Lease must pay COUNTY three and one-half percent (3.5%) of the monthly Gross Income, defined as an advertising fee to defray all direct advertising and promotional expenses incurred by COUNTY for the advertising and promotion of the Park. COUNTY retains the right, in its sole discretion, to approve or disapprove any of the recommendations submitted by the Calico Concession Association, Inc., 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.

D. PAYMENT DATE: All Lease payments are due and payable on or before the tenth day of the calendar month following the month to which such payments relate and must be accompanied by the monthly report required by Paragraph 7, RECORDS AND ACCOUNTS. COUNTY has the right to require that any payment be made by money order or cashier check.

E. LATE PAYMENT PENALTIES: If any monthly lease payment is not received when due and payable, or postmarked when due and payable and received within ten (10) days thereafter, such payment is late and CONCESSIONAIRE must pay to COUNTY an additional **Fifty Dollars (\$50.00)** each as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by CONCESSIONAIRE. Acceptance of a late charge will not constitute a waiver of CONCESSIONAIRE's default with respect to the overdue amount nor prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. Lease fees not paid when due will bear simple interest from the date due until paid in full at the rate of five-hundredths percent (0.05%) per day. If monthly lease payments are late three or more times in a twelve month period or four (4) times during the active term, then COUNTY may terminate this Lease.

F. 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. The amount of such taxes will be shown on the books and records elsewhere herein required to be maintained.

## **5. SECURITY DEPOSIT.**

A. On or before the Lease Commencement Date of this Lease, CONCESSIONAIRE shall pay to COUNTY a deposit in the amount of **five hundred dollars (\$500)** as set forth on the Reference Pages as CONCESSIONAIRE's Security Deposit, which shall be not be required to be held by COUNTY in an interest bearing account. The Security Deposit shall secure CONCESSIONAIRE's faithful performance of CONCESSIONAIRE's obligations under this Lease. The COUNTY's Director of the Regional Parks Department may, in her sole discretion, determine the form of the Security Deposit, provided that the amount of the Security Deposit shall be as stated in the Reference Pages.

B. If CONCESSIONAIRE fails to pay the Monthly Rent or any other amounts which CONCESSIONAIRE is obligated to pay pursuant to this Lease or defaults on the performance of any of the terms, provisions, covenants and conditions contained in this Lease, COUNTY may withdraw the Security Deposit from the deposit account and use, apply, or retain the whole or any part of the Security Deposit for the payment of any amount in default or for any other amounts which the COUNTY may spend or be required to spend by reason of CONCESSIONAIRE 's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to CONCESSIONAIRE at the termination or expiration of the Term. COUNTY may require, at any time, that the Security Deposit be increased in proportion to the amount of any increase in the Monthly Rent and CONCESSIONAIRE shall provide such increase deposit within ten (10) days of CONCESSIONAIRE's receipt of written notice from the COUNTY. In the event COUNTY uses part or all of the Security Deposit as provided herein, CONCESSIONAIRE shall replenish the amount used by COUNTY within ten (10) days of CONCESSIONAIRE's receipt of written notice from COUNTY.

## **6. CONCESSIONAIRE RESPONSIBILITIES.**

A. CONCESSIONAIRE will operate and manage the Concession, its service and facilities in a professional, business-like manner. CONCESSIONAIRE must, at all times conduct themselves in a professional manner to customers, COUNTY agents or its employees, or other CONCESSIONAIRES, and conform to all applicable rules, regulations, and requirements now

in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY.

B. CONCESSIONAIRE shall have the right to sell items directly related to the theme of an 1880's shop specializing in items, noted as **"Items Approved for Sale" in Exhibit "B"**, attached hereto and incorporated by this reference. Permission to sell items outside of the Concession's theme may be allowed on a case by case basis by the COUNTY, and that permission may be rescinded by the COUNTY on 10 days' notice when in conflict with the themed sales of another concession. CONCESSIONAIRE shall also have the right to conduct wedding ceremonies as noted in **Exhibit "C", "Wedding Packages"**. Fees collected for the use of the Campground, School House, Silver Bowl, and/or Livery Stage must be paid to COUNTY along with monthly lease fees. See COUNTY USE FEES as noted in **Exhibit "C"**.

C. CONCESSION EMPLOYEES: CONCESSIONAIRE will ensure that its employees at all times conduct themselves in a professional manner, to customers, COUNTY agents or its employees, or other CONCESSIONAIRES, and that they conform to all applicable rules, regulations, and requirements now in force in the COUNTY, as well as rules and regulations as hereafter may be promulgated or put into operation by the COUNTY. CONCESSIONAIRE must maintain a staff adequate to operate and administer all facilities located on the Premises in a safe and orderly manner. CONCESSIONAIRE agrees to replace personnel whenever demanded by COUNTY, when cause is shown. Employees of CONCESSIONAIRE will wear an easily identifiable visual uniform, (period dress) depicting 1880's era at Calico Ghost Town, which is clean, neat and presentable in appearance, so the public can recognize this person as associated with CONCESSIONAIRE. Every CONCESSIONAIRE and employee will wear an approved Name Tag. The COUNTY reserves the right to inspect and disapprove the uniform/period dress used by CONCESSIONAIRE to meet this requirement.

D. CONCESSIONAIRE shall comply with the Management Plan ("Management Plan") for the Concession. The Management Plan must be updated and submitted to COUNTY for review and approval by the Director of Regional Parks or his/her designee prior to **July 31** of each year of this Lease, commencing with the update for **respective next year, beginning in 2019**. The Management Plan shall be effective only after approval by the Director of Regional Parks Department or his/her designee. Changes in revenue that result from changes in the Management Plan may result in Lease Fees adjustments. In the event any portion of the Management Plan conflicts with this Lease, this Lease (without reference to the Management Plan) will control. The Management Plan will allow the COUNTY to coordinate the operation of the various concessions in the Park, and to assist the COUNTY to maintain the general overall theme of the Park.

1. The Management Plan should (1) be a **Multi-Year** business plan for the years remaining on the lease; (2) including areas such as projected revenue, expenditures, operation and merchandising program, promotional plans, new development or programs for business enhancement for current term and proposed extension; (3) include goals, objectives, implementation, strategies and timelines; (4) may include profit and loss financial statements of the previous year; (5) may include year-end balance sheet from the previous year; and (6) include a capital improvement plan.

2. CONCESSIONAIRE must comply with all environmental and health agency controls and regulations.

E. HOURS OF OPERATION: The Concession must be open for business during the published hours and days that the Park is open for business. COUNTY may reasonably adjust operating hours based on traffic levels and special events. The Park Superintendent or his/her designee is authorized, but not required to permit the Concession to close temporarily, open earlier and/or remain open later. Request for closure of more than two (2) hours must be made in writing to the COUNTY and must be requested a minimum of fifteen (15) days in advance. CONCESSIONAIRE may close for safety reasons at its discretion but must notify Park Superintendent or his/her designee and post signs designating duration of closure.

F. NON-OPERATION FEE: CONCESSIONAIRE agrees to pay a non-operational fee of \$100 per day when the Concession, without COUNTY approval, is not opened during the agreed upon hours of operation consistent with conditions in Paragraph 5, sub paragraph E.

G. MERCHANDISE AND EQUIPMENT: Consistent with Paragraph 5 subparagraph B, 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. CONTINUED OCCUPANCY: CONCESSIONAIRE covenants and agrees to, and it is the intent of this Lease that the CONCESSIONAIRE will, continuously and uninterrupted, during normal business hours, during the term of this Lease, occupy the Premises for the purposes hereinabove specified, except while such Premises are untenable by reason of fire or other unavoidable casualty.

M. ANNUAL MEETING: CONCESSIONAIRE or an authorized designee must attend a minimum of one (1) annual meeting of Park concessionaires and such other meetings as are reasonably required by the COUNTY. COUNTY shall give reasonable notice of the meeting(s).

N. PREVAILING WAGES. Should CONCESSIONAIRE make improvements or alterations to the Premises after first having requested in writing and received approval from the COUNTY, CONCESSIONAIRE will use prevailing wages to compensate all contractors.

