



## **COUNTY OF MONTEREY CONCESSION LEASE AGREEMENT**

**LEASED PREMISES:**      **Schilling Place Cafe**  
                                 **1441 Schilling Place**  
                                 **Salinas, California 93901**

**CONCESSIONAIRE:**    **PFD Management Inc.**  
                                 **8 Mariposa**  
                                 **Irvine, California 92604**  
                                 **(949) 800-7306**

**COUNTY:**                **County of Monterey**  
                                 **c/o Contracts/Purchasing Division**  
                                 **1488 Schilling Place**  
                                 **Salinas, California 93901**  
                                 **(831) 755-4992**

**COUNTY OF MONTEREY**  
**CONCESSION LEASE AGREEMENT**

**PREAMBLE**

This Concession Lease Agreement ("Agreement") is made and entered in this 6<sup>TH</sup> day of March, 2017, by and between the **County of Monterey, a subdivision of the State of California** ("County"), and **PFD Management Inc., a California limited partnership**, ("Concessionaire"), in consideration of the premises, and the agreements, terms and conditions set forth, below.

WHEREAS, County operates the facility located at 1441 Schilling Place ("Premises") in Salinas, California;

WHEREAS, County has advertised and requested interested persons to submit proposals in response to Request for Proposal #10601 ("RFP #10601") for the operation and maintenance of a Cafeteria Solution ("the Concession") at the Premises; and

WHEREAS, County received and analyzed the proposals received in response to the RFP, and has determined that Concessionaire's proposal best meets the criteria set forth in the RFP and provides the best value to the County.

NOW THEREFORE, in consideration of this Agreement granted herein and of the terms, covenants and conditions hereinafter contained to be kept and performed by the respective parties, their successors, assigns and personal representatives, the parties agree as follows:

1. **CONCESSION AREA:**

1.1 County hereby leases to Concessionaire approximately **5,100** square feet of cafeteria space ("Concession Area"), in the County of Monterey, State of California located inside the County Facility ("Facility") located at **1441 Schilling Place, Salinas, CA** ("Premises").

1.2 County does hereby lease to Concessionaire, and Concessionaire does hereby accept a lease from County, upon the terms and conditions herein set forth, over the Concession Area, and more particularly described in **EXHIBIT A-DESCRIPTION OF CONCESSION AREA** attached hereto and made a part hereof.

2. **RESERVATION OF RIGHTS:** This Agreement is subject to all outstanding easements and rights of way over, across and upon the Concession Area. The County may grant additional easements or rights of way over, across, in and upon the Concession Area as necessitated to be in the public interest. The County reserves all mineral rights in the Concession Area together with any mineral deposits thereunder.

### **3. CONDITION OF CONCESSION AREA:**

- 3.1 Concessionaire's Acceptance: Concessionaire hereby accepts the Concession Area (a) in the condition existing as of the Effective Date, and (b) subject to all applicable zoning, county and state laws, ordinances and regulations governing and regulating the use of the Concession Area and any covenants or restrictions of record. Concessionaire has independently evaluated the condition of the Concession Area and has determined that it is acceptable for Concessionaire's use. Concessionaire acknowledges that neither County nor any agent or employee of County has made any representations or warranties with respect to (a) the Concession Area; (b); the condition of the Concession Area; (c) the improvements on the Concession Area; to conduct of Concessionaire's business.
- 3.2 Evidence of Seismic Adequacy: The building containing the Concession Area was constructed after January 1, 1973, as evidenced by official documentation from the City of Salinas Building Department. Copy of which is attached as **EXHIBIT B-EVIDENCE OF SEISMIC ADEQUACY**, and incorporated by this reference.

### **4. CONCESSIONAIRE'S DUTIES AND OBLIGATIONS:**

- 4.1 Use of Concession Area: The Concession Area is released to Concessionaire exclusively for the purposes of preparing and serving of food as set forth herein, and in RFP#10601, including all associated Exhibits and Addenda, a copy of which is attached as **EXHIBIT C**, and incorporated by this reference.
- 4.2 Sanitation: Concessionaire shall, at its own expense, keep the Concession Area clean and sanitary always. No refuse or offensive matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor material detrimental to the public health, shall be permitted to remain in or on the Concession Area, and Concessionaire shall prevent any such matter or material from being or accumulating upon said Concession Area.
- 4.2.1 **Garbage:** Concessionaire shall hire a dumpster of appropriate size as approved by the County. The Concessionaire shall pay the cost of all garbage pickup from the dumpster for the Concession Area during the term of this Agreement. Concessionaire, at its own expense, shall ensure that garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the dumpster. Concessionaire shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by County.
- 4.2.2 **Janitorial Services:** Concessionaire shall furnish janitorial service as is necessary for the Concession Area.
- 4.3 General Maintenance and Repairs: Concessionaire shall, at its own expense, keep the Concession Area in good order, in a safe and clean condition, including all grease traps.

- 4.4 Equipment Maintenance: Concessionaire shall pay all costs associated with equipment maintenance and regulatory inspections of the Concession Area including but not limited to cost of equipment replacement, the cost of labor, insurance, and applicable taxes which are necessary and/or appropriate to operate and manage the Concession Area.
- 4.4.1 Concessionaire shall be responsible to maintain the fire suppression/smoke detector in the range hood, which must be checked by the Fire Marshall and serviced on an annual basis. Concessionaire shall pay for the cost of repair and maintenance of the fire suppression/smoke detector. If such repair work is performed by the County, all such repair and maintenance charges shall be submitted to Concessionaire in writing and shall be due and payable within thirty (30) days.
- 4.5 Trade Fixtures and Removal of Items after Termination or Expiration of Lease: Concessionaire may install such trade fixtures (after written approval by County), equipment, signs (subject to the limitations stated in section 15.1) and personal property as may be necessary and convenient for its operation. Such trade fixtures, equipment, signs, and personal property shall not be considered part of the Concession Area. Removal of the same shall not damage or deface the Concession Area, and if the Concession Area shall be so damaged, Concessionaire shall repair such damage at its own expense. Concessionaire shall, within thirty (30) days of the termination or expiration of this Agreement, remove all equipment (excepting County owned equipment unless otherwise agreed to in writing signed by the County), furnishings, expendables, trade fixtures, signs, and personal items belonging to the Concessionaire from the premises at its sole expense. Concessionaire shall, at its own expense, remove or paint over, all its signs and displays, and shall restore the Concession Area and any improvements thereto to the same condition as prior to the placement of any such signs or displays. Concessionaire shall not disturb any improvements; fixtures; or County-owned equipment. Concessionaire agrees that the County may sell scrap, or dispose of any article owned by the Concessionaire remaining after thirty (30) days, without any further notice, and that any such items shall be deemed irrevocably abandoned by Concessionaire and become the property of the County without any compensation to Concessionaire. Concessionaire shall pay the County all costs incurred by the County to remove any article owned by the Concessionaire plus County's actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee within thirty (30) days after payment is demanded.
- 4.6 Hiring: Concessionaire shall use its best efforts to hire employees, contractors, suppliers, custom operators, and agents who are in Monterey County.
- 4.7 Hazardous Materials: Concessionaire shall submit a Hazardous Materials Business Plan to the Monterey County Department of Environmental Health. Concessionaire shall make the Concession Area and its operations available for inspection regarding the storage of hazardous materials on the Concession Area.

- 4.8 Fire Prevention: Concessionaire shall comply with applicable fire control and prevention rules, practices, and regulations. All equipment, fuel and oil must be stored in an appropriate storage area.
- 4.9 Debris Removal: Concessionaire, at its own expense, shall dispose of all debris and empty containers generated in the Concession Area.
- 4.10 Alterations: Except as otherwise provided in sections 4.5 and 4.11 of this Lease, Concessionaire shall not make or permit any other person to make any permanent alterations to the Concession Area or any improvement thereon without the prior written consent of the County. Concessionaire shall not erect or permit to be erected any permanent structure in the Concession Area. Concessionaire shall not remove any structures located in the Concession Area without the prior written consent of County.
- 4.11 Temporary Installations: Subject to the prior written approval of the County, Concessionaire may erect, at its own expense, temporary structures in the Concession Area as may be necessary or incidental to its use under the Agreement. All such structures shall remain the Concession Area of Concessionaire and shall be removed from the Concession Area prior to the termination or expiration of the Agreement term under the terms stated in section 4.5 hereof.
- 4.12 Damage: At the termination or expiration of the Agreement, Concessionaire shall pay to County reasonable compensation for any damage to the Concession Area caused by Concessionaire or its invitees, agents, or employees, excepting ordinary wear and tear or depreciation.
- 4.13 Entry by County: Concessionaire shall permit County, its employees, agents, representatives, invitees, as well as any Federal, State and Local officials responsible for remediation of hazardous conditions on the Premises, to enter the Concession Area at all reasonable times.
- 4.14 Surrender: Concessionaire shall surrender the Concession Area to County at the termination or expiration of this Agreement in as good a condition as at the commencement of it, excepting reasonable wear and tear, damages, and destruction by the elements.
- 4.15 Compliance with “No Smoking Law” (2003 Assembly Bill 846): Concessionaire shall ensure that the Concession Area is in full compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as may be amended from time to time, and, if necessary, prior to the commencement date specified in Section 8.1 below, shall modify the Concession Area to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846.
- 4.16 Concession Notice: Concessionaire shall place a sign, in a prominent place approved by the County, stating that the Concessionaire is operating under a Concession Agreement.

