

# Attachment A

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# Monterey County

Board of Supervisors  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

Legistar File Number: A 19-284

July 23, 2019

**Introduced:** 7/2/2019

**Version:** 1

**Current Status:** Agenda Ready

**Matter Type:** BoS Agreement

- a. Receive a report on the Management Agreement for the Resort and Recreation areas at Lake Nacimiento;
- b. Approve a Management Agreement with Urban Park Concessionaires dba Monterey Lakes Recreation Company to manage the resort and recreation areas at Lake Nacimiento from August 1, 2019 to December 31, 2026, under a fixed management fee and annual incentive fee based on adjusted net income and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute the Agreement;
- c. Approve a Lease Agreement for the use of County Vehicles/Vessels by Urban Park Concessionaires dba Monterey Lakes Recreation Company;
- d. Support the RMA recommendation that the Lakes Enterprise Fund reflect only expenditures and revenues directly associated with managing the resort and recreation areas at Lake Nacimiento; and
- e. Authorize the Resource Management Agency Director or RMA Deputy Director of Administrative Services to enter into negotiations with Urban Park Concessionaires dba Monterey Lakes Recreation Company for transition services at Lake San Antonio under the Management Agreement from August 1, 2019 through November 30, 2019, for a total amount not to exceed \$150,000.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a report on the Management Agreement for the Resort and Recreation areas at Lake Nacimiento;
- b. Approve a Management Agreement with Urban Park Concessionaires dba Monterey Lakes Recreation Company to manage the resort and recreation areas at Lake Nacimiento from August 1, 2019 to December 31, 2026, under a fixed management fee and annual incentive fee based on adjusted net income and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute the Agreement;
- c. Approve a Lease Agreement for the use of County Vehicles/Vessels by Urban Park Concessionaires dba Monterey Lakes Recreation Company;
- d. Support the RMA recommendation that the Lakes Enterprise Fund reflect only expenditures and revenues directly associated with managing the resort and recreation areas at Lake Nacimiento; and
- e. Authorize the Resource Management Agency Director or RMA Deputy Director of Administrative Services to enter into negotiations with Urban Park Concessionaires dba Monterey Lakes Recreation Company for transition services at Lake San Antonio under the Management Agreement from August 1, 2019 to November 30, 2019, for a total amount not to exceed \$150,000.

## SUMMARY

Since the Board of Supervisors approved the integration of the Parks Department into the Resource Management Agency (RMA) in December 2016, RMA has reviewed and updated Parks' administrative documents and contracts and brought them to the Board for consideration and approval.

On May 3, 2011, the Board of Supervisors approved a Management Agreement between Urban Park Concessionaires (UPC), dba Monterey Lakes Recreation Company (Basecamp), to manage the resort businesses at both Lake Nacimiento and Lake San Antonio (Lakes), effective May 11, 2011. The Board has taken several actions in the last eight years regarding the two Management Agreement(s) for resort operations at the Lakes. These actions have not significantly altered the original terms of the 2011 Agreement. **Attachment A** provides the History of the Lakes Management Agreement with Urban Parks Concessionaire, dba Monterey Lakes Recreation Company (Basecamp).

RMA recommends that the Board of Supervisors approve a new Management Agreement with Basecamp to operate and maintain the resort and recreation areas year-round at Lake Nacimiento.

## DISCUSSION:

In February 2018, RMA issued Request for Proposals (RFP) #10674 to solicit proposals from qualified organizations to provide facility management services for the area of operations under County control at Lake San Antonio-North Shore, Lake San Antonio-South Shore, and Lake Nacimiento reservoirs. The solicitation was designed to seek an exclusive service agreement for all Lake operations; the type or model of the Agreement was left to the proposers. The County received one response to the solicitation, from Urban Park Concessionaires dba Monterey Lakes Recreation Company (Basecamp).

Staff evaluated available options, including canceling the solicitation and issuing a new RFP in hopes of attracting additional proposers, as well as looked at operating the facility with County staff. Staff compared the pros and cons relating to seasonal staffing, flexibility in staffing levels, and differences in salaries and benefits between the County and Basecamp. Ultimately, staff issued a tentative award to begin contract negotiations with Basecamp to manage the resort and recreation areas at Lake Nacimiento and Lake San Antonio (LSA).

On January 15, 2019, the Board approved the removal of LSA from the Enterprise Fund when presented that it could not operate as a business-type activity and would be better suited to operate in a similar fashion to a regional County park under the General Fund. With LSA removed from the Lakes Enterprise Fund, negotiations between Basecamp and the County focused on developing a facilities management agreement for resort and recreational areas at Lake Nacimiento. **Attachment B**, Lakes Management Agreement Terms, Compensation, & Modifications provides the history of Board approved actions or changes to the existing Management Agreement as compared to the proposed Management Agreement.

RMA staff has now concluded negotiating new contract terms, compensation, and operating plans with Basecamp and recommends that the Board of Supervisors approve the newly negotiated facility

management agreement (Agreement) for the resort and recreational areas at Lake Nacimiento. The proposed Agreement includes a fixed management fee of \$300,000 annually, paid in monthly installments of \$25,000. The Fixed Management Fee shall be adjusted at the beginning of each fiscal year in accordance with the prior 12-month average (July through June) Consumer Price Index (CPI) adjustment for the San Francisco-Oakland-Hayward, CA area. In addition, the agreement includes an Annual Incentive Fee of ten percent (10%) applied against an Adjusted Net Income. The proposed Agreement includes standard terms relative to indemnification and auditing, consistent with those required by the other responsible County Departments, the Auditor-Controller and County Counsel-Risk Management, and the Lakes landowner, Monterey County Water Resources Agency (MCWRA), who leases the land to the County. Exhibit B of the proposed Agreement is the lease agreement for use of County vehicles by UPC that the Board is asked to approve in Recommendation c of this report. This Agreement also affords the ability to contract for services at LSA, as needed, at Basecamp's cost plus an agreed-upon fee/profit. **Attachment C**, compares the current agreement terms with what was requested in the RFP, including proposed terms by Basecamp and the final negotiated terms included in the new agreement.

If the Board approves the new Agreement for Lake Nacimiento, the effective date will be August 1, 2019. The County also assumes full operational control of LSA on August 1, 2019. Given that this transition will occur during the peak operating season, to ensure minimal disruption to park patrons, RMA requests that the Board authorize the RMA Director or RMA Deputy Director of Administrative Services to negotiate a transition plan with Basecamp for provision of personnel necessary to maintain existing service levels at LSA (entry gate, vessel inspections, camping, and housekeeping) for a not-to-exceed cost of \$150,000, for the period starting August 1, 2019 through November 30, 2019. The Reservoir Recreational Area Plan for LSA, based on the Board's direction regarding the desired service level offerings, will be completed by late November.

Lake Nacimiento will continue to be reported under of the Enterprise Fund 452, to account for the ongoing activities similar to those found in the private sector, specifically activities for which a fee is charged to external users for goods or services. Moving forward, the Enterprise Fund 452 will include revenue and expenses under the new Agreement, as well as County-incurred expenditures directly associated with the resort and recreational areas at Lake Nacimiento. County-incurred expenditures and transfers-in will include management of capital repairs and/or construction, utilities, property taxes; Fleet; ITD support; Vehicle Acquisition Management Program (VAMP); Insurance(s); Interest on Debt; depreciation; ranger lake surface patrol; and management oversight of Basecamp.

#### OTHER AGENCY INVOLVEMENT:

The Offices of the County Counsel and Auditor-Controller reviewed and approved the proposed Agreement with Basecamp as to form and legality and fiscal provisions, respectively. MCWRA reviewed the proposed Agreement. RMA also worked closely with the Parks Ad Hoc Committee, Parks Commission, County Administrative Office, County Counsel-Risk Management, Auditor-Controller's Office, and stakeholders/community.

#### FINANCING:

Management service fees for the Lakes under the proposed Agreement are budgeted under FY 2019-20 Adopted Budget, Fund 452, Appropriation Unit RMA102, with expenditures totaling

\$4,393,198 and revenues projected to be \$4,921,323. The FY 2019-20 Budget was based on actual revenues and expenditures from FY 2017-18, including FY 2018-19 through actuals through December 2018. Staff anticipated the budgeted expenditures are inflated due to Basecamp's previously negotiated agreement terms. The current Agreement included several compensation items that have been removed in the new Agreement, such as Admin Fee, Marketing Fee, Incentive Fee at 25% of net income. Staff also anticipates with increased direct management oversight, that operating expenditures will be kept down, as all purchases must be approved in advance by the County. As a result of the new Agreement operating revenues are anticipated to be higher due to the recognition of the sale of alcohol in which the County only received 8% of sales under the current agreement. RMA will work closely with Basecamp in reviewing Lake operations, including monthly financial reviews of their P&L, invoices, and operating costs compared to revenues. **Attachment D**, Historical and Projected Compensation to Basecamp, reflects what the County has paid Basecamp since FY 2011-12 projected through FY 2018-19 under the current agreement and includes projections based on the new agreement terms.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This recommendation is consistent with the Board of Supervisors' Administration Strategic Initiative by providing efficient, cost-effective management of County Parks.

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: Shawne Ellerbee, RMA Deputy Director of Administrative Services

Reviewed by: Brett Fulgoni, Administrative Operations Manager

Reviewed by: James Rodems, Chief of Parks

Approved by: Carl P. Holm, AICP, RMA Director

Attachments:

- Attachment A- Lakes Management Agreement History with UPC
  - Attachment B-Lakes Management Agreement Terms, Compensation, & Modifications
  - Attachment C-Lake Management Agreement Comparison of Changes
  - Attachment D-Historical and Projected Compensation to Basecamp
  - Attachment E-Operation and Management Agreement, dated August 1, 2019
- (Attachments on file with the Clerk of the Board)

# Attachment A

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## **Attachment A – Lakes Management Agreement History**

Monterey County Parks Department (Parks) first entered into an agreement for management services at Lake Nacimiento and Lake San Antonio with Basecamp (previously, “CalParks”) on May 3, 2011.

**Attachment B** provides the Lakes management agreement history through 2019. On July 1, 2016, the Board of Supervisors (Board) appointed the Resource Management Agency (RMA) Director as Interim Parks Director. With the lake management agreement set to terminate on July 26, 2016, during peak season at the Lakes, RMA requested a one- (1-) year extension for a revised term ending October 2017, beyond the busy season.

On December 13, 2016, the Board approved integration of the Parks Department into the RMA. With this assimilation, RMA assumed responsibility for most Parks’ agreements in place. After analyzing the lake operations, RMA determined that a new RFP for long-term lake resort management services was needed. To provide time to issue an RFP and negotiate a new management agreement, RMA requested a two-year extension to the existing Agreement (A-11983). The Auditor-Controller’s office would only support a one-year extension to the agreement, and the Board authorized extension of the agreement through October 2018.

RMA released RFP #10674 in February 2018. The solicitation was divided into two sections: the “base” bid was for management of Lake Nacimiento only and an optional “secondary” bid for management of Lake San Antonio (LSA), including both North and South Shore operations. The solicitation was designed to seek an exclusive service agreement for all Lake operations; the type or model of Agreement was left to the proposers. On April 12, 2018, the County received only one response to the solicitation from Urban Park Concessionaires dba Monterey Lakes Recreation Company (Basecamp), the present management company.

Staff mulled over cancelling the solicitation and issuing a new RFP in hopes of attracting additional responders. Based on conversations with vendors that had shown prior interest in Lake operations, it did not appear that a new solicitation would yield a different result.

RMA staff attempted, but was unable, to identify a non-profit organization to manage the Lake facilities, as well as looked at operating the facility with County staff. After comparing the pros and cons relating to seasonal staffing, flexibility in staffing levels, and salaries and benefits between County management and Contractor management, RMA issued a tentative award in September 2018 to begin contract negotiations for Lake Nacimiento only. Negotiations to reach an agreement for the management services were extensive, and RMA had to return to the Board four times to incrementally extend the term of A-11983 until the negotiations were finalized. **Attachment B** reflects the evolution of Board-approved changes associated with Agreement A-11983 (as amended and extended) pertaining to compensation, term extensions, and staff recommendations regarding the new Management Agreement for comparison.