## **7. RECORDS AND ACCOUNTS**

A. RECORDS AND ACCOUNTS: CONCESSIONAIRE covenants and agrees that it will, at all times during the term of this Lease, keep or cause to be kept at the Premises or other place agreed upon by COUNTY, true and complete books, records, and accounts of all financial transactions relating to Gross Income. The records must be supported by documents from which the original entry of the transaction was made, including sales slips or cash register tapes, or both.

B. RECORDATION OF SALES: All sales and charges must be recorded by means of sales invoices, tickets or cash registers which display to the customer the amounts of the transactions and either physically or automatically issue receipts certifying the amounts recorded. All registers if not designed, must be covered to depict the type used in 1880's era. The approved forms or devices used in the recording of cash or charge sale transactions are as follows:

1. CASH REGISTERS: Cash registers must be of a type that displays to the customer the amount of each transaction if space permits. The register must be equipped with devices, which lock in sales total, transaction records, and with counters which are not resettable and which record on tapes the transaction numbers and sales details. Cash register readings must be recorded by CONCESSIONAIRE at the beginning and end of each business day.

2. CASH RECEIPT AND CHARGE SALES BOOK: Cash receipt and charge sales books must be of the type that is electronically printed progressively or pre numbered by the system or manufacturer of said books; and the amounts of each transaction, to include the sales tax amount, must be recorded on the original and all copies thereof. The customer must be given a copy of the sales receipt that clearly records the total amount of the transaction. Sales must be recorded consecutively; one after the other, and the beginning and ending number of the receipt books must be duly recorded at the end of each business day.

3. CASH TICKETS: Cash tickets may be used in conjunction with all admission charges, and must be of a type that is electronically printed progressively or pre-numbered by the manufacturer or system. The price of the tickets both for adults and children must be printed on each ticket. Tickets may be procured by the customer from a cashier's booth or station. CONCESSIONAIRE must, at the end of each business

day, record the tickets sold for that day's business. All tickets must be sold consecutively, in numerical order, one after the other. Alternatively, CONCESSIONAIRE may utilize an electronic debit card system rather than printed tickets, duly recorded each day.

C. MONTHLY REPORTS: CONCESSIONAIRE covenants and agrees to deliver to COUNTY, no later than the tenth (10th) day of each month, a true and correct certified statement of all Gross Income and Attendance figures for the preceding calendar month, showing separately the receipts from each activity conducted pursuant to this Lease. This report must be sent in with the monthly lease fee payment. At the same time, CONCESSIONAIRE shall remit a true and correct copy of any sales and use tax return as submitted from each business, to the Board of Equalization (BOE), unless submitted quarterly to the BOE, in which case it shall be submitted quarterly.

D. YEARLY REPORT: CONCESSIONAIRE covenants and agrees to deliver to COUNTY, no later than the last business day of July of each year of this Lease, commencing July 2019, a true and correct certified statement of all Gross Income for the preceding twelve months, except in the case of the first report, which shall be from the commencement date of this Lease to July 1, 2020, showing separately the receipts from each business, Concession service, or activity conducted pursuant to this Lease, and the amount of Lease fees paid for the same time period. CONCESSIONAIRE must prepare and deliver to COUNTY a similar report within thirty (30) days of any termination of this Lease.

E. INVENTORY REPORT: CONCESSIONAIRE covenants and agrees to deliver to the Park Superintendent, no less often than yearly, no later than the last business day of January following the commencement date of this lease date, a true and correct inventory report for the period closing on the last day of the prior year. Additional inventory reports may be requested, no more often than quarterly, at the discretion of the County. Current concession owned inventory is identified on **Exhibit "D", Concession Inventory**.

F. INSPECTION OF RECORDS: All books, records, and accounts of every kind or nature kept by CONCESSIONAIRE, agents or employees, licensees, or concessionaires, relating to the Gross Income, referred to herein as "Books and Records", must at all reasonable times be open and made available for inspection or audit by COUNTY, its agents or employees, upon prior request.

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

H. COMPLIANCE COVENANT: CONCESSIONAIRE covenants that it will comply with, and require all its agents and employees to comply with the foregoing requirements.

## **8. INSURANCE.**

A. **Basic Insurance Requirements.** Without in any way affecting CONCESSIONAIRE'S obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, CONCESSIONAIRE shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Lease:

i. 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 CONCESSIONAIRE and all risks to such persons under this Lease.

If CONCESSIONAIRE has no employees, it may certify or warrant to 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 COUNTY'S Director of Risk Management.

If, CONCESSIONAIRE is a non-profit corporation, organized under California or Federal law, volunteers for CONCESSIONAIRE are required to be covered by Workers' Compensation insurance.

ii. Commercial/General Liability Insurance. CONCESSIONAIRE shall carry General Liability Insurance covering all operations performed by or on behalf of 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:

1. Premises operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury
6. Contractual liability.
7. \$2,000,000 general aggregate limit.

iii. Commercial Property Insurance providing all risk coverage for the Premises building, fixtures, equipment and all property constituting a part of the Premises. Coverage shall be sufficient to insure One Hundred percent (100%) of the replacement cost.

v. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one

million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONCESSIONAIRE is transporting one or more non-employee passengers in the CONCESSIONAIRE's use of the Premises or CONCESSIONAIRE's performance of its obligations under this Lease, 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.

If CONCESSIONAIRE owns no autos, a non-owned auto endorsement to the general liability policy described above is acceptable.

vi. Environmental Liability Insurance. Environmental liability insurance with a combined single limit of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence..

vii. Rental Value. Insurance against the loss of the full rental and other charges and fees payable by CONCESSIONAIRE for one year. Said policy shall be in the name of the COUNTY, with loss payable to COUNTY.

viii. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**b. Required Policy Provisions.** Each of the insurance policies which CONCESSIONAIRE is required to procure and maintain as part of this Lease shall include the following provisions:

i. Additional Insured. All policies, except for the Workers' Compensation, shall contain endorsements naming COUNTY and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the CONCESSIONAIRE's use of the Premises and CONCESSIONAIRE's performance of its obligations under this Lease. The additional insured endorsements shall not limit the scope of coverage for COUNTY to vicarious liability but shall allow coverage for 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.

ii. Waiver of Subrogation Rights. CONCESSIONAIRE shall require the carriers of required coverages to waive all rights of subrogation against COUNTY, their officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit CONCESSIONAIRE and CONCESSIONAIRE's employees or agents from waiving the right of subrogation prior to a loss or claim. CONCESSIONAIRE hereby waives all rights of subrogation against COUNTY.

iii. 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 COUNTY.

iv. Severability of Interests. CONCESSIONAIRE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONCESSIONAIRE and COUNTY or between COUNTY and any other insured or additional insured under the policy.

v. Proof of Coverage. CONCESSIONAIRE shall furnish Certificates of Insurance to the San Bernardino Real Estate Services Department (RES D) administering the Lease evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to RES D, and CONCESSIONAIRE shall maintain such insurance from the Commencement Date until this Lease is terminated. Within fifteen (15) days of the Commencement Date, CONCESSIONAIRE shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

vi. Acceptability of Insurance Carrier. Unless otherwise approved by COUNTY Department of Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

vii. Deductibles: Any and all deductibles or self-insured retentions in excess of \$10,000.00 shall be declared to and approved by County's Risk Management.

viii. Insurance Review. Insurance requirements are subject to periodic review by COUNTY. COUNTY'S Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever COUNTY'S Department of Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of COUNTY. In addition, COUNTY'S 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 COUNTY, inflation, or any other item reasonably related to COUNTY'S risk.