**5. STATUS OF CONCESSIONAIRE:**

- 5.1 Independent Contractor: The Concessionaire shall during the entire term of this Lease, be construed as an independent contractor and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Concessionaire performs pursuant to this Lease. The Concessionaire shall be fully responsible for payment of all taxes due to the State of California or the Federal government. County shall not be liable for deductions for any amount for any purpose from Concessionaire's compensation to its employees. Concessionaire shall not be eligible for coverage under County's Workers Compensation Insurance Plan nor shall Concessionaire be eligible for any other County benefit.
- 5.2 Authority: Concessionaire represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Concessionaire are the duly designated agents of Concessionaire and are authorized to do so.

**6. CONCESSION PERMISSIONS GRANTED:**

- 6.1 All services provided by Concessionaire and the manner in which services are to be provided are more particularly set forth in Exhibit C.

**7. ASSIGNMENT, TRANSFER, SUBLEASE, BANKRUPTCY:**

- 7.1 Concessionaire shall not assign this Agreement, nor sublet any portion of the Concession Area, without the County's prior written approval. County may reasonably withhold its consent to any Transfer. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Agreement. As used herein, the term "Transfer" shall include an arrangement (including without limitation, management agreements and licenses) that allows the use and occupancy of all or part of the Concession Area by anyone other than Concessionaire.
- 7.2 Concessionaire shall not under-let or sub-let the subject Concession Area or any part thereof or allow the same to be used or occupied by any other or for other use than that herein specified, nor assign this Agreement nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the prior written consent of County. Neither this Agreement nor the rights herein granted shall be assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceeding in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any attempted assignment, mortgaging, hypothecation, or encumbering of the Concession rights or other violation of the provisions of this Section shall be void and shall confer no right, title, or interest in or to this Agreement or right of use of the whole or any portion of the Concession Area upon any such purported assignee, mortgagee, encumbrancer, pledgee or another lien holder, successor, or purchaser.

7.3 The Concessionaire may not, without prior written permission of the County assign or otherwise alienate any of its rights hereunder, including the right to payment; or delegate, subcontract, or otherwise transfer any of its duties hereunder.

7.4 Upon County's conveyance or transfer of all or part of the Concession Area, County shall be released from all obligations hereunder. Thereafter, County's successor in title shall be responsible for performance of County's obligations hereunder.

**8. TERM:**

8.1 Term: The total maximum term for this Agreement shall be limited to five (5) years. The initial term of this Agreement shall be for a period of one (1) year, commencing on April 3, 2017 at 12:01 a.m., and terminating on April 2, 2018 at 11:59 p.m. Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal, or holdover of the original Term.

8.2 Option to Renew: This Agreement has an initial effective period of one year, and will not automatically renew, but may be renewed for nine (9) additional one-year terms (each a "Renewal Term") at a rate to be negotiated by the parties. Such renewal shall be in the form of a written Amendment to the Agreement to be executed at least thirty (30) days prior to the expiration of the then-current term.

8.3 Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Concession Area with County's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the minimum monthly rent shall be due monthly at a rate increased by 10% over the previous rent, unless otherwise agreed to in writing by County. Concessionaire shall pay such monthly rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this Agreement except those pertaining to the term shall apply to the month-to-month tenancy.

8.4 Temporary Tenancy: This tenancy is of a temporary nature and the parties to this Agreement agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

**9. FEES AND CHARGES:**

Concessionaire agrees to pay to County for the Concession Area above-described, and County agrees to accept as payment for, the use and possession of the Concession Area as set forth below.

9.1 Minimum Base Rent:

Minimum Base Rent is Eight Thousand Dollar (\$8,000) per year, payable monthly in twelve installments due end of following month of each month during the Term.

9.2 Concession Fees: Commissions on Concessionaire's monthly sales occurring during the Agreement Term shall be calculated as follows:

9.2.1 Additional Rent of three percent (3%) commission based on Concessionaire's monthly gross sales revenue, as defined in section 12.3 hereof ("Gross Revenue"), over Sixteen Thousand dollar (\$16,000.00) for cafeteria, internal catering, and all other sales and service sales; an Additional Flat Fee ("Rent") of Five Hundred (\$500) for each outside catering event sales.

9.3 Concession Fees Payment Schedule: Commissions on Concessionaire's monthly sales occurring during the Agreement Term.

9.3.1 Commission Schedule

Example: Month 1 (March 1, 2017 – March 31, 2017) 3% of gross sales are due the following month by no later than April 31, 2017

9.3.2 Lease Payment

Example: Month 1 (March 1, 2017 – March 31, 2017) total amount of \$667 is due the following month by not later than April 31, 2017

9.4 All payments shall be payable to Monterey County and delivered to:

Monterey County  
Attn: Contracts/Purchasing Officer  
1488 Schilling Place Salinas, California 93901

9.5 Late Payment: If payment is received more than five (5) business days after the due date Concessionaire agrees to pay as liquidated damages on the amount of unpaid rent at the rate of ten percent (10%) per annum from the payment due date until payment of the rent is received. County's acceptance of the payment of the liquidated damages does not constitute a waiver of any rights or remedies granted herein.

9.6 Reimbursements:

9.6.1 If County pays any sum or incurs any obligations or expense(s) which Concessionaire has agreed to pay or reimburse County for, or if County is required or elects to pay any sum or to incur any obligations or expense(s) by reason of the failure, neglect, or refusal of Concessionaire to perform or fulfill its obligations under this Agreement, or as a result of an act or omission of Concessionaire contrary to the obligations set forth in this Agreement, Concessionaire agrees to pay to County the sum so paid or the expense(s) so incurred and costs, plus interest at ten percent (10%), plus County's actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule, and damages. This amount shall be due and payable upon within ten (10) days of County issuing an invoice detailing such charges.

9.6.2 For all purposes in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by County for any work done or material furnished shall be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable. If County elects to use its own personnel in making any repairs, replacements, and/or alterations, and elects to charge Concessionaire with the cost of same, receipts and timesheets will be used to establish the charges, and shall be presumed to be reasonable in absence of contrary proof submitted by Concessionaire.

9.7 Returned check charge: Concessionaire agrees to pay County's actual cost for each check that is returned for insufficient funds.

10. **NON-DISCRIMINATION:**

10.1 During the performance of this Agreement, Concessionaire and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment, patron or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, pregnancy-related condition, marital status, age, political affiliation, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status.

10.2 Concessionaire and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to nondiscrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

10.3 Concessionaire shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

10.4 Concessionaire shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Concessionaire's delivery of services.

11. **PERSONNEL:**

11.1 Conduct: Concessionaire and its representatives, agents, servants, and employees shall always conduct business in a quiet and orderly manner to the satisfaction of the County.

11.2 Qualified Personnel: A reasonably competent person shall be on the premises always while the concession is in operation. Concessionaire will employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the County. Concessionaire shall ensure that each of its personnel, while on or about

the Concession Area, shall be neat in appearance and courteous always and shall be appropriately attired, with badges or other suitable means of identification. No person employed by Concessionaire shall be under the influence of alcohol, illegal drugs, narcotics, or other controlled substances, while on or about the Concession Area.

- 11.3 Employee Fidelity Bonds: At the County's discretion, employee fidelity bonds may be required to be maintained by Concessionaire covering all its employees who handle money.

## **12. CASH AND RECORD HANDLING REQUIREMENTS:**

12.1 At County's request, Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment to be used for operation of the Concession which shall be submitted to the County. Concessionaire shall maintain a method of accounting of the Concession activities which shall correctly and accurately reflect the gross receipts and disbursements received or made by Concessionaire from operations. The method of accounting, including bank accounts, shall be separate from the accounting systems used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

12.1.1 Regular books of accounting such as general ledgers.

12.1.2 Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.

12.1.3 State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.

12.1.4 Cash register tapes shall be retained so that day-to-day sales can be identified. A cash register must be used in public view which prints a dated double tape indicating each sale and the daily total.

12.1.5 Any other accounting records that County, in its sole discretion, deems necessary for proper reporting of receipts.

### **12.2 Business Records.**

12.2.1 Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this Agreement in a manner that conforms to industry standards and practices and in a manner acceptable to the County.

12.2.2 Concessionaire shall maintain during the term of this Agreement and for three years thereafter, all its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this Agreement. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by the County, or a duly

authorized representative, during ordinary business hours at any time during the term of this Agreement and for at least three years thereafter.

12.2.3 Concessionaire will submit to the County, no later than February 1<sup>st</sup> of each year during the term of this Agreement, a verified profit and loss statement for the previous calendar year. Within thirty (30) days of the expiration or termination of this Agreement, Concessionaire shall submit to the County a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

12.2.4 Concessionaire shall obtain and install cash registers or other accounting equipment acceptable to the County, through which Concessionaire shall record all gross receipts from the operation of the concession. This equipment shall be non-resettable and shall supply an accurate recording of all sales on tape and produce a receipt for each transaction. All such equipment shall have a customer display that is visible to the public. Concessionaire shall make all cash register tapes available to the County upon County's request. Concessionaire shall provide a cash register receipt to each customer setting forth the full amount of a sale.

### 12.3 Gross Revenue:

The term "Gross Revenue", wherever used in this Agreement, is intended to and shall mean all moneys, property, or any other thing of value, including accounts receivable, received by Concessionaire and any sub-contractor or operator, if other than Concessionaire, through or in connection with the operation of the concession, including any concession related business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this Agreement, or that associates with or implies an endorsement by County, all without deduction. The term "Gross Revenue" shall not include any sales taxes imposed by any governmental entity and collected by Concessionaire.