This proposed management agreement specifically addresses several concerns of the parties, including: optimizing the agreement term to enhance retention of contract personnel; reducing the annual operating deficit to reduce the need for County General Fund subsidy; stabilizing vendor compensation-partnering in profit sharing, and defining operations responsibilities clearly for both parties.

First, contractual stability was a major concern for Basecamp in negotiating the new Management Agreement. As depicted in **Attachment B**, while Basecamp has been under contract for several years, the contract terms never exceeded 18 months in duration, and on two occasions, in 2013 and in 2015, the contract term lapsed requiring a renewal or new agreement restating and extending the terms of the prior agreement. This short contract term impacted Basecamp’s ability to retain personnel. Accordingly, the proposed agreement term is for seven (7) years, effective upon the date of execution through December 31, 2026. Additionally, the County has added language into the Management Agreement for the County to renegotiate the terms with Basecamp if there are any changes to the current lease agreement between the County and Monterey County Water

Resources Agency (MCWRA) or after two consecutive fiscal years of recognizing a negative Adjusted Net Income.

Second, per the terms of A-11983, the County was reimbursed by Basecamp for utilities, County Information Technology Department charges, and Fleet charges, excluding vehicle lease payments under the Vehicle Asset Management Program (VAMP), which were reflected in Basecamp's monthly Profit and Loss (P&L) Statement. However, the County incurred other costs such as maintenance and infrastructure repairs, refuse and recycling, security, surface patrol, and administration, in addition to the above reimbursed expenditures not included in Basecamp's P&L and therefore excluded from the incentive fee calculation for Basecamp. Over the last few years, Basecamp's financials reflected a positive net income, after factoring in the County-reimbursed costs; however, the overall Enterprise Fund ended the Fiscal Year in a deficit due to the other County costs, requiring the need for a subsidy from the General Fund. On October 16, 2018, the County Administrative Office reported on the Financial Condition of the lake resort operations that reflected required subsidies since Fiscal Year 2011-12.

Third, the proposed agreement promotes the concept of "partnering" with Basecamp in managing the resort and recreational areas at Lake Nacimiento to optimize profits, including sharing both profits and deficits. A-11983 included an incentive fee intended to motivate the vendor to maintain facilities to generate more revenue. Instead, it disincentivized the vendor to incur expenditures toward the care and upkeep of the Lake facilities to maximize their incentive fee potentials. As a result, combined with minimal County oversight, the Lake facilities have deteriorated from the deferred maintenance. To reach agreeable terms on profit sharing, the proposed agreement commits significant County capital investment to improve present facility conditions.

Fourth, the proposed Management Agreement provides stable compensation, regardless of water levels, for Basecamp and the County, by offering a fixed management fee of \$300,000, escalated yearly corresponding to the annual average consumer price index for the San Francisco-Oakland-Hayward, CA area. The Management Agreement also includes a small 10 percent (10%) incentive fee based on an adjusted net income formula that includes specific County costs as identified in the Agreement. It also requires Basecamp to pass through to the County any monthly surplus; the County will pay Basecamp for any monthly deficit. Staff anticipates that Basecamp's monthly gross revenues will increase with the inclusion of alcohol in Basecamp's monthly P&L, and monthly expenditures will be lower without County expenditures reflected on Basecamp's P&L. Other significant changes include: removing other monthly payments to Basecamp for Administrative Fee or Marketing Fees, the inclusion of requiring Basecamp to provide full financial audits based on Generally Accepted Auditing Standards (GAAS), requiring annual operation plans for staffing, marketing, operation, and maintenance, to be approved by the County, financial reporting by profit generating activity.

Last, clearly defined operation responsibilities, for the County and Basecamp, are included in the proposed Management Agreement. Agreement A-11983 lacked definitions as to which party held responsibility for various park operations. This Agreement details the roles of each party in several tables and exhibits. Authority and responsibility regarding setting rates and fees, special event reservations, procurement of goods and services, reporting schedules, and maintenance standards are all specified. Maintenance responsibilities for the County and Basecamp are detailed in Exhibit A to the Management Agreement. Established mandatory regular facility inspections will allow the County and Basecamp to review unexpected needs and incorporate a response into the annual operations plan. This enables the County to provide enhanced oversight to ensure full compliance with the terms of the agreement.

On January 15, 2019, the Board approved the removal of LSA from the Enterprise fund, since after taking over from the prior Concessionaire, LSA has not demonstrated it can operate as a business-type activity versus that of a regional County park. Enterprise funds are used to account for government business-type activities and as such, follow similar measurement focus and basis of account as those used for a private business that use accrual basis of accounting, capitalization and depreciation of capital assets, reporting of long-term liabilities, optional use of budgetary accounts, and take into consideration the "near term" availability of financial resources.

Currently, County expenditures are incurred at Lake Nacimiento that are not directly related to the management of the resort and recreational areas assigned to Basecamp, such as surface patrols by County Park Rangers on the lake surface itself. The County, under its current leases with MCWRA, is responsible to provide lake surface patrol at both Lake Nacimiento and LSA. This cost is one factor contributing to the Enterprise Fund deficit. RMA recommends that only costs directly associated with the management agreement for the resort and recreational areas be reflected in the Enterprise Fund. All other costs are recommended to be budgeted and funded under the Parks Operations General Fund, as they had been allocated prior to the creation of the Enterprise Fund.

**Attachment C** provides a comparison of the terms of Agreement A-11983, RFP scope requirements, Basecamp's RFP response, and final negotiated terms of the proposed Management Agreement.

**Attachment D** provides a summary of various payments to Basecamp, by fiscal year, under Agreement A-11983. A-11983 contains multiple annual fees that the County paid to Basecamp, including an *Administration Fee for Centralized Services* of \$80,000, a *Marketing Fee* of \$30,000; a *1.5 percent (1.5%) Management Fee* based on monthly Gross Revenues; and a *25 percent (25%) Incentive Fee* based on Gross Revenues less Cost of Goods Sold and Operating expenses. In addition, to the County reimbursing Basecamp for any monthly operating deficit.

With the conclusion of negotiations, RMA recommends that the Board approve the proposed Management Agreement with Basecamp for facilities management of resort and recreational areas at Lake Nacimiento.

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## Attachment B

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ATTACHMENT B  
Lakes Management Agreement Terms, Compensation, and Modifications

	Initial Agreement 05/03/11	Addendum #1 10/23/12	Addendum #2 03/11/14	New Agreement 05/17/16	Amendment #1 07/19/16	Amendment #2 07/26/16	Amendment #3 10/03/17	Amendments #4 thru #8	Proposed Agreement 08/01/19
Agreement Dates	5/11/2011 - 10/1/2012	10/1/2012 - 10/1/2013	10/1/2013 - 1/31/2015	02/01/15 - 07/26/16	02/01/15 - 10/31/17	02/01/15 - 10/31/17	02/01/15 - 10/31/18	02/01/15 - 07/31/19	08/01/19 - 12/31/26
If Basecamp has a Net Profit	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp's P&L <b>excludes</b> accrual for Utilities.
If Basecamp has a Net Loss	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp's P&L <b>excludes</b> accrual for Utilities.
Management Fee	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	1.5% of monthly gross revenue	Fixed Management Fee of \$300,000 annually, paid in monthly installments of \$25,000. Adjusted annually by the CPI for San Francisco-Oakland-Hayward, CA.
Management Incentive	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	25% of annual net profit based on Basecamp's P&L	10% of adjusted net income (Basecamp P&L and County specified costs)
Admin & Support Services	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$80K fixed annual fee	\$0 fixed annual fee
Marketing Leadership & Creative Guidance	\$30K fixed annual fee	\$30K fixed annual fee	\$0	\$30K fixed annual fee reinstated	\$30K fixed annual fee	\$30K fixed annual fee	\$30K fixed annual fee	\$30K fixed annual fee	Based on County Approved Plan and expenditures. Reimbursement of expenses, not paid as a fee.

ATTACHMENT B

Lakes Management Agreement Terms, Compensation, and Modifications

	Initial Agreement 05/03/11	Addendum #1 10/23/12	Addendum #2 03/11/14	New Agreement 05/17/16	Amendment #1 07/19/16	Amendment #2 07/26/16	Amendment #3 10/03/17	Amendments #4 thru #8	Proposed Agreement 08/01/19
Reserve Fund Account	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	1.5% of gross revenue set aside for replacement/improvements	n/a
Alcohol Sales	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Basecamp retains 92% of revenues generated from sale of alcohol. County receives 8% of gross alcohol sales.	Basecamp retains 92% of revenues generated from sale of alcohol. County receives 8% of gross alcohol sales.	Basecamp retains 92% of revenues generated from sale of alcohol. County receives 8% of gross alcohol sales.	Basecamp retains 92% of revenues generated from sale of alcohol. County receives 8% of gross alcohol sales.	Basecamp retains 92% of revenues generated from sale of alcohol. County receives 8% of gross alcohol sales.	All alcohol purchases & sales passed through in Basecamp's P&L.
If San Antonio Resort Closes	n/a	n/a	Management Fee increases to 2.5% of Nacimientos gross revenue	Management Fee increases to 2.5% of Nacimientos gross revenue	Management Fee increases to 2.5% of Nacimientos gross revenue	Management Fee increases to 2.5% of Nacimientos gross revenue	Management Fee increases to 2.5% of Nacimientos gross revenue	Management Fee increases to 2.5% of Nacimientos gross revenue	n/a
Indemnification Language Quagga Mussel Inspections	n/a	n/a	n/a	n/a	n/a	Added Indemnification for Contractor Quagga Mussel Inspection	Indemnification for Contractor Quagga Mussel Inspection	Indemnification for Contractor Quagga Mussel Inspection	Indemnification for Contractor Quagga Mussel Inspection
Term Extension	n/a	Yes	Yes	Yes	Yes	n/a	Yes. Staff requested 2-yr ext. ACO recommended only 1-yr ext.	Yes	Contract term is for 7 years, unless terminated pursuant to Agreement. No extensions beyond the 7 years.
Lake Location(s)	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos & Lake San Antonio	Lake Nacimientos ONLY.



# Attachment C

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ATTACHMENT C  
Lakes Management Agreement Comparison of Changes

Current Management Agreement		RFP # 10674	Basecamp Proposal to RFP No. 10674	Basecamp Revised Payment Terms	Final Negotiated Agreement Terms effective 08/01/19
Contract Term	02/01/15 - 07/31/19	Base Contract 10 Years plus two 5 Year periods	Base Contract 15 Years plus one 5 Year period	Base Contract 15 Years plus one 5 Year period,	Base Contract 7 years from date of Execution through December 31, 2026
Contract Type	Management Agreement to operate certain recreational facilities at both Lake Nacimiento and Lake San Antonio.	Scope leaned toward Concession agreement, but left open for bidders to decide	Hybrid Management Agreement approach, excluding Vessel rental. Basecamp would take over vessel rental completely off P&L, County receives \$0 revenue.	Hybrid Management Agreement approach, excluding Vessel rental. Basecamp would take over vessel rental completely off P&L, County receives \$0 revenue.	Management Agreement with all operations (less capital expenditures and specific County responsibilities) run through Basecamp.
Termination Clause	N/A	County reserves the right to cancel agreement or extension without cause with a 30-day written notice	Basecamp took an exception to this clause. Countered clause to notify, remedy, and arbitration process.	Basecamp took an exception to this clause. Countered clause to notify, remedy, and arbitration process.	Upon termination of Nacimiento Lease and removal of County responsibility for recreational facilities or County shall have right to renegotiate terms to accommodate changes in Nacimiento Lease.
Termination/Renegotiation of Two Consecutive FY of Negative Adjusted Net Income	N/A	N/A	N/A	N/A	After two consecutive FY of a negative Adjusted Net Income, County shall have the right to renegotiate the terms to maintain financial sustainability.
Default and Cure	Failure to make payment, insolvency can terminate if no cure beyond 45-days following receipt of notice.	County reserves the right to cancel agreement or extension without cause with a 30-day written notice	Basecamp took an exception to this clause. Countered clause to notify, remedy, and arbitration process.	Basecamp took an exception to this clause. Countered clause to notify, remedy, and arbitration process.	Material breach, defaulting party shall have 60 days after notification to cure or initiate good faith efforts to cure. If not cured within 60 days non defaulting party may terminate 30 days prior of notice.
Rental Vessel Fleet	Revenue and Expense included in P&L	Scope required vendor to provide its own vessels.	Revenue and Expense excluded from P&L	Revenue and Expense excluded from P&L	Revenue and Expense included in Basecamp P&L
If Basecamp has a Net Profit	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	RFP requested respondents propose a compensation plan	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit amount. Basecamp P&L includes accrual for Utilities.	Basecamp pays County net profit. P&L does <u>not</u> include utilities or any other County operating cost.
If Basecamp has a Net Loss	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	RFP requested respondents propose a compensation plan	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. Basecamp P&L includes accrual for Utilities.	County pays Basecamp net loss amount. P&L does <u>not</u> include utilities or any other County operating cost.
Management Fee	1.5% of monthly gross revenue	RFP requested respondents propose a compensation plan	7.5% of monthly gross revenue	9% of monthly gross revenue	10% of annual operating profit. (Revenue less allowable Basecamp and County costs)
Incentive Fee	25% of annual net profit based on Basecamp's P&L. Incentive Fee=Gross Revenue less COGS less Operating Expenses.	RFP requested respondents propose a compensation plan	25% of annual net profit based on Basecamp's P&L. Incentive Fee=Gross Revenue less Operating Costs less Admin Fee less Mgmt Fee less Annual Maintenance costs exceeding \$50K. Calculation excludes COGS.	0% of annual net profit based on Basecamp's P&L	No Incentive Fee
Admin Fee	\$80K fixed annual fee	RFP requested respondents propose a compensation plan	\$300K fixed annual fee	\$300K fixed annual fee	\$300K fixed annual fee