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

Any failure, actual or alleged, on the part of RES D or 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 RES D or COUNTY.

ix. Failure to Procure Insurance. All insurance required must be maintained in force at all times by CONCESSIONAIRE. Failure to maintain said insurance, due to expiration, cancellation, or other reasons shall be cause for COUNTY to give notice to immediately suspend CONCESSIONAIRE's use of the Premises. Failure to reinstate said insurance within the (10) days of notice to do so shall be cause for termination and for forfeiture of this Lease, and/or COUNTY, at its discretion, may procure or renew such insurance and pay any

and all premiums in connection therewith, and all monies so paid by COUNTY shall be repaid by CONCESSIONAIRE to COUNTY upon demand but only for the pro rata period of non-compliance.

x. COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make a partner or joint venturer with CONCESSIONAIRE.

xi. CONCESSIONAIRE agrees to require all parties or subcontractors, or others it hires or contracts with related to the use of the Premises and the performance of CONCESSIONAIRE's obligations hereunder to provide insurance covering the contracted operation with the basic requirements in this Paragraph 8 (including waiver of subrogation rights) and naming COUNTY as an additional insured. CONCESSIONAIRE agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required herein.

**9. INDEMNIFICATION.** 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 Lease or occurring on, in, under or about the Premises or the Regional Park 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.

**10. EXEMPTION OF COUNTY FROM LIABILITY.** COUNTY shall not be liable for any injury or damage to the person or property of CONCESSIONAIRE, CONCESSIONAIRE's employees, contractors, invitees, customers, or any other person on, in, under or about the Premises or the Regional Park, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects in pipes, fire sprinklers, wires, appliances, plumbing systems, fixtures, air conditioning systems or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising on or from the Premises or on or from any other portions of the Regional Park of which the Premises are a part or from other sources or places. COUNTY shall not be liable for any damages arising from any act or neglect of any other CONCESSIONAIRE, licensee, or other occupant or user at the Regional Park or from COUNTY's failure to enforce the provisions of any other lease, license, or other occupancy or use agreement at the Regional Park. Notwithstanding anything to the contrary in this Lease or COUNTY's negligence or breach of this Lease, COUNTY shall not be liable for any injury to CONCESSIONAIRE's business or any loss of income or profit therefrom, or for any special, incidental, consequential, or punitive damages allegedly sustained by CONCESSIONAIRE.

**11. TAXES, ASSESSMENTS AND LICENSES.** CONCESSIONAIRE shall pay before delinquency any and all real and personal property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to CONCESSIONAIRE and located in or on the Premises. CONCESSIONAIRE recognizes and understands that this

Lease may create a possessory interest subject to property taxation and that the CONCESSIONAIRE is obligated to pay and discharge such taxes. CONCESSIONAIRE shall also pay all license or permit fees necessary or required by law for the conduct of CONCESSIONAIRE's business or operation. CONCESSIONAIRE shall be responsible, at its sole cost, for platting the Premises.

## **12. IMPROVEMENTS.**

A. CONCESSIONAIRE may construct buildings or other improvements on the Premises ("Improvements"), provided that said Improvements shall be approved in writing by COUNTY prior to the commencement of any work and provided further that all Improvements are completed in: (i) accordance with the plans and specifications approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, and any and all applicable permits.. CONCESSIONAIRE shall provide COUNTY with not less than ten (10) day's notice prior to the commencement of any work in, on, or under the Premises for the approved Improvements so that COUNTY, at COUNTY'S option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to COUNTY. COUNTY makes no representation with respect to the applicability of public bidding procedures or requirements for the payment of prevailing wages hereunder. In the event CONCESSIONAIRE contracts for the construction of any Improvements or portion thereof, CONCESSIONAIRE shall comply with the applicable provision of the California Public Contract Code 22000 through 22045 regarding bidding procedure and Labor Code Section 1720.2 and 1170 et seq. regarding general prevailing wages, including the provisions set forth in **Exhibit "F", Prevailing Wage Requirements**. CONCESSIONAIRE shall indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents, and volunteers from any claims, actions, losses, damages, and/or liability arising out of the obligations set forth herein. CONCESSIONAIRE's indemnity obligation shall survive the CONCESSIONAIRE's tenancy and shall not be limited by the existence or availability of insurance. All approvals required by COUNTY in this paragraph, including all sub-paragraphs, shall be granted or denied in COUNTY's sole discretion.

## **13. MAINTENANCE OF PREMISES.**

A. **County's Obligation.** COUNTY reserves the right for its authorized agents, employees, or representatives to enter the Premises during normal business hours and at any time in an emergency/hazard, to inspect the same or any part thereof and to attend or protect the COUNTY's interest under this Lease. All work performed under this paragraph is subject to all of the conditions of Paragraph 12, IMPROVEMENTS. COUNTY agrees to repair any structural damage to the Premises, except damage legally caused by CONCESSIONAIRE's negligence or breach of any duty. The COUNTY currently will perform all maintenance, repair and replacement on evaporator cooler units associated with the concession, including all associated water and electrical connections. This arrangement is subject to change by the County with thirty (30) days notice.

B. **Concessionaires Obligation.** CONCESSIONAIRE agrees to maintain the Premises and County Property in a professional manner to industry standard(s) acceptable to COUNTY. CONCESSIONAIRE agrees to repair any non-structural damage to the Premises and County Property within ten (10) days of such damage, except that CONCESSIONAIRE must perform its obligations immediately if the nature of the problem presents hazard or emergency. If CONCESSIONAIRE does not perform its obligations with the time limitations in

this paragraph, COUNTY after giving CONCESSIONAIRE at least ten (10) days advance notice except in an emergency/hazard, may perform the repairs and have the right to be reimbursed for the sum it reasonably expends (including charges for COUNTY employees and equipment). CONCESSIONAIRE further agrees that it will make no major repairs or maintenance to said Premises or County Property without, in each case, the consent of COUNTY having first been obtained, including, but not limited to, structural, electrical and plumbing modifications. Further, that in the event any major repairs or maintenance to said Premises or County Property are made necessary for any reason whatsoever, CONCESSIONAIRE will submit proposed repairs or maintenance along with any required plans and specifications to COUNTY for approval thereof. If COUNTY determines that the repairs and maintenance are acceptable, CONCESSIONAIRE will hire and pay to the contractor all costs involved in completion of the approved requests.

C. **Surrender and Restoration of the Premises.** CONCESSIONAIRE shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in as good a condition as existed on the Commencement Date, ordinary wear and tear excepted. CONCESSIONAIRE shall further surrender all Improvements on the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that could have been prevented by good maintenance practice or by CONCESSIONAIRE performing all of its obligations under this Lease. CONCESSIONAIRE's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of CONCESSIONAIRE's trade fixtures, furnishings, equipment, as well as the removal of any storage tank installed by or for CONCESSIONAIRE, and the removal, replacement, or remediation of any soil, material or ground water contaminated by CONCESSIONAIRE, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

**14. UTILITIES.** CONCESSIONAIRE understands and agrees that provision of all utilities, including but not limited to, electrical, water, gas, telephone, refuse collection, sewage disposal, etc., shall be the sole responsibility of the CONCESSIONAIRE, and payable directly to the utility or service provider. CONCESSIONAIRE shall coordinate all utility connections with COUNTY, and CONCESSIONAIRE shall assume all costs involved with said connections, all costs for services thereafter and maintenance within the Premises. CONCESSIONAIRE shall, at its sole cost, install separate utility meters for the Premises.

**15. ASSIGNMENT AND SUBLETTING.** CONCESSIONAIRE shall not voluntarily or by operation of law, assign CONCESSIONAIRE's interest in this Lease, in the Premises or in any options contained in this Lease, nor sublease, all or any part of the Premises, nor 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 written consent.

**16. COUNTY'S ENTRY ON PREMISES.**

A. COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

- i. To inspect the Premises;
- ii. To determine whether the Premises are in good condition and whether CONCESSIONAIRE is complying with its obligations under this Lease;

iii. To do any necessary maintenance or perform any auditing, testing or sampling and to make any restoration to the Premises that COUNTY has the right to perform;

iv. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

v. To post "for rent" or "for lease" signs during the last twelve (12) months of the Term or during any period while CONCESSIONAIRE is in default;

vi. To show the Premises to brokers, agents, prospective CONCESSIONAIRES and other persons interested in leasing the Premises during the last twelve (12) months of the Term.