### 12.4 Audit:

12.4.1. **Concessionaire's Audit:** Concessionaire shall employ an independent Certified Public Accountant (CPA) at Concessionaire's cost, to perform an audit of the books and records of Concessionaire, as they pertain to this Agreement, for each Agreement Year, or applicable portion thereof, and Concessionaire shall follow all recommendations made by the independent auditor. Such audit shall be in a format and in detail satisfactory to the County and shall include all the following:

12.4.1.1 An audited statement of Gross Revenue shall be submitted to the County by no later than one hundred twenty (120) days following the last day of every Agreement Year. An independent CPA shall conduct such audit, and include all business transacted at the Premises under the terms of this Agreement by Concessionaire during the preceding Agreement Year, and excluding any other business transacted by Concessionaire; and

- 12.4.1.2 A written statement, by such CPA, to the County stating that in the CPA's opinion, the Rent and other required fees paid by Concessionaire to the County for the preceding Agreement Year were paid in accordance with the terms of this Agreement; and
  - 12.4.1.3 Copies of any reports prepared by such CPA or by Concessionaire's internal audit staff for Concessionaire relating exclusively to this Agreement, and specifically describing any strengths or weaknesses of internal fiscal controls; and
  - 12.4.1.4 A management letter prepared by such CPA for Concessionaire relating exclusively to this Agreement, and specifically describing Concessionaire's internal accounting controls as they relate to cash handling, processing of receipts and security of cash at the Premises, based on examination and testing of such controls by such CPA, including a control analysis of the strengths and weaknesses of such controls; and
  - 12.4.1.5 if the results of any such audit show any discrepancy as compared to the amount of Concessionaire's Gross Revenue at the Premises, as reported to County by Concessionaire, Concessionaire shall pay County the difference in Rent payments or County shall reimburse Concessionaire within thirty (30) calendar days following discovery of such discrepancy; and
  - 12.4.1.6 If Concessionaire fails to perform its obligations under this section, after thirty (30) days' notice by the County, the County may employ an independent CPA to perform the required audit and, in addition to any difference in Rent due the County from such audit, County shall recover the entire cost of such audit, plus County's actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule for all of County's costs in connection with such audit. .
- 12.4.2 **County Audit:** Concessionaire shall, upon request, make all or any part of its records pertaining to this Agreement available to the County, or any other authorized representative of County during normal business hours throughout the Term of this Agreement, for the purposes of inspection, copying, or audit. Except as otherwise expressly provided herein, the cost of such inspection, copying or audit shall be borne by County.
- 12.4.2.1 if the results of any such audit by County show any discrepancy as compared to the amount of Concessionaire's Gross Revenues at the Premises, as reported to County by Concessionaire, Concessionaire shall pay the County the difference in Rent payments or County shall reimburse Concessionaire within thirty (30) calendar days following discovery of such discrepancy.

12.4.2.2 if any such discrepancy exceeds the amount of such Gross Revenues reported by Concessionaire to County by more than two percent (2%), Concessionaire shall reimburse County for all of County's actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or another applicable County adopted fee schedule about such audit.

### **13. PRICE SCHEDULES AND MERCHANDISE.**

Concessionaire shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. County reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety.

- 13.1 Prices: County agrees that Concessionaire's merchandise, including its prices for same, shall be within Concessionaire's discretion; subject, however, to disapproval by County if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of County.
- 13.2 Quality of Goods: All food items, goods and service offered for sale and/or sold by Concessionaire shall be of high quality. All merchandise sold, kept for sale, or rented by Concessionaire shall be of a quality acceptable to industry standards and conform to all federal, state and municipal laws, ordinances, and regulations in every respect. No imitation, adulterated, misbranded, or impure articles shall be sold or kept for sale by Concessionaire and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted. No adulterated, misbranded, or impure articles shall be sold or kept for sale. All merchandise for sale or rented shall be subject to the County's approval prior to being offered for sale. Concessionaire shall remove any goods which are not approved by County and shall not again offer such goods for sale or rent without the prior written approval of the County. The County reserves the right to order the improvement of the quality of any merchandise kept or offered for sale or rental.
- 13.3 Food Items: Concessionaire shall offer for sale a variety of food items and beverage products, as further defined in the Concessionaire's proposal response.
- 13.4 Waste or Nuisance: Concessionaire shall not commit or permit the commission by others of any waste on the Concession Area; Concessionaire shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code, nor the Monterey County Code; and Concessionaire shall not use or permit the use of the Concession Area for any unlawful purpose.
- 13.5 Waste Diversion: Concessionaire shall minimize the paper items (straw covers, serving cartons, etc.) distributed with food products. County reserves the right to prohibit the sale or use of non-recyclable containers or plastics. Concessionaire is prohibited from selling

merchandise in non-returnable bottles, and shall not dispense food or beverage items in glass or Styrofoam containers. Concessionaire shall not sell or give away or otherwise dispose of any commodity which in the opinion of County will cause undue litter. Concessionaire expressly agrees to comply with all County recycling programs.

- 13.6 Business Diversion Prohibited: Concessionaire shall not divert, cause, allow, or permit to be diverted any business from the Concession Area and shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it.

#### 14. EQUIPMENT, FURNISHINGS, AND EXPENDABLES.

- 14.1 Equipment: Concessionaire may lease or purchase any equipment, furnishings, and expendables (collectively, "Equipment") required for its operation of the Concession upon the Concession Area with County's prior written approval. Any such Equipment shall be leased, purchased, and installed by Concessionaire at its sole cost and expense, and shall remain its personal property.

- 14.2 County-Owned Equipment: County may, as a courtesy and at no cost to Concessionaire, provide equipment for the operation of the concession, which shall remain the property of the County. Concessionaire shall annually provide the County with a list of County-Owned Equipment located within the Concession Area and/or used for the Concession. Nothing herein shall delegate to the County responsibility of providing the necessary equipment to operate the Concession. County reserves the right at any time to replace or remove all items of County-owned equipment.

14.2.1 The Concession Area contains County-Owned Equipment available for Concessionaire's use, as identified in the Inventory List of County-Owned Equipment attached hereto as EXHIBIT D COMMERCIAL KITCHEN EQUIPMENT AND CAFÉ FURNISHINGS. All such County-Owned Equipment is provided in "as-is" condition, and is presumed to be operational unless otherwise noted by Concessionaire when Concessionaire takes possession of the leased Concession Area.

14.2.2 County-Owned Equipment shall be returned to the County at the expiration of this Agreement in the same condition as received, reasonable use, wear and tear, and damage by the elements excepted. County shall, periodically, conduct an inventory of said objects and evaluate their care and condition.

14.2.3 Should Concessionaire fail, neglect or refuse to undertake and complete any required maintenance or restoration to County-Owned Equipment, County shall have the right to terminate the Agreement and take immediate possession of the County-Owned Equipment to perform maintenance or repairs for the Concessionaire's account. Concessionaire agrees to promptly reimburse the County for the cost thereof, provided, however, that the County shall first give Concessionaire ten (10) days written notice of its intent to perform such

maintenance or repairs enabling Concessionaire to proceed with such maintenance or repairs at Concessionaire's own expense.

- 14.3 Maintenance of Equipment: Concessionaire shall, always and at its sole expense, keep and maintain all equipment, whether owned and/or installed by Concessionaire or County owned, together with all the fixtures, equipment, and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Concessionaire without the prior written consent of the County. If County provides such consent, such removal and/or replacement shall be at the expense of Concessionaire.
- 14.4 Claims for Labor and Materials: Concessionaire shall promptly pay when due all amounts payable for labor and materials installed within the Concession Area. Concessionaire shall take all steps necessary and reasonable to prevent any lien or other claim under any provision of law from arising against any property owned by County (including reports, documents, and other tangible matter produced by the Concessionaire hereunder), against the Concessionaire's rights hereunder, or against the County, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.
- 14.5 Disclaimer of Warranty: **CONCESSIONAIRE SPECIFICALLY ACKNOWLEDGES THAT COUNTY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, NEITHER EXPRESS NOR IMPLIED, WHETHER OTHERWISE IMPOSED BY STATUTE OR LAW AND TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, AS TO ANY AND ALL COUNTY OWNED EQUIPMENT LISTED IN EXHIBIT D, OR COUNTY OWNED EQUIPMENT THAT CONCESSIONAIRE MAY TAKE TEMPORARY POSSESSION OF OR MAKE USE OF AFTER THE EXECUTION OF THIS AGREEMENT PURSUANT TO A FUTURE AGREEMENT BETWEEN THE PARTIES; THAT CONCESSIONAIRE TAKES TEMPORARY POSSESSION OF SAID EQUIPMENT IN AN "AS IS" CONDITION, HAS CONDUCTED ITS OWN INSPECTION OF THE EQUIPMENT AND IS SATISFIED AS TO ITS CONDITION, AND MAKES USE OF SUCH EQUIPMENT AT ITS SOLE PERIL.**

## 16. UTILITIES.

- 16.1 Utility Services: Concessionaire shall provide and pay for all initial utility deposits and fees, and for electricity, gas and telecommunications utilities and services necessary for its use and occupancy of the Concession Area during the Term and any extension or holdover period, including grease trap maintenance, and all other services which may be used in or upon the Concession Area during the term of this Agreement, or any extension or holdover period, provided that Concessionaire has contracted directly with the utility companies; County shall have no responsibility to either provide or pay for such services. If any such services are not separately metered or billed to Concessionaire, but rather are billed to and paid by County, Concessionaire will pay to County its pro rata share of the cost of such

services, as determined by County, together with its pro rata share of the cost of making such determination. County will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

16.2 Heating, Ventilation, and Air Conditioning (HVAC):

The Concession Area is located inside County's Premises and does not have a separate HVAC system from the rest of the Premises. Concessionaire shall exercise care and caution with respect to the use of the HVAC system.