ATTACHMENT C  
Lakes Management Agreement Comparison of Changes

Current Management Agreement		RFP # 10674	Basecamp Proposal to RFP No. 10674	Basecamp Revised Payment Terms	Final Negotiated Agreement Terms effective 08/01/19
Marketing Leadership & Creative Guidance	\$30K fixed annual fee	No set amount or percentage. RFP requested respondants propose a marketing plan	\$30K fixed annual fee	\$30K fixed annual fee	Marketing budget submitted to County for approval as part of annual operations plan.
Reserve Fund Account	1.5% of gross revenue set aside for replacement/improvements	Not included in RFP.	5% of gross revenue set aside for replacement/improvements	5% of gross revenue set aside for replacement/improvements	Basecamp will no longer hold gross revenue for replacement/improvements. All net profit will go to County.
Alcohol Sales	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Contractor receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	Basecamp receives 100% revenue from sale of Alcohol, excluded from P&L. County receives \$0 revenue.	All alcohol purchases & sales passed through in Basecamp's P&L.
Use of Facility	County reserves the right of use of the Resort operations for official County business, at no cost, as long as use does not interfere or reduce existing revenue generating activities	All events over 1,000 attendees require County approval.	Basecamp requests to handle all special events in the Park, including dealing directly with promoters, handles all coordination and operating needs of promoter, and books all revenue.	Basecamp requests to handle all special events in the Park, including dealing directly with promoters, handles all coordination and operating needs of promoter, and books all revenue.	Basecamp will manage all special events, subject to notice and County approval restrictions. County reserves the right of use of the Resort operations for official County business, at no cost, as long as use does not substantially interfere or reduce existing revenue generating activities
Quagga Mussel Indemnification Language	Mutual Indemnification plus specific Indemnification for Contractor Quagga Mussel Inspection	Not included in RFP	Mutual indemnification with no special indemnification	Mutual indemnification with no special indemnification	Mutual indemnification with no special indemnification
Vehicle/Vessel Lease Agreement	Vehicles and Vessels to be assigned under a lease agreement.	Scope required vendor to provide its own vehicles.	Vehicles to be assigned under a lease agreement. Basecamp to operate all vessel rentals separately and receive all revenues directly.	Vehicles and Vessels to be assigned under a lease agreement.	Exhibit B Vehicles and Vessels to be assigned under a lease agreement.
County and Contractor Maintenance and Repair Assignments	N/A	RFP requested respondants propose a maintenance plan	Maintenance responsibility to be capped at \$2,500 per individual repair, not to exceed \$50,000 got profit sharing calculations.	Requested clear definition of maintenance and repair responsibilities assignd to Basecamp.	Exhibit A to the Management agreement provides responsibility matrix for Basecamp and County
Performance Review	Allowed for "periodic inspections" of facilties and written performance evaluations based on observations.	Contractor required to submit an annual Park Operation Plan covering proposed operations for coming year.	No change to RFP scope.	No change to RFP scope.	Parties negotiatied bi-annual operation splan updates, matched to busy and off-season at reservoirs.
Annual Financial Audit	Independent audit was optional, only covered expenses.	Contractor required to employ independent Certified Public Accountant (CPA) to perform audit of books and records related to the agreement	Agreed to Annual Certified Audit, requested clarification on scope of audit (limited to revenue and expenses shown on P&L)	No change to previous proposal.	Independent Certified Public Accountant (CPA) conduct a Financial Statement Audit on an annual basis. Includes:Balance Sheet, Income Statement, Statement of Owner’s Equity and Statement of Cash Flows relating to the Agreement

# Attachment D

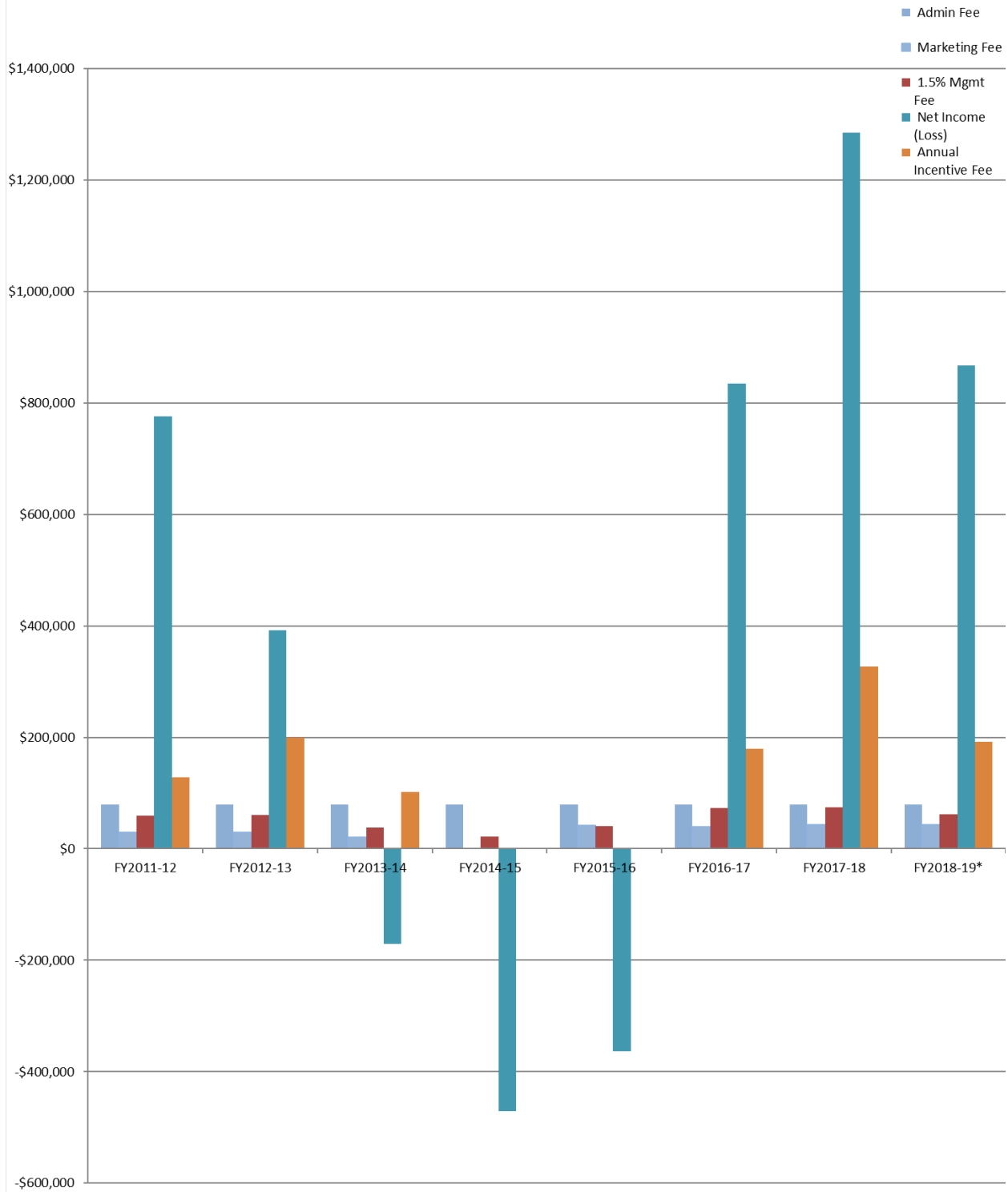
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Attachment D - Historical and Projected Compensation to Basecamp

	FY2011-12	FY2012-13	FY2013-14	FY2014-15	FY2015-16	FY2016-17	FY2017-18	FY2018-19*
Income	3,988,383	4,007,379	2,544,255	1,432,751	1,663,231	3,633,026	4,992,200	4,160,176
Cost of Goods Sold	1,287,144	1,264,091	675,476	387,738	385,982	517,797	643,808	539,741
Gross Profit	2,701,239	2,743,287	1,868,779	1,045,013	1,277,249	3,115,229	4,348,392	3,620,435
Salaries	1,077,432	1,126,487	964,111	746,333	956,676	1,436,395	1,742,102	1,542,330
Operating Expenses	678,558	697,747	601,026	410,921	508,436	630,675	1,055,072	1,026,200
Admin Expenses	0	356,525	335,660	256,482	13,199	20,596	68,106	0
Total Expenses	1,755,990	2,180,759	1,900,797	1,413,736	1,478,311	2,087,666	2,865,280	2,568,530
Operating Income (Loss)	945,249	562,528	(32,019)	(368,723)	(201,062)	1,027,562	1,483,112	1,051,905
Admin Fee	80,000	80,004	80,004	80,012	80,016	80,004	80,004	80,004
Marketing Fee	30,000	30,000	20,000	0	41,559	39,200	43,551	42,733
1.5% Mgmt Fee	59,826	60,107	38,162	21,491	41,056	73,225	74,883	62,403
Subtotal Fees	169,826	170,111	138,166	101,503	162,631	192,429	198,438	185,140
Net Income (Loss)	775,423	392,417	(170,185)	(470,226)	(363,693)	835,134	1,284,674	866,765
Annual Incentive Fee	128,681	199,405	101,944	0	0	179,508	326,818	192,072
Net of Incentive Fee	646,742	193,012	(272,129)	(470,226)	(363,693)	655,625	957,856	674,693
Reserve Fund Fee	59,826	60,111	38,164	21,491	24,948	54,495	74,883	62,403

\* FY2018-19 reflects actual through 11 month and 1 month projected

## Attachment D - Historical and Projected Compensation to Basecamp





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# Attachment E

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This Operation and Management Agreement ("Agreement") dated August 1, 2019 is between the County of Monterey, hereinafter referred to as "COUNTY" and Urban Parks Concessionaires, dba Monterey Lakes Recreation Company, hereinafter referred to as "CONTRACTOR" (collectively, the "Parties", or individually, "Party")

### **RECITALS**

**WHEREAS**, in 1957, Nacimiento Dam was completed creating a reservoir, commonly referred to as Lake Nacimiento, with the purpose of providing water to the Salinas Valley; and

**WHEREAS**, in 1967, San Antonio Reservoir (Lake San Antonio) was created, also with the purpose of providing water to the Salinas Valley; and

**WHEREAS**, the reservoirs are owned and operated by the Monterey County Water Resources Agency; and

**WHEREAS**, in 1969 and 1987, Monterey County Water Resources Agency (MCWRA) and County of Monterey (COUNTY) entered into leases for COUNTY to use the reservoirs for recreational purposes as water is available; and

**WHEREAS**, recreational opportunities are impacted by the annual weather cycle need to increase water conservation and flood protection in the Salinas Valley, proper maintenance of the Salinas River, recreational benefits, endangered species management, and compliance with state and federal regulations; and

**WHEREAS**, Lake Nacimiento reservoir was built, maintained and operated for the purpose of water conservation and flood control, regardless of any statements recorded or documented to the contrary.