B. COUNTY shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of COUNTY's entry on the Premises as provided in this paragraph, except for property damage to the extent resulting from the negligent acts or omissions of COUNTY or its authorized representatives. CONCESSIONAIRE shall not be entitled to an abatement or reduction of rent if COUNTY exercises any rights reserved in this paragraph. COUNTY shall conduct COUNTY's activities on the Premises pursuant to this paragraph in a manner that will cause minimal inconvenience, annoyance, or disturbance to CONCESSIONAIRE.

**17. DAMAGE OR DESTRUCTION OF PREMISES.** In the event any of the buildings, structures or improvements erected on the Premises are damaged or destroyed during the term of this Lease, CONCESSIONAIRE shall repair and restore such buildings, structures or improvements to the original condition prior to said damage or destruction. CONCESSIONAIRE shall commence the repair and restoration of the Premises within forty-five (45) days of the event causing such damage or destruction and shall diligently prosecute such work until completion. All proceeds of any property insurance maintained by CONCESSIONAIRE pursuant to this Lease shall be used to repair and restore the Premises, and for no other purpose, without COUNTY's express written consent. CONCESSIONAIRE shall comply with all the procedures set forth in Paragraph 12, IMPROVEMENTS as part of CONCESSIONAIRE's repair and restoration work. If CONCESSIONAIRE fails to commence the repair or restoration work in a timely manner, or fails to diligently prosecute such work, or fails to comply with the requirements of Paragraph 12, IMPROVEMENTS, COUNTY shall have the right to terminate this Lease under Paragraph 22, DEFAULT.

**18. CONDUCT OF EMPLOYEES.** CONCESSIONAIRE shall be responsible for the conduct of its employees, volunteers, agents, members, invitees, guests, patrons and spectators on the entire Calico Ghost Town Regional Park property. In addition, CONCESSIONAIRE agrees to abide by, and ensures that all such persons abide by the rules and regulations of the COUNTY while on the Premises.

**19. ERECTION OF SIGNS.** CONCESSIONAIRE may erect signs on the Premises or the structures on the Premises, but erection or application of said signs shall be allowed only with the prior written permission of the COUNTY. All signs shall be approved by COUNTY, in its sole discretion, and if approved, shall be erected in conformity with the County and City codes, ordinances, and policies with regard to signage.

**20. SPECIAL USE COVENANTS AND RESTRICTIONS.**

**A. Hazardous Substances.**

i. **Definitions.** The following terms shall have the meanings set forth in this paragraph:

a. **Applicable Requirements** shall mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of COUNTY's engineers and/or consultants, relating in any manner to the Premises now in effect or which may hereafter come into effect.

b. **Hazardous Substance** shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, or the environment, the Premises, or the Regional Park; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of COUNTY to any governmental agency or third party under any Applicable requirements or common law theory. Hazardous Substance shall include, but not be limited to fuel, hydrocarbons, petroleum products, gasoline, crude oil or any products or by-products thereof.

c. **Reportable Use** shall mean the installation or use of any above or below ground (i) storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on, under or about the Premises or Regional Park of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises, the Regional Park, or neighboring properties.

ii. **Concessionaire's Covenants.** CONCESSIONAIRE, at its sole cost, shall comply with any and all the Applicable Requirements with respect to Hazardous Substances, including but not limited to the following:

a. California Health & Safety Code, Division 20, Chapters 6.5, Hazardous Waste Control (inclusive); 6.7, Underground Storage of Hazardous Substances (inclusive); and 6.95, Hazardous Materials Release Response Plans and Inventory (inclusive);

b. California Code of Regulations Title 22, Division 4.5; Title 23, Division 3, Chapter 16, Underground Storage Tank Regulations; and

c. Title 2, Division 3, entitled "Fire Protection and Explosives and Hazardous Materials", and Title 3, Division 3, Chapter 8, entitled "Waste Management" of the San Bernardino County Code.

d. CONCESSIONAIRE shall not engage in any activity in, on, under or about the Premises or at the Regional Park which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of COUNTY, in its sole discretion, and compliance in a timely manner (at CONCESSIONAIRE's sole cost and expense) with all Applicable Requirements. Notwithstanding the foregoing, CONCESSIONAIRE may,

without COUNTY's prior consent, but upon notice to COUNTY and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by CONCESSIONAIRE in the normal course of the Use set forth on the Reference Pages, so long as such use is not a Reportable Use and does not expose the Premises, the Regional Park, or neighboring properties to any meaningful risk of contamination or damage or expose COUNTY to any liability therefore. COUNTY may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by CONCESSIONAIRE upon CONCESSIONAIRE's giving COUNTY such additional assurances as COUNTY, in the reasonable discretion of the COUNTY's Director of Risk Management, deems necessary to protect itself, the public, the Premises, the Regional Park, and the environment against damage, contamination or injury and/or liability therefore, including, but not limited to, the installation (and, at COUNTY's option, and CONCESSIONAIRE's sole cost and expense) of reasonably necessary protective modifications to the Premises and the Regional Park and/or the deposit of an additional Security Deposit under Paragraph 5 hereof. CONCESSIONAIRE shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system) or the Regional Park.

iii. **Duty to Inform COUNTY.** If CONCESSIONAIRE knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises or the Regional Park, other than as previously consented to by COUNTY, CONCESSIONAIRE shall immediately give COUNTY notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises or the Regional Park to be followed up in writing within two (2) days. CONCESSIONAIRE will provide to COUNTY, prior to the termination of this Lease agreement, a soil test and a fuel tank test that will indicate if any leakage has occurred from any tank located on or under the Premises or at the Regional Park and used by CONCESSIONAIRE. If any leakage is found, CONCESSIONAIRE shall repair the tanks and remove any contaminated soil at CONCESSIONAIRE's sole cost and expense.

iv. **Indemnification.** CONCESSIONAIRE shall indemnify, protect, defend (with counsel reasonably approved by COUNTY) and hold COUNTY, its officers, agents, employees, and volunteers and the Premises and the Regional Park, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substance generated, possessed, stored, used, transported, or disposed in, on, upon, or at the Premises or the Regional Park by or for CONCESSIONAIRE or by anyone under CONCESSIONAIRE's control. CONCESSIONAIRE's obligations under this paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by CONCESSIONAIRE, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and CONCESSIONAIRE shall release CONCESSIONAIRE from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

v. **COUNTY's Right to Perform Tests.** At any time prior to the expiration of the Lease Term, COUNTY shall have the right to enter upon the Premises in order to conduct tests of water and soil. CONCESSIONAIRE shall have not right to conduct any tests of water or soil at the Premises or the Regional Park without the prior written consent of COUNTY, at its sole discretion.

B. **Continuous Use.** The CONCESSIONAIRE covenants and agrees that CONCESSIONAIRE shall operate and conduct in compliance with minimum standards that may be promulgated by COUNTY within the Premises, those activities set forth in the use section of the Reference Pages, continuously and uninterruptedly, during normal business hours to be agreed by the parties,.

C. **Priority of Agreements with the State of California and the United States.** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the State or California or the United States, respectively, relative to the development, operation or maintenance of the Regional Park.

D. **Licenses and Certifications.** CONCESSIONAIRE agrees that before commencing any use of or business operations at the Premises, CONCESSIONAIRE will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state or local jurisdiction or authority for carrying out the purpose of this Lease. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under subparagraph 22, TERMINATION OF LEASE.

E. **Rules and Regulations.** CONCESSIONAIRE agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which COUNTY may make from time to time for the management, safety, care, cleanliness of the grounds, parking areas, and the preservation of good order, as well as for the convenience of other CONCESSIONAIRES, occupants, or visitors to the Regional Park.

F. **Auctions.** CONCESSIONAIRE shall not conduct, nor permit to be conducted, either voluntarily or involuntary, any auction on the Premises without COUNTY's prior written consent.

G. **Reservation of Right to Use Roof Areas.** COUNTY reserves all right to use the roof of any building or improvement situated on the Premises for the installation of signs, antennae and/or other communications equipment, provided that COUNTY's use of the roof does not unreasonably interfere with CONCESSIONAIRE's use of the Premises. COUNTY shall be entitled to all revenues received as the result of result of such signs, antennae and/or communications equipment.