16.3 Water/Sewer Service:

16.3.1 The Concession Area is located inside a building with water and sewer connections for use by the Concessionaire, but the Concessionaire shall be responsible for the cost of connecting the water and sewer lines to any devices.

16.3.2 Concessionaire shall exercise care and caution with respect to the use of the water and sewer systems, and shall pay for the cost of repair and maintenance of the system located within the Concession Area. If such repair work is performed by the County, all such repair and maintenance charges shall be submitted to Concessionaire in writing and shall be due and payable within thirty (30) days.

16.4 Energy & Water Conservation:

16.4.1 County is required to comply with all laws and regulations requiring the installation of energy-efficient systems, fixtures, and equipment at Concession Area. In accordance with all laws and regulations and this Agreement, Concessionaire shall maintain or repair, or cause to maintain or repair, any structures, buildings, and related systems in accordance with current energy conservation standards.

16.4.2 Concessionaire shall be responsible for promoting energy and water conservation measures in the operation of all activities at the Concession. Concessionaire shall cooperate with the County in all forms of energy and water conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Concessionaire shall comply with all existing and newly-enacted laws, bylaws, regulations, etc., relating to the conservation of energy and water. Concessionaire shall comply with all reasonable requests and demands of County pertaining to the installation and maintenance of energy and water conservation systems, fixtures, and equipment.

**17. SAFETY & SECURITY.**

17.1 Safety: Concessionaire shall keep a copy of the County's Safety Manual in a location accessible by all its employees. Concessionaire shall correct safety deficiencies, and violations of safety practices, immediately after the condition becomes known or County notifies Concessionaire of said condition. Concessionaire shall cooperate fully with County in the investigation of accidents. In the event of injury to a patron or customer, Concessionaire shall reasonably ensure that the injured person receives prompt and

qualified medical attention, and as soon as possible thereafter, Concessionaire shall submit a County Accident or Illness Report. If after ten (10) days written notice from the County (or immediately in exigent circumstances) Concessionaire fails to correct hazardous conditions specified by the County, which have led, or in the opinion of County could lead, to injury, the County may, in addition to all other remedies which may be available to County, improve, repair, replace, rebuild, redecorate, or paint any improvements to correct the hazardous condition, with the cost thereof, plus actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule, to be paid by Concessionaire to County with the next month's Concession Fee.

- 17.2 Security: Concessionaire shall be responsible for the security of any structures or equipment placed within the Concession Area. Concessionaire may install equipment, approved by the County, which will assist in protecting from theft, burglary, or vandalism. Any such equipment must be purchased, installed, and maintained by Concessionaire.

## 18. MAINTENANCE.

- 18.1 By entry hereunder, Concessionaire accepts the Premises as being in good and sanitary order, condition, and repair.
- 18.2 County Obligations: County shall, at County's own expense, keep and maintain in good repair and working order and promptly make repairs to and perform maintenance upon and replace as needed: (i) the structural elements of the Building, including without limitation, all permanent exterior and interior walls, floors and ceilings, roof, concealed plumbing, stairways, concealed electrical systems and telephone intra-building network cable (ii) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building (iii) the Common Areas; (iv) exterior windows of the Building; and (v) elevators serving the Building. County, at its sole cost and expense, shall also perform all maintenance and repairs to the Premises, and shall keep the Premises in good condition and repair, reasonable wear and tear excepted.
- 18.3 County to provide HVAC: County shall supply cooling, ventilating and heating with capacity to produce the following results effective during Normal Working Hours established by the Agreement and within tolerances normal in comparable office buildings. If energy requirements prohibit County from complying with these requirements, Concessionaire shall not unreasonably withhold its consent to temporary waivers or modifications.
- 18.4 Maintenance of Concession Area: Concessionaire shall be responsible for all necessary janitorial duties and maintenance repairs within the Concession Area to the satisfaction of the County, regardless of the cause including, without limitation, normal wear and tear and vandalism.
- 18.5 Maintenance Duties: Concessionaire's maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be

required to properly maintain the Concession Area in a safe, clean, operable, and attractive condition. Concessionaire shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the County to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of any structures, such as light fixtures, toilets, and faucets.

18.6 Correction of Conditions Leading to Damage:

18.6.1 Excluding normal wear and tear, and, excluding heating and cooling equipment, Concessionaire shall, at Concessionaire's sole expense, be responsible for the cost of repairing any area damaged by Concessionaire or Concessionaire's agents, employees, invitees and visitors and the repair of low voltage electronic, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Concessionaire. All repairs and replacements shall: (a) be made and performed by contractors or mechanics approved by Concessionaire, which consent shall not be unreasonably withheld or delayed, (b) be at least equal in quality, value and utility to the original work or installation, (c) be in accordance with all laws.

18.6.2 If Concessionaire fails, after written notice, to correct conditions that have led or, in the opinion of County, could lead to significant damage to County property, the County may at its option, and in addition to all other remedies available to it, repair, replace, rebuild, redecorate or paint any such Concession Area included in said notice, with the cost thereof, plus actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule, to be paid by Concessionaire to County as part of the next month's Concession Fee.

18.7 Pest Control: Concessionaire shall be responsible for pest control in and around the Concession Area, including, but not limited to, abatement of insects (including roaches, bees, spiders, termites etc.), rodents, vermin, and other nuisance pests, if the pests are found in or on the Concession Area or structures or areas used by Concessionaire.

18.8 Waiver of California Civil Code Section 1942: To the extent applicable to this Agreement and that any remedies specified in this Agreement conflict or are inconsistent with any provisions of California Civil Code section 1942 *et seq.*, or any successor statute thereto ("CC §1942"), the provisions of this Agreement shall control. Concessionaire specifically waives any right it may have pursuant to CC § 1942 to effect maintenance or repairs to the Concession Area which do not render the concession area untenable and to abate the costs thereof from Concession Fees due to the County under this Agreement to the fullest extent of the law.

18.9 Mechanics' Liens: Concessionaire shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Concession Area, and for all materials furnished for or in connection with any such work. If any lien is filed against the Concession Area, Concessionaire shall cause the lien to be discharged of record within ten (10) days after it

is filed. Concessionaire shall indemnify, defend, and hold County harmless from all liability, loss, damage, costs, attorneys' fees, and all other expenses because claims of lien of laborers or material-men or others for work performed or materials or supplies furnished for Concessionaire or persons claiming under Concessionaire.

- 18.10 Property Damage and Theft Reporting: if any portion of the Concession Area or County-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, or in the event of theft, burglary, or other crime committed on the Concession Area. Concessionaire shall complete and submit to the County a report for this purpose, which shall be provided by the County.

## 19. DAMAGE OR DESTRUCTION TO CONCESSION AREA.

- 19.1 Partial Damage: If all or a portion of the Concession Area, or any permanent improvements made thereon, are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by County at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of Concessionaire, its agents, officers, or employees, Concessionaire shall be responsible for the cost and expense incurred in making such repairs, plus actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule.
- 19.2 Extensive Damage: If the damages as described above in "Partial Damage" are so extensive as to render the Concession Area, or any permanent improvements made thereon, or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed sixty (60) days, the same shall be repaired with due diligence by County at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the Concession Area, or any improvements made thereon, are fully restored and certified by County as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of Concessionaire, its agents, officers, or employees, said fees and charges will not abate and Concessionaire shall be responsible for the cost and expenses incurred in making such repairs, plus actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule.
- 19.3 Complete Destruction: In the event all or a substantial portion of the Concession Area, or any permanent improvements made thereon, are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than sixty (60) days, County shall be under no obligation to repair, replace or reconstruct said Concession Area, or any permanent improvements made thereon, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Concession Area are fully restored. If within four (4) months

after the time of such damage or destruction of the Concession Area, or any permanent improvements made thereon, have not been repaired or reconstructed, Concessionaire may terminate this Agreement in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said Concession Area, or any permanent improvements made thereon, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of Concessionaire, its agents, officers, or employees, said fees and charges shall not abate and County may, in its discretion, require Concessionaire to repair and reconstruct the same within twelve (12) months of such destruction and Concessionaire shall be responsible for the cost and expenses incurred in making such repairs, plus actual cost for administrative overhead and staff time as determined by Office of Management and Budget Circular A-87 or other applicable County adopted fee schedule. Concessionaire shall timely pay the Concession Fee as determined above during the reconstruction.

- 19.4 Limits of County's Obligation to Repair or Reconstruct: In the application of the foregoing provisions, County may, but shall not be obligated to, repair or reconstruct the Concession Area, or any improvements made thereon. If County chooses to do so, County's obligation shall also be limited to repair or reconstruction of the Concession Area, or any improvements made thereon, to the same extent and of equal quality as present at the commencement of the Concessionaire's operations hereunder. Redecoration and replacement of furniture, equipment and supplies shall be the responsibility of Concessionaire and any such redecoration and refurnishing/re-equipping shall be equivalent in quality to that originally installed.

## **20. INTERFERENCE DUE TO CONSTRUCTION.**

- 20.1 In the event County constructs or causes to be constructed improvements within the Concession Area, or if construction within the Premises requires a partial or total closure of the Premises, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the County determines the construction substantially interferes with the authorized operations, provided a request for abatement of this Agreement is presented to the County within thirty (30) days of commencement of construction.
- 20.2 Concessionaire agrees to cooperate with County during any construction, including, but not limited to, vacating, and removing all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction. Concessionaire further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.
- 20.3 Concessionaire agrees to accept the remedy provided in this section in the event of construction upon the Concession Area and/or the Premises, and hereby waives any and all

other rights and remedies for relief, damages, or compensation that are presently available or may be made available hereafter under the law.