**WHEREAS**, On October 1, 2007, COUNTY took ownership of assets from Water World Resorts, Inc. and Lake San Antonio Resorts, Inc., including both real and personal property at Lake San Antonio and Lake Nacimiento, as authorized by the Board of Supervisors on July 24, 2007; and

**WHEREAS**, on April 22, 2008, COUNTY executed an interim management agreement with Forever Resorts, LLC to operate the resort business operations at the Parks which included marinas, stores, restaurants, fueling facilities, lodging units, and boat rentals, and said agreement was amended to extend through April 23, 2011; and

**WHEREAS**, on May 3, 2011, COUNTY entered into an Agreement with Urban Park Concessionaires to operate recreational facilities at Lake San Antonio and Lake Nacimiento, through October 31, 2012, and said agreement was amended to extend through January 31, 2015; and

**WHEREAS**, on July 6, 2016, COUNTY entered into a new management agreement with Urban Park Concessionaires to operate recreational facilities at Lake San Antonio and Lake Nacimiento for a period retroactive to January 31, 2015, and said agreement has been extended through February 28, 2019 [Agreement numbers A-13136, A-11984, A-11983]; and

**WHEREAS**, on February 22, 2018, COUNTY released a Request for Proposals (RFP #10674) for Facility Management Services to manage Lake San Antonio and Lake Nacimiento, which invited proposals to completely manage both facilities; and

**WHEREAS**, on April 10, 2018, CONTRACTOR submitted a responsive and responsible proposal to perform such services; and

**WHEREAS**, on January 15, 2019, COUNTY Board of Supervisors provided direction to pursue an agreement to manage Lake Nacimiento and for COUNTY to assume management of Lake San Antonio; and

**WHEREAS**, COUNTY wishes to grant a partial award to CONTRACTOR to manage park operations at Lake Nacimiento on behalf of and at the direction of the County; and transition operations at Lake San Antonio from CONTRACTOR to COUNTY; and

**WHEREAS**, it is the objective of COUNTY to operate the park facilities at Lake Nacimiento in a self-sustaining manner, free from the need for outside funds and subsidies, and with a focus on business-minded decisions that will positively impact the profitability of the park for the COUNTY while meeting all local, state and federal laws and regulations; and

**WHEREAS**, CONTRACTOR warrants it has the expertise and capabilities necessary to provide the services requested and follow COUNTY's operational objectives for the Lake Nacimiento park facilities; and

**NOW THEREFORE**, the COUNTY and CONTRACTOR agree as follows:

## **AGREEMENT**

### **SECTION I – SCOPE OF OPERATIONS AND ADMINISTRATION**

1. **Recitals.** The above recitals are hereby incorporated into the body of this Agreement by reference.
2. **Performance of the Agreement.** After consideration and evaluation of the CONTRACTOR's proposal, the COUNTY engages CONTRACTOR to provide the services set forth in RFP #10674 and in this Agreement on the terms and conditions contained herein and in RFP #10674. The Agreement is based on the following documents:

Agreement

RFP #10674 dated February 22, 2018, including all attachments and exhibits

These Documents are on file with the COUNTY Contractor/Purchasing Division.

- 2.1. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: Agreement, including all attachments and exhibits, RFP #10674
- 2.2. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the COUNTY.
  - 2.2.1. CONTRACTOR shall obtain and maintain during the term of this Agreement its California Qualified Applicator License as required to perform herbicide and pesticide spraying activities identified in this Agreement, within one (1) year of the execution of this Agreement. COUNTY may extend the deadline on its sole determination that CONTRACTOR has made a good-faith effort to obtain such license, and additional time is warranted.
- 2.3. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
3. **Term of Agreement.** The term of this Agreement is from August 1, 2019 through and including December 31, 2026, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and COUNTY with the COUNTY signing last, and CONTRACTOR may not commence work before COUNTY signs this Agreement.
  - 3.1. If a material breach of any material provision of this Agreement by either Party (COUNTY or CONTRACTOR) occurs, the defaulting Party shall have sixty (60) days after written notice thereof is received by the Party against whom the default is claimed to cure the default or initiate good faith efforts to cure such breach to the reasonable satisfaction of the non-breaching Party.
  - 3.2. If the material breach is not cured within the sixty (60) day notice period, the non-defaulting Party may terminate this Agreement upon thirty (30) days prior written notice to the defaulting Party.

- 3.3. The COUNTY is granted authority to operate recreational facilities at Lake Nacimiento under the terms of a 1987 lease, adopted by COUNTY Board of Supervisors resolution No. 87-424 (Nacimiento Lease). The Nacimiento Lease may be terminated with 6-months' notice via a Resolution of Intention by the COUNTY or MCWRA Board of Supervisors.
- 3.3.1. This Agreement shall terminate, upon termination of the Nacimiento Lease and removal of COUNTY responsibility for recreational facilities by either the COUNTY or MCWRA Board of Supervisors.
- 3.3.2. COUNTY shall have the right, upon any enacted change in term to the Nacimiento Lease or execution of a new lease by the COUNTY Board of Supervisors for COUNTY operation of recreational facilities at Lake Nacimiento, to renegotiate the terms of this Agreement in good faith with CONTRACTOR, to accommodate the terms of the new lease.
- 3.4. COUNTY shall have the right, after two consecutive Fiscal Years of a negative Adjusted Net Income as defined in Section 21.2, excluding Ranger Costs as requested by the supervising Park Ranger, to renegotiate the terms of this Agreement in good faith with CONTRACTOR to maintain financial sustainability.
- 3.5. If COUNTY and CONTRACTOR are unable to renegotiate terms under Sections 3.3.2 or 3.4 above, the County shall have the right to terminate this agreement upon sixty (60) days written notice to CONTRACTOR.
4. **Exhibits.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
- Exhibit A: County and Contractor Maintenance and Repair Assignments  
Exhibit B: Vehicle Lease Agreement  
Exhibit C: Request for Proposal #10674  
Exhibit D: CONTRACTOR's Response to RFP #10674
5. **Scope of Operations.** The COUNTY hereby hires CONTRACTOR to provide facility management services on behalf of the COUNTY for the area of operations under COUNTY control at Lake Nacimiento, ("Park"). Management services consist of providing services including but not limited to supplies, staff, equipment, permits, licenses and materials required for the maintenance, operation and administration of the Park with the purpose of increasing net revenue for the COUNTY. All services provided by CONTRACTOR under this agreement are subject to the direction and approval of the COUNTY. This Agreement shall replace agreement No. 11983 under which CONTRACTOR and COUNTY have operated since February 1, 2015, and such agreement is hereby terminated.

- 5.1. This Agreement is a contract for management services only and is not to be considered or interpreted as a lease for any purpose. This Agreement confers only permission to occupy and use the Park for management purposes in accordance with the terms and conditions of this Agreement. The expenditure by CONTRACTOR of capital and/or labor in the course of operation and management of the Park shall not confer to CONTRACTOR any interest in the Park except as provided herein.
- 5.2. COUNTY and CONTRACTOR may, upon mutual agreement, determine that a specific operation, facility or service should be suspended or terminated if it does not provide value to the Parties, and contribute to the overall profitability of the Park. Mutual agreement shall be in the form of a written notice signed by the Resource Management Agency (RMA) Director or Deputy Director(s) and CONTRACTOR. Regardless of any individual suspension or termination, the terms of the agreement shall continue to apply to all remaining operations.
- 5.2.1. The Parties shall cooperate to achieve mutual agreement on operations of the Lake Nacimiento park facilities with the goal of keeping the Park profitable. CONTRACTOR shall provide COUNTY with documentation showing how the operations, facility or service in question will contribute to the profitability of the Park, or how untimely closure will negatively affect current operations. COUNTY will take CONTRACTOR's proposal into consideration; however, COUNTY reserves all discretionary authority to determine if a specific operation, facility or service should remain active. If CONTRACTOR satisfactorily demonstrates that termination or suspension of a specific operation, facility or service will result in necessary reduction in CONTRACTOR staff, COUNTY shall provide CONTRACTOR with notice ninety (90) days prior to the termination or suspension taking effect.
- 5.3. **Notices.** Any notice pursuant to this Agreement shall be given in writing by a Party or its legal representative by (a) personal delivery, (b) overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance with this section, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:



**For the COUNTY:**  
Administrative Operations Manager  
Resource Management Agency  
1441 Schilling Place, South 2nd Floor  
Salinas, California 93901-4527

**For CONTRACTOR:**  
Basecamp Hospitality  
2150 Main Street, Suite 5  
Red Bluff, CA 96080

**6. Indemnification.**

- 6.1. CONTRACTOR shall indemnify, defend, and hold harmless the COUNTY and MCWRA, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses are determined to be solely caused by the gross negligence or willful misconduct of the COUNTY or MCWRA. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents, and subcontractors.
- 6.2. Neither COUNTY, MCWRA, nor CONTRACTOR will be liable for any delays or failures in performance due to circumstances beyond either Party's reasonable control or that may arise out of or become the result of the priority uses of the reservoir.

**7. Insurance.**

- 7.1. **Evidence of Coverage.** Prior to commencement of this Agreement, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to COUNTY'S Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by COUNTY. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

- 7.2. **Qualifying Insurers.** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating

of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by COUNTY's Contracts/Purchasing Officer.

- 7.3. **Insurance Coverage Requirements.** Without limiting CONTRACTOR'S duty to Indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability
- 7.3.1. **Commercial general liability insurance**, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, and liquor liability with a combined single limit for Bodily Injury and Property Damage of not less than \$10,000,000 per occurrence.
  - 7.3.2. **Business automobile liability insurance**, covering all motor vehicles, including owned, leased, on-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 \$5,000,000 per occurrence.
  - 7.3.3. **Workers' Compensation Insurance**, if CONTRACTOR 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 \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease and policy aggregate.
  - 7.3.4. **Professional liability insurance**, 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 \$1,000,000 per claim and \$2,000,000 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, CONTRACTOR 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 years following the expiration or earlier termination of this Agreement.
  - 7.3.5. **Watercraft Liability Insurance, Protection and Indemnity Insurance** with limits not less than \$5,000,000 each occurrence combined single

limit for Bodily Injury and Property Damage; with respect to the ownership, operation and maintenance of all watercraft.

- 7.3.6. **Contractor Pollution Liability Insurance**, with limits not less than \$10,000,000 each incident/aggregate, with respect to Bodily Injury and Property Damage or Remediation Costs arising from new or pre-existing pollution incidents with a deductible not to exceed \$ 10,000 per incident.
- 7.3.7. **Liquor Liability**, Liquor Liability, with limits of not less than \$2,000,000 each occurrence.
- 7.4. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the annual aggregate limit, such aggregate limit shall be double the occurrence/incident limits specified above.
- 7.5. Should any required Insurance lapse during the Agreement term; requests for payments originating after such lapse shall not be processed until COUNTY receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, COUNTY may, in Its sole discretion, terminate this Agreement effective on the date of such lapse of insurance, as a material breach of CONTRACTOR's obligations.:
- 7.6. Liability policies shall be endorsed (or otherwise certified) to provide the following: 1. Name as additional insured's, the COUNTY and MCWRA, and their officers, agents and employees; and 2. That such insurance is primary to any other insurance or self-insurance available to the additional insured's with respect to claims covered under the required policies and that coverage applies separately to each insured against whom claim is made or suit brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- 7.7. Commercial general liability, automobile liability, watercraft liability, contractor pollution liability, and liquor liability policies shall provide an endorsement naming the COUNTY, MCWRA, and their officers, agents, and employees as Additional Insured's with respect to liability arising out of CONTRACTOR'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 COUNTY and MCWRA and that the insurance of the Additional Insured's shall not be called upon to contribute to a loss covered by CONTRACTOR'S insurance.
- 7.8. All policies shall be endorsed to provide 30 days prior written notice (except 10 days for non-payment) of cancellation or endorsed reduction of coverage or limits to the following address:

County of Monterey  
Contracts/Purchasing Division  
1488 Schilling Place  
Salinas, CA 93901

- 7.9. Prior to the execution of this Agreement by COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY'S contract administrator and COUNTY'S Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this Agreement. CONTRACTOR shall file a new or amended certificate of insurance within five 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. All insurers shall have a current A M Best rating of not less than A VII.
- 7.10. CONTRACTOR 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'S Contract Administrator and COUNTY'S Contracts/Purchasing Division. If the certificate is not received by the expiration date, COUNTY shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles COUNTY, at its sole discretion, to terminate this Agreement immediately.
8. **County Assets.** COUNTY shall provide CONTRACTOR the use of both the real and personal property ("Facilities") in the Park for providing, operating and maintaining Park operations. Facilities include all Park buildings, facilities and grounds/open space within the County-operated Park, unless designated by COUNTY in writing or identified in the approved Park Operations Plan as a County-managed facility (e.g., Ranger Station.) All real and personal property is provided to contractor in an "as is" condition with no warranty of any kind whatsoever by the COUNTY including but not limited to fitness for a particular use, and CONTRACTOR is deemed to have inspected and satisfied itself as to the actual condition of all such real and personal property.
9. **Hours and Operating Status.** CONTRACTOR shall operate the Park year-round under In-Season, Off-Season, or Standby status.
- 9.1. "In-Season" means the peak visitor season for the Park, defined as approximately May 1st through September 30th. "Off-Season" means the remainder of the year outside the In-Season period. "Standby" means the Park is closed to the public for a period greater than thirty (30) consecutive days.