**21. CONDEMNATION.** If the Premises or any part thereof are taken under the power of eminent domain, this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession thereof. In such event, the rent shall be reduced in the proportion that the floor area (or other surface area), taken bears to the total floor area (or other surface area), prior to the taking. If more than twenty percent (20%) of the floor area of the buildings or the Premises or more than fifty percent (50%) of the surface area leased to CONCESSIONAIRE but not occupied by any building, is taken by condemnation, CONCESSIONAIRE may, at CONCESSIONAIRE's option, terminate this Lease. If CONCESSIONAIRE elects to exercise its option to terminate this Lease pursuant to this paragraph, CONCESSIONAIRE shall give written notice of termination to COUNTY within thirty

(30) days after the condemning authority takes such possession and this Lease shall terminate sixty (60) days thereafter. If CONCESSIONAIRE does not exercise CONCESSIONAIRE's right to terminate this Lease, then the rent payable shall be reduced as set forth above and this Lease shall remain in full force and effect. Any compensation awarded as damages for the taking of the Premises or COUNTY owned improvements, together with any severance damage, shall be the sole property of the COUNTY, except that any compensation awarded for CONCESSIONAIRE's improvements, trade fixtures, equipment and moving costs shall be paid to CONCESSIONAIRE if any.

## **22. TERMINATION OF LEASE.**

A. **Definitions.** A "Default" by CONCESSIONAIRE shall refer to any failure by CONCESSIONAIRE to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to CONCESSIONAIRE under this Lease. The term "Breach" shall refer to the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure of CONCESSIONAIRE to cure such Default prior to the expiration of the applicable grace period:

i. CONCESSIONAIRE's unexcused failure to conduct CONCESSIONAIRE's business at the Premises in accordance with the terms of this Lease including but not limited to the failure to comply with the limitations of use of the Premises.

ii. Vacating the Premises without the evident intention to reoccupy same, an abandonment of the Premises, or notice of intent to abandon Premises expressed in written notice or failing to continuously and uninterruptedly operate those activities set forth in the use section of the Reference Pages.

iii. CONCESSIONAIRE's failure to make any payment of Lease Rent, or any other monetary payment required to be made by CONCESSIONAIRE hereunder as and when due, the failure of CONCESSIONAIRE to provide COUNTY with reasonable evidence of insurance or surety bond required under this Lease, or CONCESSIONAIRE's failure to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days, or such reasonable time as agreed by COUNTY, following written notice thereof by or on behalf of COUNTY to CONCESSIONAIRE. In the event COUNTY serves CONCESSIONAIRE with a Notice to Pay Rent or Quit pursuant to the California Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subsection.

iv. The failure by CONCESSIONAIRE to provide COUNTY with reasonable written evidence (in duly executed original form, if applicable) (in compliance with minimum standards that may be promulgated by COUNTY) of (a) compliance with Applicable Requirements per Paragraph 20.D., (b) the inspection, maintenance and service contracts required under Paragraph 13.B., (c) the rescission of an unauthorized assignment or subletting per Paragraph 15, (d) the guaranty of the performance of CONCESSIONAIRE's obligations under this Lease if required by the Reference Pages, or (e) any other documentation or information which COUNTY may reasonably require of CONCESSIONAIRE under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of COUNTY to CONCESSIONAIRE.

v. A Default by CONCESSIONAIRE as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted hereof that are to be observed,

complied with or performed by CONCESSIONAIRE in compliance with minimum standards that may be promulgated by COUNTY, other than those described in subparagraphs 22.A.(i) through (iv) inclusive, where such Default continues for a period of thirty (30) days or more after written notice thereof by or on behalf of COUNTY to CONCESSIONAIRE; provided, however, that if the nature of CONCESSIONAIRE's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by CONCESSIONAIRE if CONCESSIONAIRE provides written notice along with documentation of the need for an extended cure period to COUNTY and, if verified by the COUNTY, commences such cure within said thirty (30) day period and thereafter continuously and diligently prosecutes such cure to completion, provided that in no event shall such cure period be longer than ninety (90) days following the occurrence of the default.

vi. A Default by CONCESSIONAIRE as to the terms of any Approved Encumbrance, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of COUNTY;

vii. The occurrence of any of the following events: (a) the making by CONCESSIONAIRE of an assignment for the benefit of creditors; (b) CONCESSIONAIRE's becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against CONCESSIONAIRE, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of CONCESSIONAIRE's assets located at the Premises or of CONCESSIONAIRE's interest in this Lease, where possession is not restored to CONCESSIONAIRE within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of CONCESSIONAIRE's assets located at the Premises or of CONCESSIONAIRE's interest in this Lease, where such seizure is not discharged within thirty (30) days.

viii. The discovery by COUNTY that any financial statement of CONCESSIONAIRE, given to COUNTY by CONCESSIONAIRE, was materially false; or CONCESSIONAIRE's default pursuant to Paragraph 22.A.

#### **B. Remedies.**

i. Other than as provided in Paragraph 22.A., if CONCESSIONAIRE fails to perform any affirmative duty or obligation of CONCESSIONAIRE under this Lease, within ten (10) days after written notice to CONCESSIONAIRE (or in case of an emergency, without notice), COUNTY may at its option (but without obligation to do so), perform such duty or obligation on CONCESSIONAIRE's behalf, including, but not limited to, the obtaining of reasonably required, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by COUNTY shall be due and payable by CONCESSIONAIRE to COUNTY within ten (10) days of COUNTY's demand.

ii. In the event of a Breach of this Lease by CONCESSIONAIRE (as defined in Paragraph 22.A.), with or without further notice or demand, and without limiting COUNTY in the exercise of any right or remedy which COUNTY may have by reason of such Breach, COUNTY may:

a. Terminate CONCESSIONAIRE's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and CONCESSIONAIRE shall immediately surrender possession of the Premises to COUNTY. In such event COUNTY shall be entitled to recover from CONCESSIONAIRE: (i) the worth at

the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the CONCESSIONAIRE proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the CONCESSIONAIRE proves could be reasonably avoided; and (iv) any other amount necessary to compensate COUNTY for all the detriment proximately caused by the CONCESSIONAIRE's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by COUNTY in connection with this Lease and applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). COUNTY's attempt to mitigate damages caused by CONCESSIONAIRE's Default or Breach of this Lease shall not waive COUNTY's right to recover damages under this Paragraph 22. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, COUNTY shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or COUNTY may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

b. Continue the Lease and CONCESSIONAIRE's right to possession in effect under California Civil Code Section 1951.4 after CONCESSIONAIRE's Breach and recover the rent as it becomes due, provided CONCESSIONAIRE has the right to sublet or assign, subject only to reasonable limitations. COUNTY and CONCESSIONAIRE agree that the limitations on assignment and subletting in this Lease are reasonable. COUNTY's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the COUNTY's interest under this Lease, shall not constitute a termination of the CONCESSIONAIRE's right to possession.

c. Pursue any other remedy now or hereafter available to COUNTY under the laws or judicial decisions of the State of California.

iii. If, at any time CONCESSIONAIRE is in default of any monetary obligation as defined in Paragraph 4 as Concession and Lease Fees or any other provision for forty-five (45) days, or if CONCESSIONAIRE defaults on any provision(s) three (3) times within any twelve (12) consecutive months, COUNTY may terminate this Lease on ten (10) days notice.

**C. Termination for Convenience.** Either party shall have the right to terminate this Lease for its convenience at any time, on at least thirty (30) days written notice prior to the effective date of termination, given to the other party.

i. In the event either party terminates this Lease pursuant to this paragraph, the COUNTY shall have the right to receive from CONCESSIONAIRE the amount of rent that will have been earned at the effective date of termination of the Lease. Such amounts are due in lump sum on the date all such rent payments are due under this Lease.

D. **Survival of Indemnity Provisions.** The expiration or termination of this Lease and/or the termination of CONCESSIONAIRE's right to possession shall not relieve CONCESSIONAIRE from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of CONCESSIONAIRE's occupancy of the Premises.