## 21. HAZARDOUS MATERIALS.

- 21.1 Hazardous Materials Laws-Definition: As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the soil and ground water conditions or other similar substances or conditions.
- 21.2 Hazardous Materials – Definition: As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance, or other matter that:
- 21.2.1 Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious, or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
  - 21.2.2 Is controlled, referred to, designated in, or governed by any Hazardous Materials Laws;
  - 21.2.3 Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws;
  - 21.2.4 Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Concessionaire with respect to any third person under any Hazardous Materials Law.
- 21.3 Concessionaire's Representations and Warranties: Concessionaire represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Concessionaire shall comply with the following provisions unless otherwise specifically approved in writing by the County:
- 21.3.1 Concessionaire shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Concession Area by Concessionaire, its agents, employees, assigns, contractors or invitees, except as otherwise allowed by Concessionaire's permitted use of the Concession Area and with written authorization from County and any other appropriate permitting authority.
  - 21.3.2 Any handling, transportation, storage, treatment, or usage by Concessionaire of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.

- 21.3.3 Any leaks, spills, release, discharge, emission, or disposal of Hazardous Materials which may occur within the Concession Area following the Commencement Date shall be promptly and thoroughly cleaned and removed by Concessionaire at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.
- 21.3.4 No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Concessionaire within the Premises.
- 21.3.5 No underground improvements, including but not limited to treatment or storage tanks, or water, gas, or oil wells, shall be located by Concessionaire within the Premises without County's prior written consent.
- 21.3.6 Concessionaire shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of County.
- 21.3.7 Concessionaire shall not place, maintain, or distribute asbestos materials on site.
- 21.3.8 Concessionaire shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Concessionaire to the United States Environmental Protection Agency, the United Occupational Safety, and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.
- 21.3.9 Concessionaire shall promptly notify County of any liens threatened or attached against the Concession Area pursuant to any Hazardous Materials' Law. If such a lien is filed, then within twenty (20) days following such filing or before any governmental authority commences proceedings to sell the Concession Area pursuant to the lien, whichever occurs first, Concessionaire shall either: (a) pay the claim and remove the lien from the Concession Area; or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Agreement, Concessionaire shall surrender the Concession Area to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Concession Area.
- 21.4 Hazardous Materials Indemnification by Concessionaire: Concessionaire (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by County), reimburse and hold County and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown,

contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Concession Area. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Concession Area, and the release or discharge of Hazardous Materials by Concessionaire during the course of Concessionaire's alteration or improvement of the Concession Area.

21.5 Remedies Cumulative: The provisions of this section shall be in addition to all common law obligations and liabilities Concessionaire may have to County, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Agreement and/or any transfer of all or any portion of the Concession Area, or of any interest in this Agreement, and shall be governed by the laws of the State of California.

21.6 Asbestos Notification: In September, 1989, the Governor of California signed AB-1564, an Asbestos Notification law, codified in Section 25915 et seq. of the Health and Safety Code. Health and Safety Code Section 25915(a) states:

"Notwithstanding any other provisions of the law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos- containing construction materials, shall provide notice to all employees of that owner working within the building."

21.6.1 Should the County know or become aware of any asbestos-containing material, County will notify Concessionaire within ten (10) days.

21.6.2 If Concessionaire suspects or has reason to believe that the Concession Area contains asbestos-containing material, County shall within ten (10) days of Concessionaire's request supply Concessionaire with an Asbestos Survey Report performed by a qualified hazardous material specialist. If County fails to have the testing done, Concessionaire may have the required testing done and all related cost may be deducted from the Concession Fee. If abatement is necessary, County shall provide the Concessionaire an Asbestos Abatement Plan within thirty (30) days.

## 22. DEFENSE AND INDEMNIFICATION.

22.1 Sole Indemnity: Concessionaire agrees to indemnify, defend, and save harmless COUNTY and its officers, agents, and employees from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to Concessionaire's use, services or performance of this Agreement, including but not limited to, claims for property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and

any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees); and including, but not limited to, any and all losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Concessionaire's use, services or performance of this Agreement, unless such claims, liabilities, or losses determined to be solely caused by the gross negligence or willful misconduct of the County. " Concessionaire's use" includes Concessionaire's professional errors or omissions, negligent actions, or inactions; and the professional errors or omissions, negligent actions or inactions of its officers, employees, agents, occupants, guests, and business invitees.

22.2 Savings Clause: If any term, provision, or application Concessionaire's indemnification to County is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of Concessionaire's indemnification to County and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions, or application of Concessionaire's indemnification to County and California law, the broadest indemnity protection for the County under this Agreement that is permitted by law shall be provided by Concessionaire.

22.3 Concessionaire's obligation to defend, indemnify and hold County and its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Concessionaire to procure and maintain a policy of insurance.

## 23. INSURANCE CONDITIONS.

23.1 Without limiting Concessionaire's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Concessionaire shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Agreement (Required Insurance.) These minimum insurance coverage terms, types, and limits also are in addition to and separate from any other contractual obligation imposed upon Concessionaire pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Concessionaire for liabilities which may arise from or relate to this Agreement.

23.2 County Review and Approval of Insurance Requirements: The County reserves the right to review and adjust the Required Insurance provisions upon County's determination of changes in risk exposures. The County may increase or decrease the amounts of insurance coverage required herein by giving thirty (30) days prior written notice to Concessionaire.

23.3 Evidence of Coverage and Notice to County.

23.3.1 Prior to commencing services under this Agreement, Concessionaire shall deliver to the County a Certificate(s) of insurance coverage (Certificate) satisfactory to County, and copies of endorsements.

- 23.3.2 Renewal Certificates shall be provided to County not less than ten (10) days prior to Concessionaire's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Concessionaire and/or subcontractor insurance policies at any time.
- 23.3.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Concessionaire identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding Fifty Thousand Dollars (\$50,000).
- 23.3.4 Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Concessionaire, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions. Certificates and copies of any required endorsements shall be sent to:

County of Monterey  
Attn: Contracts/Purchasing Officer  
1488 Schilling Place Salinas, CA 93901

- 23.3.5 Concessionaire shall promptly report to County any injury or property damage accident or incident, including any injury to concessionaire employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Concessionaire. Concessionaire also shall promptly notify County of any third-party claim or suit filed against Concessionaire or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Concessionaire and/or County.
- 23.4 Additional Insured Status and Scope of Coverage: The County of Monterey, elected officials, officers, agents, employees, and volunteers (collectively County and its Agents) shall be provided additional insured status under Concessionaire's General Liability policy with respect to liability arising out of Concessionaire's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Concessionaire's acts or omissions, whether such liability is attributable to the Concessionaire or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

- 23.5 Failure to Maintain Insurance: Concessionaire's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of this Agreement, upon which County immediately may suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Concessionaire resulting from said breach.
- 23.6 Insurer Financial Ratings: Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A- VII unless otherwise approved by County.
- 23.7 Concessionaire's Insurance Shall Be Primary: Concessionaire's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Concessionaire. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Concessionaire coverage.
- 23.8 Waivers of Subrogation: To the fullest extent permitted by law, the Concessionaire hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Concessionaire shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.
- 23.9 Subcontractor Insurance Coverage Requirements: Concessionaire shall include all subcontractors as insureds under Concessionaire's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Concessionaire shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Concessionaire as additional insureds on the subcontractor's General Liability policy. Concessionaire shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.
- 23.10 Deductibles and Self-Insured Retentions (SIRs): Concessionaire's policies shall not obligate the County to pay any portion of any Concessionaire deductible or SIR. The County retains the right to require Concessionaire to reduce or eliminate policy deductibles and SIRs with respect to the County, or to provide a bond guaranteeing Concessionaire's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- 23.11 Claims Made Coverage: If any part of the Required Insurance is written on a "claims made" basis, any policy retroactive date shall precede the effective date of this Agreement. Concessionaire agrees to maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination, or cancellation.
- 23.12 Application of Excess Liability Coverage: Concessionaire may use a combination of primary and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

- 23.13 Separation of Insureds: All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.
- 23.14 Alternative Risk Financing Programs: The County reserves the right to review, and then approve, Concessionaire use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements, and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

#### 24. INSURANCE COVERAGE REQUIREMENTS.

- 24.1 **Commercial General Liability (occurrence coverage)**: Concessionaire shall maintain comprehensive commercial general liability coverage with liability limits of not less than Two Million Dollars (\$2,000,000) for injury or death to one or more persons and property damage limits of not less than One Million Dollars (\$1,000,000) per occurrence insuring against all liability of Concessionaire and its authorized representatives arising out of and in connection with Concessionaire's use or occupancy of the Concession Area. County, during the terms hereof, shall indemnify and save harmless the Concessionaire from and against all claims and demands whether for injuries to persons or loss of life, or damage to property, arising out of acts or omissions of the County.

**With an Additional Insured Endorsement noted below:**

**Additional Insured Endorsement**: shall name County and its officers, agents, and employees as Additional Insureds with respect to services being provided, including ongoing and completed operations. Additional insured endorsement shall be equivalent to ISO form CG 2010 11 85.

