

RENEWAL AND ADDENDUM NO. 2 OF AGREEMENT BETWEEN THE
COUNTY OF MONTEREY &
URBAN PARK CONCESSIONAIRES DBA MONTEREY LAKES
RECREATION COMPANY

WHEREAS, Urban Parks Concessionaires, DBA Monterey Lakes Recreation Company (“CONTRACTOR”), and the County of Monterey a political subdivision of the State of California, (“COUNTY”) previously entered into an agreement dated May 3, 2011, to manage the resort business at Lake San Antonio and Lake Nacimiento (“AGREEMENT”); and

WHEREAS, COUNTY and CONTRACTOR amended the AGREEMENT previously on October 23, 2012 via ADDENDUM NO. 1; and

WHEREAS, the AGREEMENT expired pursuant to its terms on October 31, 2013; and

WHEREAS, COUNTY and CONTRACTOR wish to renew the AGREEMENT retroactive to October 31, 2013; and

WHEREAS, COUNTY and CONTRACTOR wish to extend the term of the renewed AGREEMENT through and including January 31, 2015; and

WHEREAS, COUNTY and CONTRACTOR wish to further amend the renewed AGREEMENT to delete a provision regarding marketing services and compensation, to allow for the financial compensation terms of the AGREEMENT to be modified in the event of closure of Lake San Antonio due to low water levels, and to add a provision regarding inspections; NOW THEREFORE,

For valuable consideration, the sufficiency of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

1. The AGREEMENT is renewed retroactive to October 31, 2013, and all of its provisions shall be deemed to have been in effect continuously since that time.
2. The Term of this agreement shall be extended through January 31, 2015.
3. Section 3.9 of the Agreement is hereby revised to delete the following payment terms:

“and Marketing Leadership and Creative Guidance for marketing campaigns and customer service programs for a fixed annual fee of \$30,000.”;

4. Add new Section 6.5 to Section 6. MANAGEMENT & MANAGEMENT INCENTIVE FEES as detailed:

6.5 Due to environmental, economic, and/or other factors or conditions outside of the control of the COUNTY, it may be necessary for the lakes resorts facilities and operations at Lake San Antonio to be temporarily or intermittently closed to the public. In such events, the parties agree

that continued management operations would be unnecessary, unwarranted, and an inappropriate use of resources for the continued operation of lake management services.

- 6.5.1 Therefore, when it is determined by COUNTY that the Lake San Antonio resort operations should be suspended, COUNTY shall submit written notification to CONTRACTOR with at least 30 days' notice of lake operation closure. Such closure shall be for at least 30 days, and the Lake San Antonio resort operations shall not be reopened with less than 30 days' notice by COUNTY to CONTRACTOR unless mutually agreed to an earlier/shorter reopening deadline.
- 6.5.2 The parties agree and understand that the temporary cessation of Lake San Antonio resorts activities may not necessarily include cessation of all recreation activities at the facility, only those included in the management responsibilities of CONTRACTOR which are dependent upon a reasonable minimum amount of water in the Lake. Notwithstanding the fact that COUNTY may give notice to CONTRACTOR of lakes resort closure and management responsibilities of CONTRACTOR for certain operation are being suspended, other activities that are outside of the responsibilities of CONTRACTOR may continue during that time period and CONTRACTOR shall have no management or operational responsibilities for those activities not outlined in the Agreement.
- 6.5.3 Accordingly, and in consideration for the fact that CONTRACTOR will not have management responsibilities for the facilities when closed and will therefore not be able to recover the management fees due to the applicable reduction in economies of scale, for any 30 day period in which the lake resort operation is suspended/closed, the management fee set forth in paragraph 6.3 of the Management Agreement shall be adjusted from 1.5% to 2.5%, and shall apply only to the management operations at the Lake Nacimiento resort which would remain in operation. There shall be no additional adjustment in compensation, and, once the Lake San Antonio resort facilities are re-opened the percentage shall revert to the previous aforementioned 1.5%.

5. Add new Section 6.6 to Section 6. MANAGEMENT & MANAGEMENT INCENTIVE FEES as detailed:

- 6.6 As part of its administration of this Contract, COUNTY will conduct periodic inspections of CONTRACTOR operated facilities, equipment, services, and/or programs, and prepare written performance evaluations based upon its observations. A "Contractor Performance Rating", example attached hereto, or other similar format(s), as may be adopted by the COUNTY, will be utilized for evaluation purposes. The COUNTY further reserves the right of ingress and egress without notice to inspect CONTRACTOR's operations for the purposes of evaluating performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the premises; and to do any work thereon of any nature necessary for the preservation, maintenance, and operation of the County Parks facilities. CONTRACTOR agrees to cooperate with COUNTY in all respects related to the implementation of COUNTY's Contractor Performance Evaluation Program and with COUNTY'S activities on the premises. COUNTY shall not be

liable in any manner for any inconvenience, disturbance, loss of business, nuisance, other damage arising out of COUNTY's evaluation process as provided herein, except damage resulting from the active negligence or willful misconduct of COUNTY or its authorized representatives.

- 6. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this RENEWAL AND ADDENDUM No. 2 TO THE AGREEMENT, and shall continue in full force and effect as set forth in the AGREEMENT;
- 7. A copy of this RENEWAL AND ADDENDUM NO. 2 shall be attached to the original AGREEMENT dated May 3, 2011.

IN WITNESS WHEREOF, the County and CONTRACTOR execute this RENEWAL AND ADDENDUM NO. 2 as follows:

COUNTY OF MONTEREY

CONTRACTOR

By: _____

By:  _____

Signature of Chair, President, or Vice-President

Dated: _____

JOHN W. KOEBENER CEO
Printed Name and Title

Dated: 2/18/14

Consented to by the MONTEREY COUNTY WATER RESOURCES AGENCY:

By: _____

By:  _____

*(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)**

Printed Name and Title

Pamela Koebener Pitts, Sec.
Printed Name and Title

Dated: _____

Dated: 2/20/14

Approved as to Form:

Deputy County Counsel

Dated: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Amendment.