- 9.2. CONTRACTOR shall establish dates for In-Season and Off-Season operation of the Park, subject to approval by the RMA Director or Deputy Director(s).
- 9.3. CONTRACTOR shall establish daily Park operating hours, subject to the written approval of the RMA Director or RMA Deputy Director(s).
- 9.4. All operation dates and times shall be included in the Park Operations Plan as described in Section 26.
- 9.5. Contractor shall submit any proposed changes to the approved regular operating status and hours for approval in writing to the COUNTY RMA Director or Deputy RMA Director(s).
- 9.6. Due to environmental, economic and/or other factors or conditions outside the control of the COUNTY, an emergency closure may be required by authority of the COUNTY, MCWRA, or any other federal, state or local authority having jurisdiction.
- 9.7. COUNTY is not required to provide advanced notice of emergency closures; however, COUNTY shall notify CONTRACTOR as soon as reasonably possible but in no circumstance more than 1 hour following any such Park closure.
- 9.8. COUNTY may reopen park after an emergency closure without providing an advance notice to CONTRACTOR.
- 9.9. COUNTY may notify the CONTRACTOR in writing that the COUNTY has temporarily suspended specific administrative or operation requirements as a result of a Park closure.
10. **Public Access, Reservations and Fees.** CONTRACTOR shall monitor and control the public's access to the Park. Responsibilities shall include receiving and recording all reservations for the Park, including phone, internet and on-site reservations, and issuing passes for entry and use of the Park.
  - 10.1. CONTRACTOR shall maintain a count of all fees paid, reservations made by type, and attendance by zip code, and report the counts to the COUNTY on a monthly basis.
  - 10.2. All rates and charges to the public by CONTRACTOR for Park services will be reasonable and appropriate for the type and quality of facilities, equipment and products provided. Rates and charges require COUNTY approval as shown below:

<b>Table 10 – Rate Approvals</b>	
<b>Director and Board of Supervisors Approval</b>	<b>Director or Designee Approval</b>
Entry Fees Reservation Fees Facility use fees (boat launch, rentals, marina slip rates, etc.)	Retail Food and Beverage Special Event/Promotional Fees: - User Fees - Assignment of Cost to Permittee - Promotional Event Fees - Special Discount Programs and Promotions

- 10.3. CONTRACTOR shall submit all proposed rates and pricing changes to the COUNTY for review and approval by the RMA Director or designee as part of the Baseline update as detailed in Section 26.
- 10.4. County Access to Park. MCWRA has and maintains absolute entitlement to, use of, and release of all waters within the reservoir at Lake Nacimiento. MCWRA will from time to time as it solely deems necessary release or add water to the reservoir, and it is agreed MCWRA may do so without regard to the effect, if any, as to CONTRACTOR's revenue, income or profit, whether gross or net.
- 10.5. COUNTY, in its sole discretion, reserves the right of use of Park facilities for official COUNTY business, at no cost, as long as such use does not substantially interfere or reduce existing revenue generating activities.
- 10.6. COUNTY, in its sole discretion, further reserves the right to use any occupied camping space and/or facility for official COUNTY business, and CONTRACTOR agrees to perform the administrative task of notifying and removing the current occupants at the soonest possible opportunity as provided by law. COUNTY agrees to pay CONTRACTOR the current rental rate for the space and/or facility for the remainder of the displaced occupant's term of use, or the time reserved by the COUNTY, whichever is less. If COUNTY requires the use of facilities normally used by CONTRACTOR as office space, and such use will displace or interfere with CONTRACTOR staff in the performance of their duties, COUNTY shall provide a reasonably comparable facility for the duration of COUNTY'S use.
- 10.7. COUNTY may undertake improvements to the Park during the term of the agreement. The COUNTY will attempt to make those improvements in a manner that does not interfere with or unreasonably restrict public use of revenue generating facilities otherwise available to the extent feasible for on-going operations. CONTRACTOR expressly waives any and all claims for damages of any kind, including but not limited to, loss of profits as a result of any interruption

of business that may arise as a result of such improvements undertaken by the COUNTY.

11. **Alcoholic Beverage Sales.** COUNTY transferred three (3) State of California, Department of Alcoholic Beverage Control Licenses (hereinafter referred to as "Licenses"), for alcohol sales at the Park to CONTRACTOR under the previous agreement, identified as follows:

Permit #20-510912 Off Sale Beer and Wine Store  
Permit #20-510903 Off Sale Beer and Wine Marina  
Permit #41-540909 On Sale Beer and Wine Eating Place

- 11.1. Upon termination of the agreement, CONTRACTOR shall transfer Licenses to the COUNTY, subject to approval by the California Department of Alcoholic Beverage Control.
- 11.2. Revenue and cost of goods sold related to alcohol sales will be shown on the P&L.
12. **Staff.** CONTRACTOR shall provide all staff necessary to operate and maintain the Park as specified in this scope of work, to such an extent and in a manner considered satisfactory by COUNTY.
  - 12.1. CONTRACTOR shall be responsible for human resources management of the Park operations. Human resources management will include recruiting, selection, hiring, retention, termination, and overall employee management. Employee benefits will be based on CONTRACTOR's employee benefit policy.
  - 12.2. CONTRACTOR shall ensure that one of its employees, authorized by the CONTRACTOR to make operational decisions, lives within a radius of twenty-five 25 miles of the Park to allow prompt and appropriate response to the operational needs of the Park.
  - 12.3. CONTRACTOR shall ensure that its staff assigned to work under this Agreement dress professionally and appropriately for their job in accordance with a dress code established by CONTRACTOR. and the terms of this Agreement. In the event of a conflict between CONTRACTOR's dress code and this Agreement, (e.g., CONTRACTOR branding on uniforms) the terms of this Agreement shall prevail.
  - 12.4. CONTRACTOR staff shall not possess for personal use or consume alcohol while in uniform or providing services under this Agreement.
  - 12.5. CONTRACTOR shall not use any COUNTY facilities for staff housing without prior written approval by the RMA Director or RMA Deputy Director(s).

13. **CONTRACTOR Use of County Vehicles.** COUNTY shall assign COUNTY Fleet vehicles, vessels and equipment to CONTRACTOR for use in Park operations.

13.1. CONTRACTOR shall require all staff assigned to Park or an Additional Service to sign waivers of liability as provided by the COUNTY for use of COUNTY vehicles.

13.2. The parties shall enter into a separate Lease Agreement (in a form substantially similar to that attached hereto as Exhibit B) for the lease from County to CONTRACTOR of specified personal property (vehicles and vessels identified therein) to be used by CONTRACTOR during the term of this Agreement. From time to time, the parties may agree in writing to update or modify the assets listed therein as necessary and appropriate. At the conclusion of this Agreement, the personal property shall be transferred back to COUNTY according to the terms of that Lease Agreement.

14. **Additional Services.** COUNTY and CONTRACTOR recognize that it may be mutually beneficial to coordinate additional CONTRACTOR or COUNTY support for operations at the Park or Lake San Antonio on a temporary basis. These Additional Services may include janitorial work and event staffing support for COUNTY-managed special events, short-term CONTRACTOR assistance to COUNTY staff at Lake San Antonio, or special use of COUNTY or CONTRACTOR resources in the repair or maintenance of the Park or Lake San Antonio on limited occasions, subject to prevailing wage and public bidding requirements. Additional Services are voluntary and neither Party is under any obligation to perform such services unless mutually agreed to in writing.

14.1. Any accepted Additional Services shall be agreed to in writing by CONTRACTOR and the RMA Director or Deputy Director(s) and shall include the scope of Additional Services to be provided, the staff, equipment and/or materials to be used, the length of time for the Additional Services to be provided, and the estimated cost.

14.2. CONTRACTOR shall submit to the COUNTY a rate sheet detailing costs to be charged for Additional Services. The rate sheet may be updated from time to time, with approval from the COUNTY, to reflect current staff salaries. All rates shall be on a "cost plus" basis consisting of base salary and an overhead percentage to be negotiated on a case by case basis and shall not include any other overhead charges.

14.3. Any costs associated with Additional Services shall be reimbursed on a time and materials basis and will not be included in any profit and loss calculation for the operations of the Park.



15. **Special Events.** All special events held at the Park will be managed through CONTRACTOR. All revenue and expenses, including COUNTY expenses associated with special events will be included in the Adjusted Net Income calculation.
- 15.1.1. For any event under one-thousand (1,000) people where CONTRACTOR is negotiating fees in accordance with Section 10.2, CONTRACTOR shall provide COUNTY with a notice of the event thirty (30) days prior to the event, or within three (3) days of receiving an event application if received less than thirty (30) days from the event date. If the event requires any additional permitting or contracting other than a reservation (e.g. ABC alcohol license, structure permit for tents, 3rd-party vendor agreements, etc.), CONTRACTOR shall coordinate with COUNTY to ensure all required permits are obtained prior to the event.
- 15.1.2. CONTRACTOR shall submit all special events requests with an estimated attendance greater than one thousand (1,000) and less than five thousand (5,000) people, including spectators, event volunteers and event employees to the RMA Director for review and express written approval. Per COUNTY Code Chapter 14.12, the RMA Director may add conditions of approval to ensure public health, safety and welfare, and prevent unreasonable impact or risk to the COUNTY. COUNTY shall not unreasonably withhold approval and shall provide notice of determination within ninety (90) days of submittal to COUNTY.
- 15.1.3. Per Monterey County Code Chapter 14.12, events with an estimated attendance of five thousand (5,000) people or more must be approved by the County Board of Supervisors. In such cases, CONTRACTOR shall include the COUNTY as the final signatory the event agreement, in a form acceptable to the COUNTY.
- 15.1.4. CONTRACTOR shall not permit event organizers, partners, attendees, or sponsors to store equipment, vehicles, machinery, or any other items used in the performance of an event at Park facilities, grounds or open space, beyond the term of the special event, unless given prior written approval by the RMA Director or Deputy Director(s). CONTRACTOR shall be solely liable for any COUNTY cost to remove any storage permitted by CONTRACTOR without COUNTY approval.
16. **Environmental Laws and Monitoring.** CONTRACTOR shall at all times in all aspects comply with all federal, state and local laws and regulations, and any amendments thereto affecting CONTRACTOR's operation on the Park, including all federal, state and local laws, ordinances and regulations relating to the environment and Hazardous Material.