E. **Tenant's Personal Property.** CONCESSIONAIRE covenants and agrees that immediately upon termination of this Lease, CONCESSIONAIRE shall remove and properly dispose of all of CONCESSIONAIRE's personal property, machinery or fixtures from the Premises. If CONCESSIONAIRE fails to remove any such personal property, COUNTY may remove such personal property and place the same in storage at the expense of CONCESSIONAIRE and without liability to COUNTY for losses. CONCESSIONAIRE agrees to pay COUNTY for all expenses incurred by COUNTY in connection with the removal, and storage charges of CONCESSIONAIRE's personal property, including attorney's fees and court costs. Alternatively, COUNTY may at its option and on not less than ten (10) days written notice to CONCESSIONAIRE sell all or any part of said personal property at public or private sale for such prices as COUNTY may obtain. COUNTY shall apply the proceeds of any such sale to the amounts due from CONCESSIONAIRE under this Lease and to any expense incidental to such sale. Any surplus arising from such sale shall be refunded to CONCESSIONAIRE.

F. **No Waiver by County.** COUNTY's receipt of any rent or of any other amounts of money paid by CONCESSIONAIRE after the termination and forfeiture of this Lease, 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 impair the efficacy of COUNTY's notice of termination, unless otherwise agreed in writing by COUNTY. COUNTY's acceptance of the keys to the Premises or any other act of the COUNTY or its agents or employees during the Term of this Lease shall not be deemed to be an acceptance or a surrender of the Premises, unless otherwise agreed in writing by COUNTY.

G. **Recapture of Inducement.** COUNTY's agreement for free or abated rent or other charges applicable to the Premises, or for the giving or paying by COUNTY to or for CONCESSIONAIRE of any cash or other bonus, inducement or consideration for CONCESSIONAIRE's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon CONCESSIONAIRE's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon the occurrence of a Breach (as defined in paragraph above) of this Lease by CONCESSIONAIRE, any such Inducement Provisions shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration therefore abated, given or paid by COUNTY under such an Inducement Provision shall be immediately due and payable by CONCESSIONAIRE to COUNTY, and recoverable by COUNTY, as additional rent due under this Lease. The acceptance by COUNTY of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by COUNTY of the provisions of this paragraph, unless specifically agreed in writing by COUNTY.

H. **No Relief from Forfeiture After Default.** CONCESSIONAIRE waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event CONCESSIONAIRE is evicted or

COUNTY otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by CONCESSIONAIRE.

**23. 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 the provisions of this Lease except the Monthly Rent, 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. The Monthly Rent payable during such permitted period of holding over shall initially be one hundred fifty percent (150%) of the Monthly Rent that was payable in the month immediately preceding the commencement of the period of holding over and such Monthly Rent shall thereafter be subject to the same adjustments set forth in Paragraph 4.

**24. TIME OF ESSENCE.** Except as otherwise specifically provided in the Lease, time is of the essence for each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

**25. PROVISIONS ARE COVENANTS AND CONDITIONS.** All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

**26. CONSENT.** Except as otherwise specifically provided in the Lease, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

**27. EXHIBITS.** All exhibits referred to in this Lease or attached to this Lease are incorporated herein by reference.

**28. LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

**29. 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 the COUNTY, including such costs and attorneys' fees payable under Paragraph 9, INDEMNIFICATION, Paragraph 12, IMPROVEMENTS, Paragraph 20A, Hazardous Substances, and Paragraph 41, PUBLIC RECORDS DISCLOSURE.

**30. VENUE.** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be the Superior Court of California, County of San Bernardino. Each party hereby waives any law, statute (including but not limited to California Code of Civil Procedure Section 394) or rule of court that would allow it to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino.

**31. COMPLIANCE WITH LAW.** CONCESSIONAIRE and its officers, employees, agents, contractor, agents, invitees, and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Lease.

**32. CAPTIONS, TABLE OF CONTENTS AND COVER PAGE.** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretation.

**33. NOTICES.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally, sent by United States mail, postage prepaid, first-class mail, certified or registered, return receipt requested, or by overnight courier to the other party at the address listed in the Reference Pages. Any such notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth in Reference Pages. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt if personally delivered on a business day; otherwise on the next business day, or (ii) the date of delivery or refusal of the addressee to accept delivery if delivered on a business day, otherwise on the next business day, if such notice is sent by or United States mail, postage prepaid, certified or registered, return receipt requested, or overnight courier.

**34. RESERVED.**

**35. OPTION TO EXTEND TERM.** In the event the Reference Pages provide that CONCESSIONAIRE is given one or more options to extend the Lease Term ("Lease Term Extension Option"), the following provisions shall apply:

A. **Concessionaire's Option Notice.** CONCESSIONAIRE shall notify COUNTY of CONCESSIONAIRE's intention to exercise CONCESSIONAIRE's Lease Term Extension Option by giving written notice of the exercise of each said option ("Lease Term Extension Notice") to COUNTY, which notice must be received by COUNTY by no later than six (6) months prior to the expiration of the then current Lease Term. CONCESSIONAIRE must pay an option fee (Option Fee) of **five-hundred (\$500.00)** concurrently with Lease Term Extension Notice.

B. **Options Personal to Original CONCESSIONAIRE.** Each Lease Term Extension Option granted to CONCESSIONAIRE in this Lease is personal to the original CONCESSIONAIRE and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original CONCESSIONAIRE, while the original CONCESSIONAIRE is in full and actual possession of the Premises, unless prior written consent is granted by the COUNTY.

C. **Effect of Default on Extension Options.** If CONCESSIONAIRE is in Default at any time during the Term of this Lease or any extended Lease Term, CONCESSIONAIRE shall have no right to exercise any Lease Term Extension Option and the Lease Term Extension Notice, if given by CONCESSIONAIRE, shall be totally ineffective. If

CONCESSIONAIRE is in Default at any time on or prior to the date the extended Lease Term is to commence, the extended Lease Term shall not commence and this Lease shall automatically expire at the end of the then current Lease Term.

D. **Multiple Options.** In the event that CONCESSIONAIRE is granted multiple Lease Term Extension Options to extend the Term of this Lease, each Lease Term Extension Option shall only be exercised individually and sequentially and a later Extension Option cannot be exercised unless the prior Lease Term Extension Option has been validly exercised. Any lapse in the sequential exercise of the Lease Term Extension Options shall void any and all remaining Lease Term Extension Options.

E. **Monthly Rent.** If CONCESSIONAIRE exercises a Lease Term Extension Option, the Term of the Lease shall be extended on the same terms and conditions as this Lease, except that the Monthly Rent for each extended term shall be adjusted by good faith negotiation of the parties to the fair market rental rate then prevailing based upon the rental rates of comparable leased property in San Bernardino County. If the parties have been unable to agree upon the said fair market rental rate within five (5) months after COUNTY's timely receipt of CONCESSIONAIRE's Lease Term Extension Notice, said fair market rental rate shall be determined through arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. If the fair market rental rate is determined by arbitration, the COUNTY has the right to terminate the Lease by giving termination notice to the CONCESSIONAIRE within thirty (30) days of being notified of the new fair market rental rate.

36. **RECORDATION OF LEASE.** CONCESSIONAIRE shall not record this Lease, or a short form memoranda of this Lease without the prior written consent of COUNTY. If COUNTY consents to the recordation of a short form memoranda of this Lease, CONCESSIONAIRE shall pay all charges incident to such recording and upon termination or expiration of this Lease, CONCESSIONAIRE shall, within ten (10) days of such termination or expiration, execute and record a quitclaim deed (or any other document required by County) as to its leasehold interest.

37. **RESERVE.**

38. **SEVERANCE.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

39. **SURVIVAL.** The obligations of the parties, which by their nature continue beyond the term of this Lease, will survive the termination of this Lease.

40. **REPRESENTATIONS AND AUTHORITY.** If CONCESSIONAIRE is a corporation, each of the persons executing this Lease on behalf of CONCESSIONAIRE represents or warrants that CONCESSIONAIRE has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If CONCESSIONAIRE is a partnership, limited liability company, trust or other legal entity, each of the persons executing this Lease on behalf of CONCESSIONAIRE

represents or warrants that CONCESSIONAIRE has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. CONCESSIONAIRE agrees to furnish upon COUNTY's request a corporate resolution, or other appropriate documentation evidencing the authorization of CONCESSIONAIRE to enter into this Lease.