- 24.2 **Professional Liability**: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, Concessionaire shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.
- 24.3 **Business Automobile Liability Insurance**: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than One Million Dollars (\$1,000,000) per occurrence. Insurance shall cover liability arising out of Concessionaire's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

- 24.4 **Workers' Compensation:** if Concessionaire employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than One Million Dollars (\$1,000,000) each person, One Million Dollars (\$1,000,000) each accident and One Million Dollars (\$1,000,000) each disease. If Concessionaire will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WCOO 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Concessionaire's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workers' compensation law or any federal occupational disease law.
- 24.5 **Directors and Officers Liability:** Minimum Limit One Million Dollars (\$1,000,000)
- 24.6 Fire Legal Liability limit of One Million Dollars (\$1,000,000) for damage to premises rented to Concessionaire.
- 24.7 Water Legal Liability limit of One Million Dollars (\$1,000,000) for damage to premises rented to Concessionaire.
- 24.8 **Liquor Liability:** If Concessionaire sells or dispenses alcoholic beverages, standard liquor liability insurance with an umbrella policy of not less than Five Million Dollars (\$5,000,000) per occurrence.
- 24.9 **Sexual Misconduct:** Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate, and claims for negligent employment, investigation, supervision, training, or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature.
- 24.10 **Property Coverage:** Concessionaire shall carry property coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP10 30) form. The County and its Agents shall be named as an Additional Insured and Loss Payee on Concessionaire's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.
- 24.11 **Periods of Construction:** During the period(s) of any new construction as required or authorized herein, and in addition to the aforementioned insurance coverage, at the discretion of the County, the Concessionaire shall provide the following forms and amounts of insurance:
- 24.11.1 **Builder's All-Risk Insurance,** including flood coverage, covering the entire work, against loss or damage until completion and acceptance by the County. Insurance shall be in an amount for the replacement value of the improvements and

endorsed for broad form property damage, breach of warranty, explosion, collapse, and underground hazards. Deductibles shall not exceed five percent (5%) of the construction costs.

**24.12 Other Insurance Requirements:**

- 24.12.1 All insurance required for this Agreement shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of five (5) years following the expiration or early termination of this Agreement.
- 24.12.2 Each liability policy shall provide that County shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Concessionaire and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 24.12.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Concessionaire's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Concessionaire's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 24.12.4 Prior to the execution of this Agreement by County, Concessionaire shall file certificates of insurance with County, showing that Concessionaire has in effect the insurance required for this Agreement. Concessionaire shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.
- 24.12.5 Concessionaire shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County. If the certificate

is not received by the expiration date, County shall notify Concessionaire and Concessionaire shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Concessionaire to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

24.12.6 County agrees that it will keep insured against loss or damage by fire, to at least eighty percent (80%) of the full fair insurable value thereof, the building on the demised Premises or of which the demised Premises are a part.

24.12.7 County shall not be liable to Concessionaire, or to anyone whatsoever for any damages caused by plumbing, gas, water, steam, sprinkler or other pipe and sewage system, or by the bursting, running or leaking of any tank, washstand, closet, or waste or other pipe, in and about the Concession Area or the building of which they are a part, or for any damage caused by water being upon or coming in through the roof, skylight, vent, trap door or otherwise; provided that County shall not be relieved from any of its obligations for maintenance and repair as otherwise set forth in this Agreement.

## **25. PROHIBITED ACTS.**

25.1 Concessionaire shall not:

25.1.1 Do or allow to be done anything which may interfere with free access and passage in the Concession Area or the public areas adjacent thereto, or in the streets or sidewalks adjoining the Concession Area, or hinder police, fire fighting or other emergency personnel in the discharge of their duties; and

25.1.2 Interfere with the public's enjoyment and use of the Premises or use the Concession Area for any purpose which is not essential to the Concession operations; and

25.1.3 Rent, sell, Agreement or offer any space for storing of any articles whatsoever within or on the Concession Area other than specified herein, without the prior written approval of the County; and

25.1.4 Place any additional lock of any kind upon any window or interior or exterior door in the Concession Area, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Concession Area, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to County any and all keys to the interior or exterior doors on the Concession Area, whether said keys were furnished to or otherwise procured by Concessionaire, and in the event of the loss of any keys furnished by the County, Concessionaire shall pay County, on demand, the cost for replacement thereof; and

25.1.5 Do or permit to be done any act or thing upon the Concession Area which will invalidate, suspend or increase the rate of any insurance policy required under this Agreement, or carried by County, covering the Concession Area, or the buildings in which the same are located or which, in the opinion of the County, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement, provided, however, that nothing contained herein shall preclude Concessionaire from bringing, keeping or using on or about the Concession Area such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary; and

25.1.6 Engage in or allow any other use not explicitly authorized by Exhibit C.

## **26. REGULATIONS. INSPECTION. AND DIRECTIVES.**

26.1 Laws: The operations conducted by Concessionaire pursuant to this Agreement shall be subject to: Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by County with respect to the operation of the Concession; Any and all orders, directions or conditions issued, given, or imposed by County with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the Concession Area; Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including of any governmental authority, federal, state or municipal, lawfully exercising authority over the Concessionaire's operations; and, Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.

26.2 Permissions: Any permission required by this Agreement shall be secured in writing by Concessionaire from the appropriate permitting authority for the County or if no such appropriate authority exists, then by the County Administrative Officer and/or his or her designee, and any errors or omissions made by county in issuing such permission shall not relieve Concessionaire of its obligations to faithfully perform the conditions set forth in this Agreement. Concessionaire shall immediately comply with any written request or order submitted to it by County.

26.3 Right of Entry Inspection and Correction: County, their authorized representatives, agents, and employees shall have the right to enter upon and inspect, including but not limited to the right to the taking of samples, the Concession Area at all reasonable times for, evaluation, and observation of Concessionaire's operation. During these inspections, County shall have the right to photograph, film, or otherwise record conditions and events taking place upon the Concession Area. The inspections may be made by persons identified to Concessionaire as County employees, or may be made by independent contractors engaged by County. Inspections may be made for any lawful purpose for which the County or another governmental entity with jurisdiction is authorized to

perform inspections of the Concession Area for any purpose. During such entry County may additionally perform any correctional work which County in its sole discretion deems necessary for public safety, building maintenance/remodel/expansion/improvement, or protection or renovation of any County-constructed or owned facilities on or off of the Concession Area, or that County is otherwise required to perform hereunder. County may also immediately and take such action as County in its sole judgment deems appropriate to remediate any actual or threatened contamination or risk to public health caused by Concessionaire's failure to comply with any health or safety regulation or terms of this Lease. Nothing herein shall imply any duty on the part of County to do any such work which, under any provision of this Agreement, Concessionaire may be required to do, nor shall County's performance of any repairs on behalf of Concessionaire constitute a waiver of Concessionaire's default in failing to do the same. If County exercises any of its rights under this section, Concessionaire shall not be entitled to any compensation, damages, or abatement of fees from County for any injury or inconvenience occasioned thereby.

- 26.4 Control of Premises: County shall have absolute and full access to the Concession Area and all its appurtenances during the Term of this Agreement and may make such changes and alterations therein, and in the grounds surrounding same, as may be determined by the County. Such determination shall not be unreasonable and shall consider the business considerations presented by Concessionaire.
- 26.5 Disability Laws and Regulations: Concessionaire shall ensure that the Concession Area and all Concessionaire activities and all seating, signs, banners, and structures and installations within the Concession Area are accessible to qualified individuals with a disability. The Concessionaire shall comply with all Disability Laws and Regulations including without limitation, the Americans with Disabilities Act (ADA) (42 U.S.C. section 12101 et seq.), the California Unruh Civil Rights Act (California Civil Code section 51,) California Civil Codes sections 54 through 55.2, Title 24 of the California Code of Regulations (California Physical Access Laws), California Government Code sections 11135-11139.8, (Accessibility to Government Programs,) The Fair Employment and Housing Act (California Government Code Section 12900-12951 & 12927-12928 & 12955 - 12956.1 & 12960-12976, ). Compliance shall include, but is not limited to, the removal of all structural barriers, maintaining the accessibility of services and goods, and the modification of policies, practices and procedures and its auxiliary aids and services. The County will not be responsible for any costs or expenses related to the Concessionaire's compliance with the Disability Laws or Regulations. The Concessionaire will defend, indemnify, and hold the County harmless from and against all claims, suits or causes of action and expenses (including attorney's fees) which arise out of any act or omission by the Concessionaire, its agents, employees, guests, clients, customers, patrons, or invitees that violates or is alleged to violate any or all the Disability Laws and Regulations.

26.6 County's Statement Regarding Disability Access & Certified Access Specialist Inspection (CASp) Report:

- 26.6.1 Pursuant to California Civil Code Section 1938 (a), County represents that the Premises [ ] has [X] has not undergone inspection by a Certified Access Specialist (CASp).
- 26.6.2 Pursuant to California Civil Code Section 1938 (b), if the Premises has undergone inspection by a CASp, and to the best of County's knowledge, there have been no modifications or alterations completed or commenced between the date of the inspection and the date of execution of the Agreement which have impacted the Premises' compliance with construction related accessibility standards, County shall provide, prior to execution of the Agreement, a copy of any report prepared by the CASp with an agreement from Concessionaire that information in the report shall remain confidential, except as necessary for the Concessionaire to complete repairs and corrections of violations of construction related accessibility standards that the Concessionaire agrees to make.
- 26.6.3 Pursuant to California Civil Code Section 1938 (c), making any repairs or modifications necessary to correct violations of construction related accessibility standards that are noted in a CASp report is presumed to be the responsibility of the County, unless otherwise mutually agreed upon by County and Concessionaire. Concessionaire shall have the opportunity to review any CASp report prior to execution of the Agreement. If the report is not provided to the Concessionaire at least forty-eight (48) hours prior to execution of the Agreement, Concessionaire shall have the right to rescind the Agreement, based upon the information contained in the report, for seventy-two (72) hours after execution of the Agreement.
- 26.6.4 Pursuant to California Civil Code Section 1938 (d), if the Premises have been issued an inspection report by a CASp, as described in paragraph (1) of subdivision (a) of Section 55.53, indicating that it meets applicable standards, as defined in paragraph (4) of subdivision (a) of Section 55.52, County shall provide a copy of the current disability access inspection certificate and any inspection report to Concessionaire not already provided pursuant to subdivision (b) within seven (7) days of the date of the execution of the Agreement.
- 26.6.5 Pursuant to California Civil Code Section 1938 (e), if the Premises have not been issued a disability access inspection certificate, as described in subdivision (e) of Section 55.53, County shall state the following on the Agreement:
- 26.6.5.1 A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the

lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the subject premises.