- 16.1. As used herein, the term "Hazardous Material" includes, without limitation, any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States government. COUNTY shall be notified Within one (1) hour of any release or threatened release of any hazardous material.
- 16.2. CONTRACTOR shall notify COUNTY within 24 hours when an endangered species or species under federal, state or local protection such as the Bald Eagle is identified within the Park. CONTRACTOR shall coordinate with COUNTY to ensure all applicable laws and regulations are followed when responding to a protected species within the Park.
- 16.3. CONTRACTOR shall provide environmental risk mitigation services, environmental testing, enforcement and reporting as required by CONTRACTOR's operations and maintenance responsibility under the scope of this Agreement. Any work requiring California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) review will be considered COUNTY responsibility and will not be included in Operating Expenses.
- 16.4. CONTRACTOR shall comply with State, COUNTY and other regulatory requirements pertaining to water quality testing in recreational, water body areas for harmful algal blooms as per the State Water Board's Surface Ambient Monitoring Program, in coordination with the San Francisco Estuary Institute and the Cyanobacteria Assessment Network (CyAN), a joint project of the National Aeronautics and Space Administration (NASA), National Oceanic and Atmospheric Administration (NOAA), U.S. Geological Survey (USGS), and Environmental Protection Agency (EPA).
- 16.5. When conditions are optimal, including light, temperature, levels of nutrients, and lack of water turbulence, cyanobacteria and some algae can quickly multiply into a harmful algal bloom (HAB). CONTRACTOR shall begin monitoring activities including but not limited to visual inspections or water testing as required by the State Water Board prior to opening of the Park from Standby status or any time the Park is open to the Public.
- 16.6. CONTRACTOR shall perform water quality tests and submit reports to appropriate agencies as required by law and send electronic .pdf copies of all such reports to the COUNTY.

## **SECTION II – FINANCES AND ACCOUNTING**

17. **Accounting System.** CONTRACTOR shall utilize an accounting system that follows generally accepted accounting practices. The accounting system shall be capable of providing information required by this scope of work and in final form acceptable to COUNTY. CONTRACTOR shall track and report revenues and expenses in a format

acceptable to the COUNTY that identifies costs by activity or facility category to determine which revenue streams make significant contributions to and which may detract from net income. Specifically, revenue and expenses shall be assigned to both Revenue Generating Activity and revenue/expense categories acceptable to COUNTY and substantially similar to the examples shown in Table 17 below:

<b>Table 17 – Itemized Revenue and Expenses</b>		
<b>Revenue Generating Activity</b>	<b>Revenue Category</b>	<b>Expense Category</b>
<ul style="list-style-type: none"> <li>- Special Events, Tours, etc.</li> <li>- Camping</li> <li>- Day Use</li> <li>- General Store</li> <li>- Marina</li> <li>- Moorage</li> <li>- Lodging/Rooms</li> <li>- RV Rental</li> <li>- Support (for Park-wide infrastructure)</li> </ul>	<ul style="list-style-type: none"> <li>- Admission (Identified by type: vehicle, boat, etc.)</li> <li>- Alcohol</li> <li>- Apparel</li> <li>- Fuel</li> <li>- Groceries</li> <li>- Ice</li> <li>- Other Food &amp; Beverage (e.g., Food Truck)</li> <li>- Reservation</li> <li>- Taxable Merchandise</li> </ul>	<ul style="list-style-type: none"> <li>- Cost of Goods Sold</li> <li>- Staff Time (by position)</li> <li>- Maintenance – Building</li> <li>- Maintenance – Infrastructure</li> <li>- Maintenance – Grounds</li> <li>- Repairs – Building</li> <li>- Repairs – Infrastructure</li> <li>- Repairs - Grounds</li> <li>- Housekeeping</li> </ul>

18. **Financial Report Schedule.** Financial reporting to COUNTY will be on a calendar month basis. CONTRACTOR shall submit a monthly written general ledger, trial balance, and profit and loss statement (P&L) to the COUNTY for review and approval within thirty (30) days of the end of each calendar month. CONTRACTOR shall also provide out of cycle financial reports at the COUNTY's request, to develop COUNTY's budget estimates.

19. **Procurement of Good and Services.** CONTRACTOR shall have no authority to negotiate or contract for, or purchase goods or services on behalf of the COUNTY without prior approval from the COUNTY. Prior approval may be given in various forms to allow continuity of operations, including individual approval for one-time procurement of goods or services in accordance with sub-sections 19.1 – 19.3 below, or as part of the Operations Plan approved by the COUNTY for scheduled services or reoccurring goods and inventory purchases. Tables 18.a, 18.b below provide guidelines for the responsibility of procuring third-party contracts for goods and services:

<b>Table 19.a: Procurement Responsibility</b>		
	<b>Capital Project</b>	<b>Operations and Maintenance</b>
<b>Goods</b>	COUNTY	CONTRACTOR (with COUNTY approval)
<b>Services</b>	COUNTY	COUNTY

<b>Table 19.b: P&amp;L Calculations</b>		
	<b>Capital Project</b>	<b>Operations and Maintenance</b>
<b>Goods</b>	Not Included	Included
<b>Services</b>	Not Included	Included

- 19.1. CONTRACTOR may, upon written approval from the RMA Director or Deputy Director(s), act as a designated agent on behalf of the COUNTY to coordinate with third-party vendors, suppliers, independent contractors, promoters and sanctioning bodies to provide amenities, perform repair and maintenance, and provide other services as necessary in performance of this Agreement. CONTRACTOR, shall, as designated agent, collect all revenue, receive invoices and make payments for third-party services.
- 19.1.1. Unless considered an ineligible expense per Section 14 – Additional Services, all revenues and expenses incurred by CONTRACTOR as a designated agent for the COUNTY shall be reported to the COUNTY on a monthly basis.
- 19.1.2. CONTRACTOR shall submit copies of all invoices paid in the previous month.
- 19.2. **Transition of Third-Party Contracts.** Upon execution of this Agreement, CONTRACTOR shall provide to COUNTY a list of its active contracts used in performance of lake management services under agreement A-11983. COUNTY may provide written authorization to CONTRACTOR to continue to procure services under these existing contracts, and receive reimbursement for associated Direct Operating Costs, subject to review and approval by COUNTY, while COUNTY executes contracts for the same services, as needed. Contractor shall act as the designated agent in accordance with Section 19.1 once a COUNTY contract is executed and a written notification provided to CONTRACTOR naming it as designated agent, COUNTY may rescind its existing contract authorization with a seven (7) day notice, and any subsequent costs incurred by CONTRACTOR using its own contract shall not be eligible for reimbursement.
- 19.3. **Emergency Services.** CONTRACTOR may, upon written approval by the COUNTY, contract directly with third-party vendors to provide services when the COUNTY determines the need presents an immediate threat to life safety, health or property. No individual contract for emergency services shall exceed \$15,000 per COUNTY procurement policy. Services are subject to prevailing wage requirements.
20. **Profit and Loss Statement (P&L).** The P&L, as audited and approved by the COUNTY, will reflect all CONTRACTOR revenue, and expenses paid in the normal course of business such as all personnel, supplies, materials and equipment needed for the operation of the Park, excluding any Additional Services as defined under Section 14. COUNTY

expenses such as Information Technology Department (ITD) Support Costs, Fleet service and Vehicle Acquisition Management Plan (VAMP) costs and utilities shall not be included in the P&L.

- 20.1. CONTRACTOR shall include in the P&L a summary of its previous month Direct Operating Costs, directly related to and incurred in the performance of this Agreement and specifically set forth in Table 20 below.

<b>Table 20 – Direct Operating Costs</b>
Costs for Staff Working at the Park:
Salaries, Benefits and Employee Welfare
Insurance Health
Workers Comp
Payroll Service Fees
Payroll Taxes
Additional Insurance purchased to meet Agreement requirements.
Audit Expenses per Section 22
Marketing Expense
Property Taxes, Assessments and Fees
Park Legal Fees
Association Fees (on behalf of Park)
Third-Party Contracts (Acting as Designated Agent)
Cost of Goods Sold
Maintenance (Emergency and Scheduled) as defined in Exhibit A
Direct vehicle expenses under the Vehicle Lease Agreement (Exhibit B)

- 20.2. CONTRACTOR shall be responsible for the payment of all taxes, fees and assessments associated with its performance under this Agreement.
- 20.3. COUNTY maintains a Vehicle Acquisition Management Plan (VAMP) to offset the cost of replacement vehicles, vessels and equipment managed by County Fleet Management. Fleet vehicles, vessels and equipment provided by the COUNTY to CONTRACTOR will be included in the VAMP.
21. **Compensation.** Parties agree to settle the CONTRACTOR Operating Account Surplus or Deficit on a monthly basis, based on CONTRACTOR's P&L as reviewed and approved by the COUNTY. If a surplus, CONTRACTOR shall reimburse COUNTY. If a deficit, COUNTY shall reimburse CONTRACTOR. In addition, COUNTY shall pay CONTRACTOR a Fixed Management Fee of \$300,000 annually, paid in monthly installments of \$25,000. The Fixed Management Fee shall be adjusted at the beginning of each Fiscal Year in accordance with the prior 12-month average (July through June) Consumer Price Index (CPI) adjustment for the San Francisco/Hayward area. Payment shall be made within thirty (30) days of the end of each calendar month.

- 21.1. In addition to the Fixed Management Fee, COUNTY shall pay CONTRACTOR, if applicable, an Annual Incentive Fee of ten percent (10%) on the Fiscal Year Adjusted Net Income. The Annual Incentive Fee shall be paid, pending COUNTY's audit and approval of the Fiscal Year Adjusted Net Income and reconciliation of applicable COUNTY costs, not to exceed 120 days from June 30 each year. If the calculated Annual Incentive Fee falls below \$0, no fee will be paid by COUNTY.
- 21.2. For the purposes of this Agreement, the following definitions apply:
- 21.2.1. Adjusted Net Income is calculated as Gross County and CONTRACTOR Income for the Park, less all Operating Expenses
- 21.2.2. Gross Income means all COUNTY and CONTRACTOR operating revenue from ordinary business activities and specifically excludes:
- 21.2.2.1. Sale of Capital Assets.
- 21.2.2.2. Interest Earnings.
- 21.2.3. Operating Expenses means all COUNTY and CONTRACTOR direct operating expenses, including Direct Operating Costs as defined in Table 19, the Fixed Management Fee, and other direct costs charged to the Park, including but not limited to the costs listed in Table 21.a below. Costs identified in Table 21.b are excluded from the Operating Expense calculation. CONTRACTOR costs listed in Table 21.b are ineligible for reimbursement.

<b>Table 21.a – Allowable Costs Calculated as Operating Expense</b>
Fleet service costs for vehicles assigned to the Park
Hours charged to the Park by the Chief of Parks and Administrative Operations Manager assigned to manage the Park contract, not to exceed 2% of total salary and benefits for each position.
Information Technology Department (ITD) Support Costs
Ranger hours for response to incidents in the Park as requested by CONTRACTOR, or to provide security and enforcement as determined by the supervising Park Ranger on duty to supplement the security responsibilities of CONTRACTOR. Ranger hours other than incident response at the Park as defined above will not be charged to the Operating Expenses calculation.
Utilities
Vehicle VAMP Costs

<b>Table 21.b – Excluded Costs</b>
Annual direct salary and benefits in excess of \$50,000 for CONTRACTOR Vice President assigned to oversee the Park
CONTRACTOR charges covering any corporate or central office overhead or staff, other than legal fees for services provided directly charged to the Park as allowed in Table 20.
COUNTY administrative staff costs and Ranger surface patrols not covered under Table 21.a
COUNTY insurance costs
Depreciation
Extraordinary items and Capital expenses as defined under Exhibit A.
Interest on Debt

22. **Audits and Reconciliation.** CONTRACTOR agrees that COUNTY, or its designee shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. CONTRACTOR agrees to provide COUNTY with any relevant information requested, and shall permit COUNTY access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the agreement.

22.1. CONTRACTOR shall have an independent Certified Public Accountant (CPA) conduct a Financial Statement Audit on an annual basis. The Financial Statement Audit includes the Balance Sheet, Income Statement, Statement of Owner's Equity and Statement of Cash Flows relating to this Agreement. CONTRACTOR also offers to COUNTY to provide an independent audit of CONTRACTOR's expenses at any time (not to exceed two times annually) requested by COUNTY in writing. All audits performed by independent entities shall be conducted by a licensed CPA in compliance with professional standards promulgated by the American Institute of Certified Public Accountants.

22.1.1. All costs associated with the performance of independent audits shall be included in the P&L as expenses paid in the normal course of operation. Any deficiency or error found in such audit will promptly be corrected by CONTRACTOR. If such audit shall disclose a variance of ten percent (10%) or greater in total annual revenue or a variance of ten percent (10%) or greater in total annual expense, CONTRACTOR shall be responsible to pay the entire amount of the independent audit not as part of the P&L.