**41. PUBLIC RECORDS DISCLOSURE.** All information received by the COUNTY from CONCESSIONAIRE or from any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Sections 6250 et seq. (the "Public Records Act"). CONCESSIONAIRE acknowledges and understands that although all materials received by the COUNTY in connection with this Lease 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 CONCESSIONAIRE has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall endeavor to 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 the nondisclosure, and agrees to indemnify, defend (with counsel reasonably approved by COUNTY), and hold the COUNTY harmless in any/all actions brought to require disclosure. CONCESSIONAIRE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify CONCESSIONAIRE of any such disclosure request and/or releases any information concerning the contract received from the CONCESSIONAIRE or any other source.

**42. INTERPRETATIONS.** As this Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

**43. ENTIRE AGREEMENT.** This agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

**44. AMENDMENT.** No waiver, modification or amendment of any term condition or provision of this Lease shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto.

**45. NO RELIANCE.** COUNTY makes no warranties or representations of any kind concerning the condition of the Premises or the fitness of the Premises for the use intended by CONCESSIONAIRE, and hereby disclaims any knowledge with respect thereto, it being expressly understood by the parties that CONCESSIONAIRE has inspected the Premises, knows its condition, finds it fit for CONCESSIONAIRE's intended use, accepts the Premises AS-IS, except that COUNTY shall remove all trash, debris, and COUNTY's personal property located thereon, and has ascertained that it can be used for the limited purposes specified in the Use section on the Reference Pages. In entering into this agreement, each of the parties acknowledges, represents and warrants that it has not relied upon any promise, statement or representation, express or implied, of any other party or such other party's agents, employees, or attorneys, not contained in this agreement.

**46. FORMER COUNTY OFFICIALS.** CONCESSIONAIRE agrees to provide information on former COUNTY administrative officials (as defined below) who are employed by or represent CONCESSIONAIRE. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of CONCESSIONAIRE. The information also includes the employment with and/or representative capacity and the date those individuals began employment with or representation of CONCESSIONAIRE. For purposes of this provision, "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, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. (See **Exhibit "E", List of Former County Officials.**)

**47. MATERIAL MISREPRESENTATION.** If during the course of the administration of this Lease, the COUNTY determines that the CONCESSIONAIRE has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Lease may be immediately terminated by COUNTY. If this Lease is terminated according to this provision, the COUNTY is entitled to pursue any available remedies at law or in equity.

**48. BROKER'S COMMISSIONS:** Each Party represents and warrants to the other that no real estate broker, agent, commissioned salesperson or other person has represented said Party in the negotiations of this Lease, other than as set forth in the Reference Pages. Each party agrees to indemnify and hold the other harmless from and against any claim, loss, liability or expense, including reasonable attorneys' fees, incurred by the other party as a result of a breach of its respective representations herein. COUNTY shall be responsible for the payment of any commissions due to the Brokers set forth on the Reference Pages pursuant to a separate agreement.

**49. EASEMENTS:** COUNTY reserves to itself, the right, from time to time, to grant such easements, rights and dedications on the Premises that County, in its sole discretion, deems necessary or desirable, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not materially interfere with the permitted use of the Premises by CONCESSIONAIRE. CONCESSIONAIRE shall sign any of the aforementioned documents upon request of COUNTY and failure to do so shall constitute a material breach of this Lease.

**50. INDEPENDENT CONTRACTOR.** It is agreed that CONCESSIONAIRE shall act and be an independent contractor and not an agent nor employee of COUNTY.

**51. NON-DISCRIMINATION.** CONCESSIONAIRE covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this Lease

**52. SIGNATURES.** All parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

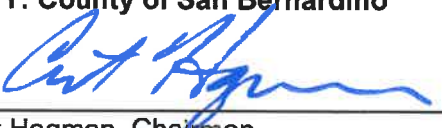
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IN WITNESS THEREOF, the parties executed this agreement.

**COUNTY: County of San Bernardino**

By:   
Curt Hagman, Chairman  
Board of Supervisors

Dated: 8-6-19

**CONCESSIONAIRES:**

By:   
Rebecca Daugherty

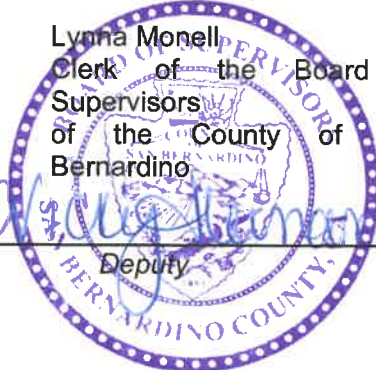
Dated: 7/19/19

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

By:   
Tonya Edwards

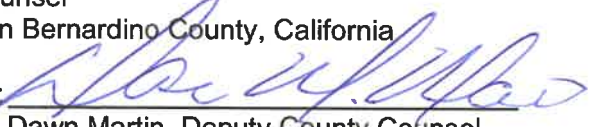
Dated: 7/19/19

By:   
Lynn Monell  
Clerk of the Board of  
Supervisors  
of the County of San  
Bernardino  
Deputy



**APPROVED AS TO LEGAL FORM**

MICHELLE D. BLAKEMORE, County  
Counsel  
San Bernardino County, California

By:   
Dawn Martin, Deputy County Counsel

Dated: 7/24/19

# CALICO GHOST TOWN REGIONAL PARK



Odessa Red's Parlour Crafts and Curiosities

STRUCTURE: BLDG #1 APPROX. 760 SQFT

EXHIBIT A

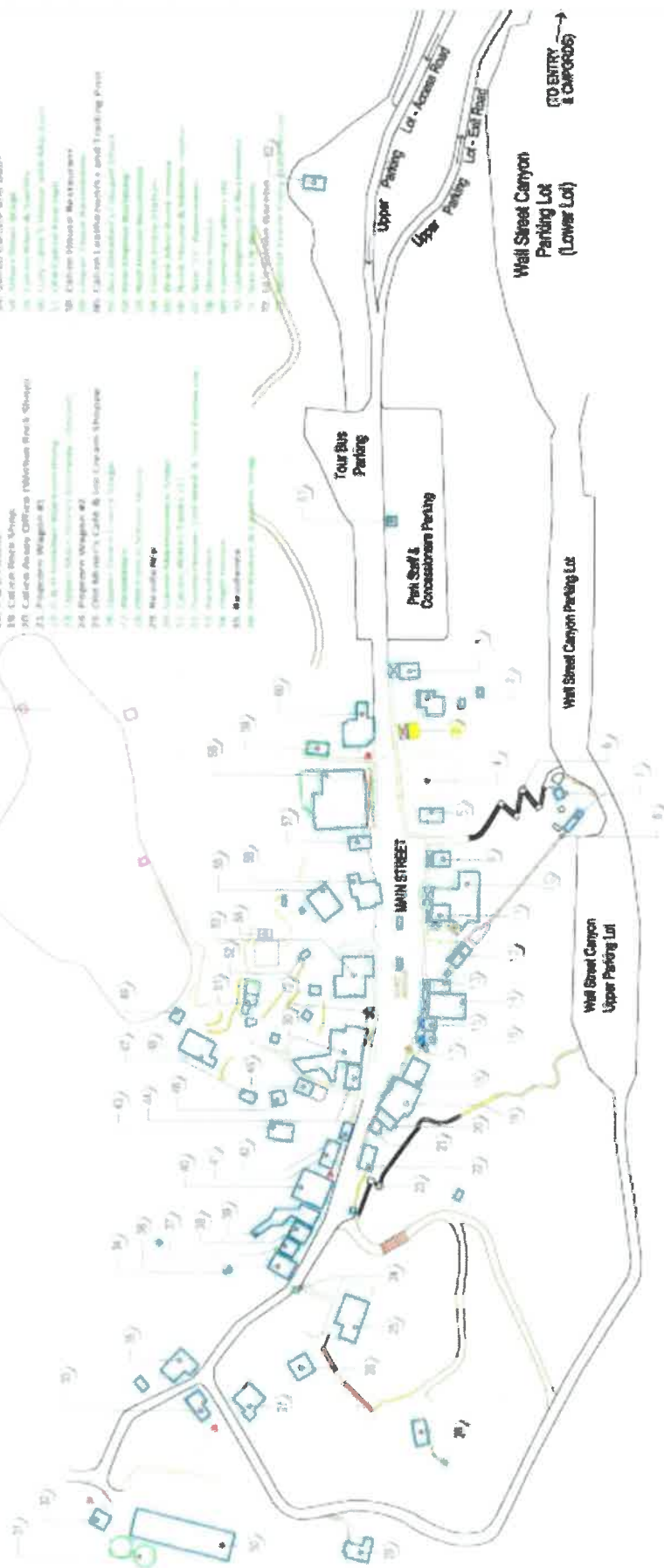
# CALICO GHOST TOWN REGIONAL PARK



Calico Shops and Building's Legend

## 1. Odessa Red's Parlour Crafts and Curiosities

- 1. Odessa Red's Parlour Crafts and Curiosities
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Drawing No. Odessa 11-27-00  
Drawing Date: 11-27-00  
Drawing Name: 11-27-00