## **27. TERMINATION BY COUNTY:**

- 27.1 Termination for Convenience: In addition to all other remedies authorized by law, County may terminate this Agreement with or without cause and for convenience with respect to all or part of the Concession Area upon thirty (30) days prior written notice to Concessionaire.
- 27.2 County's Right of Reentry: County shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the Concession Area and every part thereof on the effective date of termination without further notice of any kind, remove all persons and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under this Agreement.
- 27.3 Additional Rights of County: County, upon termination of this Agreement, or upon reentry, regaining, or resumption of possession of the Concession Area, may occupy said Concession Area and shall have the right to permit any person, firm or corporation to enter upon the Concession Area and use the same. Such occupancy by others may be of only a part of the Concession Area, or the whole thereof or a part thereof together with other space, and for a period the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in this Agreement.
- 27.4 Survival of Concessionaire's Obligations: In the event County terminates this Agreement, or in the event County reenters, regains, or resumes possession of the Concession Area, all the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement. Subject to County's obligation to mitigate damages, the total amount of the minimum Concession Fee shall become due and payable to County to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place. County may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency. The amount of damages for the period after termination, reentry, regaining or resumption of possession, subject to an offset for any Concession Fee payment received by County from a succeeding Concessionaire, shall be the amount of the minimum Concession Fee otherwise due until the end of the term of this Agreement. The damages specified above shall not affect or be construed to affect

County's right to such damages in the event of termination, reentry, regaining or resumption of possession where Concessionaire has not received any actual gross receipts under this Agreement.

## **28. TERMINATION BY CONCESSIONAIRE.**

28.1 Concessionaire may terminate This Agreement, upon thirty (30) days prior written notice to the County, conditioned upon the happening of one or more of the following events:

28.1.1 The permanent abandonment by the County of the Premises or the permanent removal of all County services from the Premises;

28.1.2 The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Premises or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon;

28.1.3 The complete destruction of all or a substantial portion of the Concession Area from a cause other than the negligence or omission to act of Concessionaire, its agents, officers, or employees, and the failure of County to repair or reconstruct said Concession Area;

28.1.4 Any exercise of authority under this Agreement which so interferes with Concessionaire's use and enjoyment of the Concession Area as to constitute a termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the State of California; or

28.1.5. The default by County in the performance of any covenant or agreement herein required to be performed by County and the failure of County to remedy such default for a period of thirty (30) days after receipt from Concessionaire of written notice to do so.

## **29. SURRENDER OF POSSESSION.**

29.1 Concessionaire agrees to yield and deliver possession of the Concession Area to County on the date of the expiration or earlier termination of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or County, normal use and wear and tear thereof excepted.

29.2 No agreement of surrender or agreement to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of County and Concessionaire. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of County shall be deemed an acceptance of a surrender of the Concession Area utilized by Concessionaire under this Agreement.

29.3 Concessionaire shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures, and personal property from the Concession Area within

thirty (30) days of the expiration or earlier termination of this Agreement pursuant to the terms stated in section 4.5 hereof.

### 30. GENERAL PROVISIONS.

30.1 Permits and Licenses. Concessionaire shall obtain and maintain at its sole expense all approvals, permits, or licenses that may be required about the operation of the Concession including, but not limited to, tax permits, business licenses, health permits, building permits, police, and fire permits, etc. During the entire term of this Agreement, the Concessionaire must hold a current Monterey County business license.

Concessionaire shall comply with all applicable health, safety and sanitary laws, regulations and inspections concerning the same. Concessionaire shall keep such licenses and permits displayed in the Concession Area, as required by law. Concessionaire shall allow duly authorized representatives of governmental entities access to the Concession Area for inspection purposes.

#### 30.2 Compliance with Laws and Regulations:

30.2.1 Concessionaire shall not use or allow the Concession Area to be used, in whole or in part, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments, or officers thereof, including County. These ordinances, rules, and regulations include those which relate to sanitation, public health, and safety. Concessionaire shall at its own expense obtain all licenses and permits necessary for the operation of the Concession Area.

30.2.2 Concessionaire shall, at its own expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Department of Environmental Resources in addition too Local, State or Federal Food Handling Guidelines in effect during the term of this Agreement regulating the use of the Concession Area by Concessionaire. Concessionaire shall pay all fines and penalties assessed by any local agency, district, or state agency arising from a violation of any statute, ordinance, rule, regulation, order, covenant, or restriction of record relating to the use of the Concession Area by Concessionaire, its employees, officers, agents, or contractors. Concessionaire's willful violation of any law or regulation shall constitute grounds for termination as set forth in Section 27 above.

30.3 Quiet Enjoyment: County agrees that Concessionaire, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the required terms, conditions, and covenants of this Agreement, shall lawfully and quietly hold, use, and enjoy the Concession Area during the term of this Agreement. In the case of disputes, during the life of this Agreement, over any conditions which may impede upon the

Concessionaire's quiet enjoyment of the Concession Area, the County shall have final determination of any solution to such dispute; the County's final determination shall be binding upon all parties in such dispute.

- 30.4 Responsibility for Payment of Taxes and Assessments: Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the rights of Concessionaire to use the Concession Area, or upon Concessionaire's improvements, fixtures, equipment, or other property thereon or upon Concessionaire's operations hereunder, or any other charges levied or made because of Concessionaire's possession or use of the Concession Area without contribution by County. In addition, by executing this Agreement and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. Concessionaire, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.
- 30.5 Brokers: Concessionaire warrants that it has had no dealings with any real estate broker or agent about the negotiation and/or execution of this Agreement. In the event any broker other than the brokers acknowledged in writing by County make claim for monies owed, Concessionaire shall indemnify, defend, and hold County harmless.
- 30.6 Captions: The captions, headings and index appearing in this Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.
- 30.7 County Approval: Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean written approval of County by the appropriate permitting authority for the County or if no such appropriate authority exists, then by the County Administrative Officer and/or his or her designee.
- 30.8 Cumulative Remedies: In the event of a default under this Agreement, each party's remedies shall be limited to those remedies set forth in this Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Agreement to which the non-defaulting party may be entitled.
- 30.9 Notices: All notices required or permitted by this Agreement or by any law now in effect, or later enacted, to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail addressed as follows:

To County:                    County of Monterey  
  Attn: Contracts/Purchasing Officer  
  1488 Schilling Place  
  Salinas, CA 93901

To Concessionaire: PFD Management Inc.  
Attn: Erik Pak, CEO  
8 Mariposa Irvine CA 92604

Any Notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is given by certified mail to the addresses above. Correspondence other than regular mail may give notices, facsimile or email. Any correspondence sent by facsimile or email shall also be sent by United States mail. By written notice to the other, either party may change its own correspondence information.

- 30.10 Entire Agreement: This Agreement, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, and representations, oral or written, are superseded. This Agreement supersedes all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 30.11 Number of Originals: The number of original texts of this Agreement shall be equal to the number of parties hereto, one text being retained by each party.
- 30.12 Duplicate Counterparts: This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.
- 30.13 Exhibits: All exhibits referred to herein are attached hereto and incorporated by reference.
- 30.14 Force Majeure: In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Concessionaire, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Concessionaire's negligent operation or maintenance of the Concession Area ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

To Concessionaire: PFD Management Inc.  
Attn: Erik Pak, CEO  
8 Mariposa Irvine CA 92604

Any Notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is given by certified mail to the addresses above. Correspondence other than regular mail may give notices, facsimile or email. Any correspondence sent by facsimile or email shall also be sent by United States mail. By written notice to the other, either party may change its own correspondence information.

- 30.10 Entire Agreement: This Agreement, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, and representations, oral or written, are superseded. This Agreement supersedes all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.
- 30.11 Number of Originals: The number of original texts of this Agreement shall be equal to the number of parties hereto, one text being retained by each party.
- 30.12 Duplicate Counterparts: This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.
- 30.13 Exhibits: All exhibits referred to herein are attached hereto and incorporated by reference.
- 30.14 Force Majeure: In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Concessionaire, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Concessionaire's negligent operation or maintenance of the Concession Area ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