22.2. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the COUNTY or as part of any audit of the COUNTY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment.

23. **Fiscal Year Budget.** CONTRACTOR shall provide COUNTY with a Fiscal Year budget by January 31 of each year, showing planned revenues and expenditures for the upcoming Fiscal Year by revenue generating activity.

## SECTION II - PARK OPERATIONS

24. **Reporting Requirements.** The following table summarizes CONTRACTOR's non-regulatory reporting obligation to COUNTY. Additional federal, state and local regulations may require additional reporting.

Table 24 – Reporting Requirements		
Associated Section	Report Type	Frequency
10.1	Count of Fees, Reservations, Attendance by Zip Code	Monthly
10.3	Rates and Pricing Adjustments	October 31st
14.2	Rate Sheet for Additional Services	As Needed
15.1.1	Notice for small events	As Needed
15.1.2	Approval for large events	As Needed
16.6	Water Quality Test Copies	As Needed
20.1	P&L w/ Revenue and Expenses by Revenue Generating Activity	Monthly
26	Park Operations Plan	Bi-Annually (See Below)
26.1,2	Baseline Plan	October 31st
26.1,3	Summer Ops Plan	March 31st
26.4.5.1	Inventory reports	Monthly
27.1	Facility Inspection Reports	Quarterly



25. **Marketing Guidelines.** It is the goal of the County to promote the Park as a year-round destination for both water and non-water activities with the end result of increased attendance and net profit. CONTRACTOR shall be responsible for advertising and marketing of the Park to meet this goal. CONTRACTOR should consider alternative income opportunities and marketing strategy to render Park operations less dependent on the reservoir levels. Any marketing strategy must include a plan to attract special events to the Park. COUNTY may recommend events to CONTRACTOR to evaluate feasibility. CONTRACTOR shall submit its marketing plan and any plan updates to COUNTY as a part of the Park Operations Plan process described in Section 26 below, which is subject to COUNTY review and approval.
- 25.1. It is the intent of the COUNTY to promote the Park as a Monterey County park. CONTRACTOR shall market the Park using identifiers that include a form of "Lake Nacimiento" branding approved by the COUNTY. References to "CalParks", "Basecamp Hospitality", "Monterey Lakes Recreation Company", "Urban Parks Concessionaires" or any other form of branding which identifies CONTRACTOR shall not be permitted on any uniforms, vehicles, advertising, or any other marketing material.
- 25.2. All advertising shall be subject to approval by the COUNTY. COUNTY may approve marketing strategies that allow the CONTRACTOR to determine the best approach and content, however the COUNTY may at any time require the CONTRACTOR to terminate any advertising.
- 25.3. CONTRACTOR shall make all advertising material and agreements available to the COUNTY upon request.
- 25.4. There shall be no advertising, sponsorships or event sanctioning for tobacco, gun, cannabis, or adult entertainment businesses.
- 25.5. No advertising, sponsorship or event sanctioning agreement shall extend beyond the term of the CONTRACTOR's agreement with the COUNTY without the express, written approval of the COUNTY.
26. **Park Operations Plan.** CONTRACTOR shall provide COUNTY with a detailed Park Operations Plan (Plan) that will describe how CONTRACTOR intends to operate the Park in accordance with this Agreement. Subsequent years should consist of updates and revisions as necessary. The Plan shall be subject to review and approval by COUNTY. CONTRACTOR shall operate the Park in accordance with the approved Plan unless otherwise directed in writing by the COUNTY.
- 26.1. **Development Schedule.** CONTRACTOR shall update the Plan on a bi-annual basis, or as necessary upon agreement by the Parties. Plan updates shall consist of a "Baseline Operations Update" due October 31st for each year, and a "Summer

Operations Update” to be submitted by CONTRACTOR no later than March 31st of each year.

<b>Table 26.a – Park Operations Plan Schedule</b>	
<b>Baseline Operations Update Due October 31st Annually</b> (Report on operations for previous March 1 – September 30)	<b>Summer Operations Update Due March 31st Annually</b> (To account for water levels/weather. Report on operations for previous October 31 – February 28/29)
Report on Previous Operating Period	Report on Previous Operating Period
Budget w/ cost by revenue generating activity.	Revised Budget based on outlook for weather and water levels.
Park Activities and Amenities	Revised Staffing Plan
Staffing	Retail and Merchandising Plan
Rates/Fees Update	Marketing Plan
Retail and Merchandising	Other Updates as Needed
Marketing	
Maintenance and Repairs	
Capital Improvement	

26.2. **Bi-Annual Operations Review.** CONTRACTOR shall provide COUNTY with a written progress report covering the previous operating period as part of the Baseline and Summer Operations Updates. Parties shall meet to review Plan updates and develop operations goals for the following year. Upon request by COUNTY, CONTRACTOR shall prepare a presentation for the Plan review meeting, highlighting accomplishments made in the previous reporting period and any proposed changes to the Plan for the upcoming period. Progress reports shall include the following information:

- 26.2.1. Comparison of overall Park operations for the previous reporting period compared to the goals previously set in the Plan.
- 26.2.2. Planned vs actual staffing levels
- 26.2.3. Planned vs actual marketing efforts
- 26.2.4. Maintenance and repair work completed, and the status of any incomplete maintenance or repair work scheduled for the preceding reporting period.
- 26.2.5. Any other updates as needed, or as requested by COUNTY to evaluate CONTRACTOR performance of this Agreement.

26.3. COUNTY shall provide CONTRACTOR with a “Satisfactory” or “Unsatisfactory” rating for each area of the operations review. CONTRACTOR’s

performance shall be considered unsatisfactory if CONTRACTOR fails to meet operations goals agreed to in the Plan or provide County with an acceptable explanation for the failure. County shall provide CONTRACTOR with a written explanation for any Unsatisfactory Rating.

26.4. The "Baseline Operations Plan" shall include the following:

26.4.1. **Budget w/ Line Item Detail.** A baseline budget which identifies estimated contractor costs, staff time, marketing, merchandising and all other expenses, and estimated revenue for the current and upcoming Fiscal Years. Each revenue and expense line should be supported by the information included in Plan as described in 23.2.2 – 23.2.9 below. To meet these requirements, CONTRACTOR must submit the following budget reports, to be included in the Baseline Operations Update:

- 26.4.1.1. Proposed budget for the upcoming Fiscal Year
- 26.4.1.2. Current Fiscal Year estimate of revenues and expenses
- 26.4.1.3. 3-Year estimate of revenues and expenses.

26.4.2. **Park Activities and Amenities.** Proposed operations and use of Park facilities, and any changes in operations from the previous year. These may include proposed relocation, reuse or closure of Park facilities, and investments in the Parks such as new or improved revenue generators. If facilities are scheduled to be closed, the maintenance status must be included (e.g. continued maintenance, "mothballed", etc.).

26.4.3. **Staffing.** Anticipated staffing estimates for the upcoming year, including approximate year-round and summer staffing levels, any pay/salary increases and pay range by position for County approval, general job descriptions, and any known special projects or assignments by position. The baseline plan should provide details on how year-round staff will be utilized in during periods of reduced water-related activity. The staffing plan will be updated with more detail as part of the Summer Operations Update, when water levels and expected park attendance are known.

26.4.4. **Rates and Fees.** Updates to existing rates and fees for Park amenities are due October 31 of each year. Retail, Food and Beverage, and Special Event/Promotional Fee rates may be approved as a range or criteria for pricing instead of specific rates, (e.g., discount programs based on time of year/end of season) These approved ranges or criteria may be adjusted with approval from the RMA Director or designee. Rates requiring COUNTY Board of Supervisors approval will be presented by COUNTY to the Board for adoption into the Monterey County Master Fee Schedule.

- 26.4.5. **Retail and Merchandise.** The Plan should demonstrate CONTRACTOR has developed a comprehensive merchandising plan that follows retail best practices, considers store and merchandising layout, product selection adjusted to meet customer demands, and analysis of pricing ranges for goods, expected gross margin, estimated cost of goods sold, proposed inventory levels and order points for the following retail categories:

Table 26.b – Inventory Categories	
Prepared Food	Tobacco
Taxable Groceries	Taxable Merchandise
Non-Taxable Groceries	Fishing Tackle
Ice Cream	Wood
Beer/Wine	Ice
Fountain Drinks	Gasoline
Apparel	Propane

- 26.4.5.1. CONTRACTOR shall provide COUNTY with monthly inventory reports which show shortages and shrink by retail category. This information may be included with the monthly P&L reports.
- 26.4.6. **Marketing.** A marketing plan and estimated costs, developed in accordance with the guidelines established in Section 25 above, including information on the target audiences, materials and media, planned special offers and promotions, partnerships, and other information that details how CONTRACTOR will market the Park. The Baseline Operations Plan should focus on marketing special events, new revenue-generating services/facilities, non-water activities and shoulder seasons. The Plan will be updated in the Summer Operations Update to include marketing scope based on water levels.
- 26.4.7. **Maintenance.** The Plan will include a list of all planned maintenance projects to be completed by CONTRACTOR during the upcoming year, and when projects are expected to be completed. Work may be subject to prevailing wage and public bidding requirements. The list of projects should consider deficiencies identified in facility inspections conducted in past years when determining project priorities. Project descriptions should include a cost estimate if available.
- 26.4.8. **Capital Improvements.** A list of proposed/requested capital improvements provided by CONTRACTOR to the COUNTY. All capital improvements, if approved, must be completed by the COUNTY. Capital improvements are subject to prevailing wage and public bidding requirements. A list of approved or scheduled capital

improvement projects relating to the Park, as adopted by the Board of Supervisors, will be provided by the COUNTY to be included in the Plan for reference.

26.5. The "Summer Operations Update" shall include the following:

26.5.1. Anticipated staffing plan, including staffing levels, pay/salary range and page range by position for County approval, general job descriptions, and any known special projects or assignments by position. The plan should also provide expected staff hours per month by task as shown in the sample Table 26.a below.

Table 26.c (Sample Plan)					
Task	Total Hours	July	August	September	...
Special Events and Marketing					
Weed Abatement					
Mowing					
Janitorial					
Gate Operations/Quagga Inspection					

26.6. COUNTY and CONTRACTOR acknowledge that the Plan may require revision at any time to address changing lake and/or Park conditions such as unexpected water levels or unexpected maintenance needs. CONTRACTOR shall notify COUNTY if it is unable to perform any part of the approved Plan due to conditions beyond its control (weather, available applicants for staffing, etc.). Parties will review the plan and may amend as necessary, and all changes must be approved in writing by the COUNTY prior to implementation.

27. **Facility Inspections.** CONTRACTOR shall regularly inspect all Park facilities under CONTRACTOR management to identify deficiencies and provide a written record of facility conditions to COUNTY.

27.1. CONTRACTOR shall conduct a minimum of quarterly inspections on all facilities to compare facility conditions with maintenance standards as described in this Agreement. The COUNTY may require additional inspections on facilities as needed.

27.2. CONTRACTOR shall record deficiencies identified through inspection, notification by visitors, COUNTY staff, etc.

27.3. COUNTY staff shall be allowed to accompany CONTRACTOR staff on inspections at any time.

- 27.4. COUNTY reserves the right to conduct its own inspection of any facility without prior notice to CONTRACTOR.
- 27.5. Parties shall comply with all local state and federal rules and regulations when conducting inspections of facilities used as Staff Housing.
28. **Inspection Records.** CONTRACTOR shall maintain written records of inspections and shall utilize inspection checklists to consistently document Facility conditions. CONTRACTOR shall note any deficiencies, new or ongoing on inspection forms. Deficiencies that present an imminent danger to life, health or property must be addressed within 24 hours.
- 28.1. Forms must be signed and dated by individual completing the inspection. A scanned electronic copy of the inspection form in .pdf format must be sent to the COUNTY designated point of contact within ten (10) days after the inspection.
- 28.2. CONTRACTOR shall make any inspection record on file available to the COUNTY upon request.
- 28.3. CONTRACTOR shall keep all inspection records on file for three (3) years following the end of this Agreement in electronic .pdf format.
29. **Maintenance.** CONTRACTOR shall provide preventative and corrective maintenance to keep all Facilities in a safe, operable condition that is in strict compliance with all applicable governmental regulations, laws and codes, including but not limited to applicable Building, Electrical, Plumbing and Fire codes. Work may be subject to prevailing wage and public bidding requirements.
- 29.1. Exhibit A details the maintenance responsibilities of the COUNTY and CONTRACTOR. COUNTY retains responsibility for all capital improvements and repairs.
- 29.2. CONTRACTOR shall return the Facilities to the COUNTY at the termination of the agreement in as good order as when received, excepting ordinary wear and tear.
- 29.3. CONTRACTOR shall be responsible for providing all staff and equipment necessary to maintain Park facilities in accordance with this agreement, except vehicles, vessels and equipment assigned to CONTRACTOR by COUNTY under this agreement or any associated vehicle lease agreement.
- 29.4. CONTRACTOR shall maintain all Park Facilities whether the Facilities are open or closed, unless express written permission is provided by the RMA Director or Deputy Director(s) stating that maintenance on a Facility may be discontinued (i.e. "mothballed").