Odessa Red's Parlour Crafts & Curiosities

STRUCTURE: BLDG #1 APPROX. 760 SQFT

EXHIBIT A-1

## **EXHIBIT “B”**

### **ITEMS APPROVED FOR SALE**

#### Themed Items

#### Hand Crafted and Repurposed Items

- Household items excluding pottery, leather and bath items
- Home décor
- Garden décor and accessories
- Shelving
- Dried flowers
- Planters/pots- with and without plants
- Wind chimes
- Birdhouses and feeders (not wooden)
- Dolls
- Puppets
- Stuffed animals
- Toys (not wooden)
- Embroidered items
- Art pieces
- Signs
- Boxes (not wooden)
- Lamps and lighting
- Décor items related to police, firefighters, military, fishing, camping, jeeping, off-roading, motorcycle riding, hiking, and other outdoor recreation.
- Quilts
- Crocheted items
- Kitchen witches
- Curling iron totes
- Aprons
- “Aqua bags”- cloth bags that hold water bottles
- Model antique furniture, airplanes and cars
- Backpacks, purses, coin purses and fanny packs (not leather or Native American)
- Hair accessories
- Wedding and other celebratory items and accessories
- Calico China Town novelty items

#### Other Themed Items

- Victorian décor and novelty items
- Victorian vintage or handmade reproduction corsets, corset covers, chemises, petticoats, night caps, mob caps, gloves, shawls, chapeaus, bonnets and bloomers
- Hand fans
- Shabby chic décor and household items
- Country farmhouse décor and household items

## **EXHIBIT “B” (continued)**

### **ITEMS APPROVED FOR SALE**

- French décor
- Americana décor
- Crafting kits and supplies- assorted medium (no leather)
- Odessa Red branded novelty items (mugs, glasses, kitchen items, bottle openers, shirts, etc.)
- Books and patterns (crafting related only)
- Vintage collectible ephemera
- Handkerchiefs
- Lingerie bags
- Victorian parasols and canes
- Victorian style jewelry (no Western, Native American or rocks/stones)
- Pincushions
- Hat pins
- Cast iron, metal, horse shoe crafts and art

#### Other Approved Items

- Calico branded souvenirs (no clothing)
- Calico penny nails

#### Other Approved

Live period music is permitted on porch or Premises and for wedding ceremonies (see Exhibit C).

## **EXHIBIT "C"**

### **WEDDING PACKAGES**

#### **AFFORDABLE CALICO WEDDING PACKAGES BY ODESSA MAKE CALICO GHOST TOWN YOUR DESTINATION WEDDING**

Officiated By: Minister Tonya M. Edwards,  
Independent Christian Clergy  
(prices and services subject to change with prior County approval)

PACKAGE 1: SHOTGUN WEDDING, includes quaint decorated Odessa's porch ceremony, boutonniere, bouquet, one 8x10 photo, two just married buttons. \$300

PACKAGE 2: CAMPFIRE NUPTIALS, includes campground ceremony, rustic decorations, boutonniere, bouquet, one 8x10 photo, two Just Married buttons. \$450

PACKAGE 3: SCHOOL HOUSE UNION, includes schoolhouse ceremony, rustic decorations, boutonniere, bouquet, one 8x10 photo, two Just Married buttons. \$550

PACKAGE 4: SILVER RUSH TO MARRY, includes Silver Bowl ceremony, rustic decorations, boutonniere, bouquet, one 8x10 photo, two Just Married buttons. \$650

PACKAGE 5: 20 MULE TEAM MATRIMONY, includes Livery Stage ceremony, rustic decorations, boutonniere, bouquet, one 8x10 photo, two Just Married buttons. \$650

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#### **COUNTY USE FEES:**

1. CAMPGROUND - \$150/USE
2. SCHOOL HOUSE - \$250/USE
3. SILVER BOWL - \$350/USE
4. LIVERY STAGE - \$350/USE

## **EXHIBIT "D"**

### **CONCESSION INVENTORY**

All items and equipment located inside the building belong to CONCESSIONAIRE including, but not limited to:

- Shelving
- Display cases
- Glass counter
- Wood counter
- Storage cabinets
- Antique armoires
- Victorian antique sideboards
- Two (2) potting tables
- Farmhouse hutch
- Antique decorative bedframes
- Antique and vintage secretary desks
- Antique dining table with drop leafs
- Decorative electric fireplace with mantle
- Antique sewing table/cabinet
- Topiary trees in urns
- Kitchen icebox/ Hoosier
- Standing height drop leaf tables
- Aqua display table with drawer
- Curtains, lighting and chandeliers
- All other decorative items

**EXHIBIT "E"**

**LIST OF FORMER COUNTY OFFICIALS**

**INSTRUCTIONS:** List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the CONCESSIONAIRE, the date the Official entered CONCESSIONAIRE's employment and/or representation.

OFFICIAL'S NAME:

REQUIRED INFORMATION

CONCESSIONAIRE certifies that the foregoing information is true and accurate.

**CONCESSIONAIRE:**

By:

---

Title:

---

Date:

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## **EXHIBIT "F"**

### **PREVAILING WAGE REQUIREMENTS**

- A. All or a portion of the Tenant Improvements in the Lease requires the payment of prevailing wages and compliance with the following requirements. As used in this exhibit, the term "Contractor" shall include Tenant and Tenant's contractor and/or subcontractors and the term "Tenant Improvements" shall include the improvements made by or on behalf of Tenant pursuant to the Lease.**

**1. Determination of Prevailing Rates:**

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

**2. Payment of Prevailing Rates**

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

**3. Prevailing Rate Penalty**

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

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a

matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Tenant Improvements.

**5. Payroll Records:**

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Tenant Improvements. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Tenant Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
  - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
  - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
  - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
  - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Tenant Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.
- 6. Limits on Hours of Work:**
- Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Tenant Improvements or upon any part of the Tenant Improvements, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.
- 7. Penalty for Excess Hours:**
- The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Tenant Improvements by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- 8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**
- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
    - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
    - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
    - iii. This project is subject to compliance monitoring and enforcement by the DIR.
    - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.

- v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
  - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
  - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
  - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
- vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

b. Labor Code section 1725.5 states the following:

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

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

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

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

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

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

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

c. Labor Code section 1771.1 states the following:

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

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

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

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

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

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

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

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

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

awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

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

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

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

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

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

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

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered

contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

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

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

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

(i) The Contractors' State License Board.

(ii) The Secretary of State.

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

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

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

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

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

d. Labor Code section 1771.4 states the following:

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

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

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

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

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

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

shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

**2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:**

**a. Submit Contract Award Information (DAS-140):**

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

**b. Employ Registered Apprentices**

- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.

- vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
  - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.
- 3. Exemptions to Apprenticeship Requirements:**
  - a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
    - i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
    - ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
    - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
    - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
    - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.
- 4. Exemption from Apprenticeship Ratios:**
  - a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
    - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
    - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or

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