- 30.15 Governing Law: This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California.
- 30.16 Interpretation: The language of this Agreement shall be construed simply per its plain meaning and shall not be construed for or against either party.
- 30.17 Survival: The following provisions of this Agreement shall survive the termination or expiration of this Agreement:
- 30.17.1 Section 12.2, "Business Records"; and
  - 30.17.2 Section 22, "DEFENSE AND INDEMNIFICATION"; and
  - 30.17.3 Section 23, "INSURANCE CONDITIONS"; and
  - 30.17.4 Section 24, "INSURANCE COVERAGE REQUIREMENTS"; and
  - 30.17.5 Section 27.5, "Survival of Concessionaire's Obligations"; and
  - 30.17.6 Any payments activity that occurs after termination or expiration.
- 30.18 Severability: if any provision of this Agreement, is determined by a court of competent authority to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable fully permitted by law.
- 30.19 Joint and Several Liability: If more than one person or entity executes this Agreement as Concessionaire, each of them is jointly and severally liable for all the obligations of Concessionaire hereunder.
- 30.20 Liquidated Damages: Any payments by Concessionaire to County under this Agreement described as liquidated damages represent the parties' reasonable estimate of County's actual damages under the described circumstances, such actual damages being uncertain and difficult to ascertain considering the impossibility of foreseeing the state of the leasing market and amount of gross revenue Concessionaire will generate at the time of the various deadlines set forth herein. County may, at its election, take any of the liquidated damages assessed in any portion of this Agreement as direct monetary payments from Concessionaire and/or as an increase of rent due from Concessionaire under this Agreement.
- 30.21 Modification: The provisions of this Agreement may not be modified, except by a written instrument signed by both parties.
- 30.22 Successors & Assigns: This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.
- 30.23 Time of Essence: Time is of the essence of each provision of this Agreement.
- 30.24 Waiver of Condition: No provision of this Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition of any subsequent breach thereof, or of any other term, covenant or

condition contained in this Agreement. County's subsequent acceptance of partial rent or performance by Concessionaire shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Concessionaire of any term, covenant, or condition of this Agreement or of any right of County to a forfeiture of this Agreement because of such breach, regardless of County's knowledge of such preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Agreement shall not be construed as in any manner changing or waiving the terms of this Agreement or as estopping County from enforcing in full the provisions hereof. No custom or practice which may arise between the parties hereto during administering this Agreement shall be construed to waive, estop or in any way lessen County's right to insist upon Concessionaire's full performance of, or compliance with, any term, covenant, or condition of this Agreement or to inhibit or prevent County's exercise of its rights with respect to any default, dereliction, or breach of this Agreement by Concessionaire.

- 30.25 Venue: Venue for any action arising under this agreement shall be Monterey County, California.
- 30.26 Non-Exclusive Use Areas: Concessionaire shall also have the non-exclusive right to use, loading and unloading areas, visitor parking areas, ramps, drives, platforms, public rest rooms, and common walkways and sidewalks necessary for access to the Premises.
- 30.27 Parking Areas: Parking lot adjacent to the Building Premises includes random parking spaces, outlined with white striping, and situated closest to the Premises, for use by Concessionaire's visitors and clients. Additional random parking spaces, which are outlined with yellow striping, are available for use by Concessionaire's employees.
- 30.28 Addendum: In the event of conflict between this Lease and any Addendum or Exhibit attached hereto, the provisions of such Addendum or Exhibit shall control.
- 30.29 Dispute Resolution: County shall discuss any concerns or complaints with Concessionaire's Facility Manager (the "Manager") immediately. If County's concern relates to the Manager or the concern cannot be resolved with the Manager, County shall immediately contact Concessionaire's Executive Officer at is Administrative Office. Any ongoing dispute between Concessionaire and County shall be arbitrated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers:

MONTEREY COUNTY

CONTRACTOR

\_\_\_\_\_  
Contracts/Purchasing Officer

By:   
\_\_\_\_\_  
Signature of Chief Executive Officer PFD  
Management Inc.

Dated: \_\_\_\_\_

Erik Pak, Chief Executive Officer  
\_\_\_\_\_  
Printed Name and Title

*Approved as to Fiscal Provisions:*

  
\_\_\_\_\_  
Deputy Auditor/Controller

Dated: 3/20/2017

Dated: 3/21/17

By:   
\_\_\_\_\_  
(Signature of Chief Financial Officer)

*Approved as to Liability Provisions:*

\_\_\_\_\_  
Risk Management

Erik Pak, Chief Financial Officer  
\_\_\_\_\_  
Printed Name and Title  
(Chief Financial Officer)

Dated: 3/20/2017

Dated: \_\_\_\_\_

*Approved as to Form & Legality:*

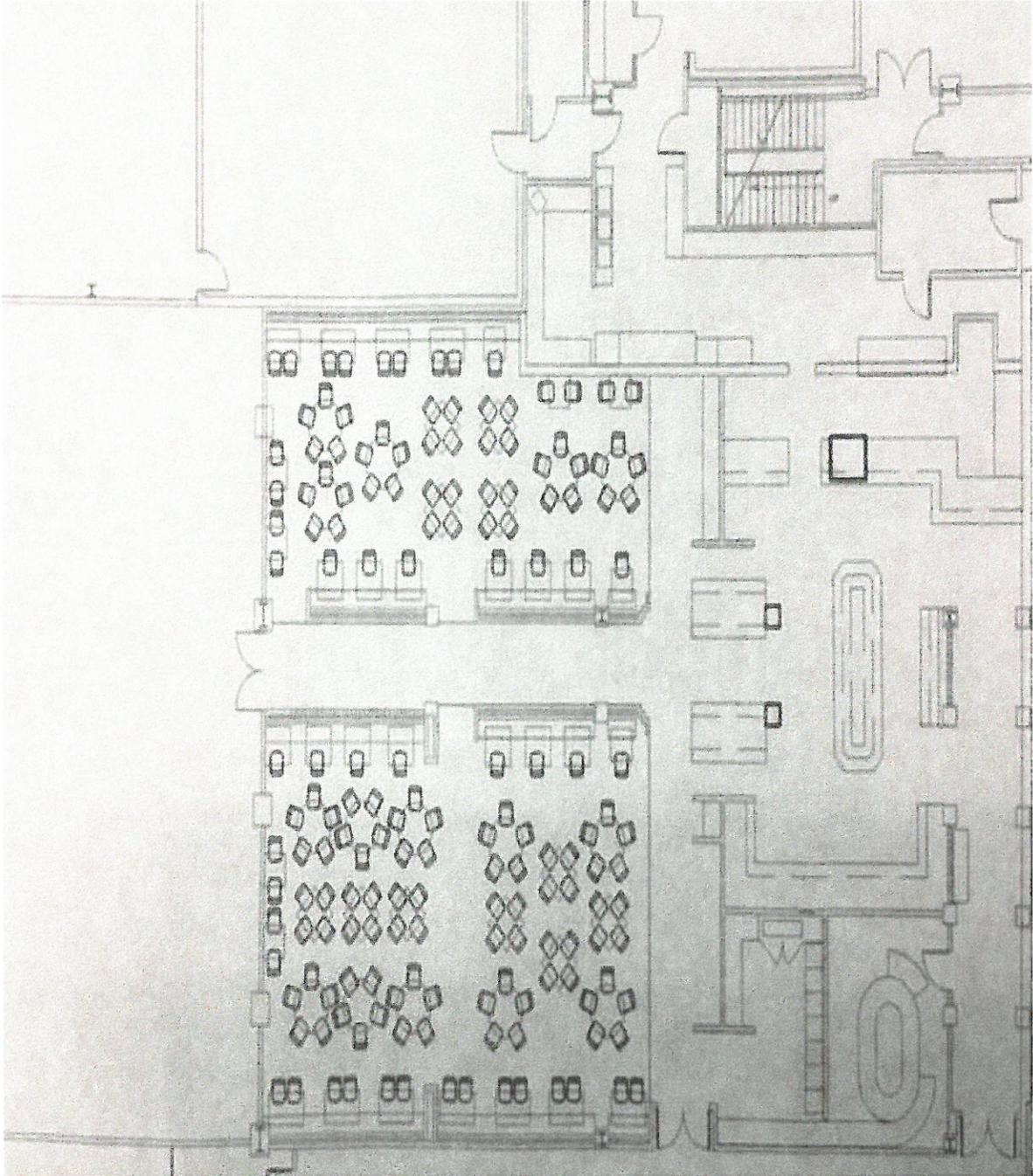
  
\_\_\_\_\_  
Deputy County Counsel

Dated: 3-21-17

County Board of Supervisors' Agreement Number: \_\_\_\_\_.

\*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 Agreement.

**EXHIBIT A**  
**DESCRIPTION OF CONCESSION AREA-Current Floor Plan**



**EXHIBIT B**  
**EVIDENCE OF SEISMIC ADEQUACY**

Will need to have this provided by George Salcido

**EXHIBIT C  
COMMERCIAL KITCHEN EQUIPMENT AND  
CAFÉ FURNISHINGS**

**1441 SCHILLING PL KITCHEN INVENTORY**

1-TRAULSEN two section pass-through hot food holding cabinet.



1-TRAUSEN two section reach in refrigerator.



1 IMPERIAL 4 burner and griddle.



1 UTILITY 2 drawer food warmer.



1 IMPERIAL 6 burner countertop char broiler gas broiler.



2 IMPERIAL fryer gas.



1 JADE RANGE countertop griddle gas.



1 BEVERAGEAIR 2 door refrigerated salad/sandwich prep table.



1 CONTINENTAL REFRIGERATOR 2 door front sandwich/salad.



1 WELLS 5 pan drop-in hot food well-infinite control.



1 PACIFIC COOLER walk-in Cooler



1 HOBART mixer



1 HOBART 2 position manual automatic food meets slicer.



1 CLEVELAND Power Pan open base tilt skillet.



1 IMPERIAL 6 Burner one convection oven.



1 MARKET FORGE pressure less steam cooker.



1 HOBART double stack oven.



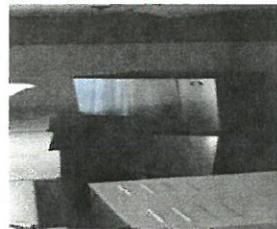
1 FOLLETT ice bin with lift-up door.



1 MANITOWOC ice cube machine head with air cooled.



1 MANITOWOC ice dispenser with water valve.



4 Restaurant Hood System with makeup-air.



1 HOBART pass thru dish machine.



1 Dish Carrousel



END OF EQUIPMENT LIST