- 29.5. CONTRACTOR shall be solely responsible for the cost of any repair or maintenance to Facilities resulting from the negligent acts or omissions of the CONTRACTOR. In the event of such damage, COUNTY may elect to perform such repair or maintenance itself, at CONTRACTOR's sole cost and expense, or require CONTRACTOR to perform the same at CONTRACTOR's sole cost and expense. Such costs shall not be included in the Adjusted Net Income Calculation.
- 29.6. CONTRACTOR shall be responsible for notifying COUNTY within 24 hours of any malfunction, problem, fault, or not-in-operation for any item for which COUNTY is responsible under Exhibit A, or immediately if a danger to life, health or safety is present.
30. **Maintenance Standards.** CONTRACTOR shall maintain all Facilities in good operating condition acceptable to the COUNTY, in accordance with industry standards and best practices as generally described below. COUNTY recognizes that conditions of some facilities at the start of this Agreement may not meet these standards, and COUNTY may provide CONTRACTOR with alternative maintenance standards on a temporary, case by case basis.
- 30.1. **Buildings**
- 30.1.1. **Building Extensions:** All decks, railings, steps, patios and other building extensions are structurally sound. Railings are secured and do not present a fall hazard. Decks, patios, steps and other constructed surfaces do not present a trip hazard.
- 30.1.2. **Doors:** Finish is in good condition, not chipped or peeling; locks function properly; threshold is not rotted, broken or presenting a trip hazard due to condition; weather-stripping is in place with no gaps; hinges tightened.
- 30.1.3. **Exterior:** Siding or other exterior finish is intact and provides adequate protection to the structure and interior; no holes, missing slats/boards, broken stucco, etc. Paint is not peeling or cracked.
- 30.1.4. **Fixtures, Equipment Misc.:** Appliances, fixtures and equipment (sinks, toilets, water heaters, filtration systems, HVAC, etc.) are in good working order; parts replaced as needed; leaks repaired; filters and other consumables replaced as needed per system and parts manufacturer direction; burned out lights replaced.
- 30.1.5. **Floors:** Flooring is free of trip hazards; Carpets are in good condition with no staining or discoloration beyond normal wear and tear; hard surface floors (wood, laminate, concrete, etc.) must be flat, clean, dry, structurally sound, free of squeaks and free of protruding fasteners.

- 30.1.6. **Interior Walls:** Holes and other damage to the interior wall surfaces are properly patched and painted. Paint is not peeling, bubbled, or otherwise defective.
- 30.1.7. **Marina:** Repair or replacement is required when flotation material no longer performs its designated function, or it fails to meet the specifications for which it was originally warranted. Flotation should be adequate to maintain a stabilized and safe structure capable of supporting use loads. Flotation should be securely fastened to the dock using galvanized steel straps, treated wood dowels, galvanized bolts, or other acceptable methods.
- 30.1.8. **Roof:** Roofing material does not leak and is in good condition. Gutters systems are clean, free of debris buildup. Roof is clean and free of leaves, pine needles, and other debris that may present a fire hazard.
- 30.1.9. **Water Damage:** Source(s) of water damage identified, and any ongoing contributing factors mitigated. Previous damage is assessed to determine the need for repair/replacement.
- 30.1.10. **Windows:** Glass is not broken or cracked; Glazing and weather-stripping provides a good seal, is not cracked, broken or missing; locks are in place (if applicable) and work properly; paint and/or finish is not chipped or peeling. Exterior frame is sealed with no holes or gaps into the interior of the structure. Window screens are free of tears, holes. Screens are secured in frames on all sides, and spline, if appropriate, is intact.
- 30.2. **Trees, Vegetation and Fire Management.** CONTRACTOR shall maintain grounds and open space in compliance with all applicable laws and regulations, such as fire codes and COUNTY policies and codes.
  - 30.2.1. CONTRACTOR shall maintain a vegetation clearance around any fire source or propane tank in accordance with CalFire standards.
- 30.3. **Animal and Pest Control.** CONTRACTOR shall be responsible for the control of all wildlife including rodents, insects and other pests and invasive species at the Park.
  - 30.3.1. Proactive preventative measures, including but not limited to netting, exterior surface protectors (skirt board, sheet metal), bat houses, bird deterrents, and rodent traps and deterrents shall be used as necessary to prevent wildlife from entering spaces within and under structures or otherwise damaging facilities.



- 30.3.2. Traps and repellents will be installed as needed around Park facilities and removed or replaced when full or unsightly.
- 30.3.3. CONTRACTOR shall be responsible for all pesticide spraying and application, including all necessary permits.
- 30.3.4. CONTRACTOR shall provide mussel inspection services at the Park entrance located at 10625 Lake Nacimiento Drive while it is open to the public. All inspections shall be conducted by trained personnel during hours which vessels are admitted to the Park.
- 30.3.5. Quagga Inspection services shall include use of a Quagga Inspection Database to track inspections. Database reports and information shall be available to the COUNTY upon request.
- 30.3.6. The COUNTY has in the past been awarded grants for Quagga Mussel inspections at the Park. The COUNTY anticipates that it will continue to apply for available grants for Quagga Mussel inspections and will expect CONTRACTOR to be involved in the execution of any grant scope of work related to these services.
- 30.4. **Grounds and Open Space.** CONTRACTOR shall provide all open space maintenance, including mowing, road patching, tree trimming, removal of dead or hazardous trees, debris clearing, weed spraying, picking up litter and general cleaning for the campgrounds and open space within the Park.
- 30.5. **Custodial/Janitorial.** CONTRACTOR shall provide services and staff for all custodial and janitorial services at Park facilities, including the following:
  - 30.5.1. **Restrooms:** Clean, stock and maintain all structural restrooms, chemical toilets and floating restrooms (including pumping). Stock toilet paper and paper towel dispensers, fill or replace hand soap dispensers, empty all waste bins, sanitize and mop floors, sanitize facility regularly and as needed.
  - 30.5.2. **Garbage/Recycle:** Provide garbage and recycle collection services, to include cleaning and emptying of trash and recycle bins, cleanup of litter and debris and placement of trash and recycle bins as needed. Complete and adequate arrangements for the sanitary handling of all trash, garbage, and other refuse generated at the Park.
- 30.6. **Campgrounds.** Pool is kept clean and free of leaves, debris and algae. Chlorine and pH is tested and maintained regularly.

- 30.7. **Restaurant.** Restaurant is kept sanitized and clean in accordance with all food health and safety standards.
- 30.8. **Water and Wastewater Systems.** CONTRACTOR shall maintain all drinking water and wastewater systems (pumps, lift stations, filtration systems, storage tanks, and sewer treatment) including:
- 30.8.1. Monitor drinking water quality levels including all required testing for turbidity.
- 30.8.2. Maintain all required water system permits.
- 30.8.3. Provide upkeep to the water systems as needed.
- 30.8.4. CONTRACTOR shall require its staff to maintain all licenses and certifications necessary to legally and safely operate equipment.
- 30.9. **Increased Maintenance Standards Following Capital Improvements.** CONTRACTOR shall maintain facilities that have undergone capital improvements in the improved condition following completion of such improvements.
31. **Public Safety.** CONTRACTOR shall provide basic security services at the Park grounds, including the marina. Services shall be provided by unarmed CONTRACTOR staff or a third-party contractor with CONTRACTOR acting as COUNTY's agent and will include enforcement of CONTRACTOR rules and policies and directing the public to follow COUNTY Code and applicable COUNTY park rules and regulations.
- 31.1. COUNTY shall be responsible for coordinating all security and enforcement services on the water.
- 31.2. CONTRACTOR shall provide on-site security to monitor visitor activity and safety at the Park based on the individual needs of each Park operation.
- 31.3. Security shall make any required reports to the CONTRACTOR on-site supervisor or manager, and/or the appropriate authorities as necessary.
- 31.4. Security shall observe and report any damage to Park property or suspicious activity.
- 31.5. Security shall observe, investigate and report issues related to parked vehicles such as car break-ins, lights left on, missing permits and passes, etc.
- 31.6. Security shall perform patrols of Park property including parking lots, campgrounds and public areas as required.

- 31.7. CONTRACTOR shall include COUNTY as an indemnified party in any waiver or release of liability provided to the public for use of Park facilities. Any such waiver or release of liability is subject to approval by COUNTY.
32. **Lake San Antonio Transition Plan.** It is the intent of COUNTY to transfer all operations at Lake San Antonio to COUNTY. COUNTY and CONTRACTOR shall coordinate the transition of operations at Lake San Antonio in accordance with the County's draft reservoir recreation plan or any subsequent plan approved by the COUNTY Board of Supervisors. Operations at Lake San Antonio are subject to the direction of the County Board of Supervisors
33. **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the COUNTY or prepared in connection with the performance of this Agreement, unless COUNTY specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to COUNTY any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
34. **County Records.** When this Agreement expires or terminates, CONTRACTOR shall return to COUNTY any COUNTY records which CONTRACTOR used or received from COUNTY to perform services under this Agreement.
35. **Maintenance of Records.** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and COUNTY rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain such records until such action is resolved.
36. **Access to and Audit of Records.** The COUNTY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the COUNTY or as part of any audit of the COUNTY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three (3) years after final payment under the Agreement.

37. **Royalties and Inventions.** COUNTY shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without prior written approval of the COUNTY.
38. **Non-Discrimination.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free from such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed prohibited discrimination.
39. **Compliance with Terms of State or Federal Grants.** If this Agreement has been or will be funded with monies received by the COUNTY pursuant to a contract with the state or federal government in which the COUNTY is the grantee, CONTRACTOR will comply with all provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, COUNTY will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
40. **Independent Contractor** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the COUNTY. No offer or obligation of permanent employment with the COUNTY or particular COUNTY department or agency is intended in any matter, and a CONTRACTOR shall not become entitled by virtue of this Agreement to receive from COUNTY any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such taxes.

41. **Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
42. **Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by COUNTY and CONTRACTOR.
43. **Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by COUNTY and CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms and conditions in this Agreement.
44. **Contractor.** The term 'CONTRACTOR' as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
45. **Disputes.** CONTRACTOR shall continue to perform under this Agreement during any dispute.
46. **Assignment and Subcontracting.** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of COUNTY. None of the services covered by this Agreement shall be subcontracted without the prior approval of the COUNTY. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
47. **Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of the COUNTY and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, and heirs.
48. **Compliance with Applicable Law.** The Parties shall comply with all federal, state, and local laws and regulations in performing this Agreement.
49. **Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
50. **Time is of the Essence.** Time is of the essence in each and all of the provisions of this Agreement.
51. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California.

52. **Non-exclusive Agreement.** This Agreement is non-exclusive and both COUNTY and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services at locations other than the Park.
53. **Construction of Agreement.** COUNTY and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
54. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
55. **Authority.** Any individual executing this Agreement on behalf of the COUNTY or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such Party and bind the Party to the terms and conditions of this Agreement.
56. **Integration.** This Agreement, including all exhibits, represent the entire Agreement between COUNTY and CONTRACTOR with respect to the subject matter of this Agreement, and shall supersede all prior negotiations, representations, or agreements, either written or oral, between COUNTY and CONTRACTOR as of the effective date of this Agreement, which is the date COUNTY signs the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**CONTRACTOR\***

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Date: \_\_\_\_\_

Approved as to Form and Legality  
Office of the County Counsel-Risk Management  
Charles J. McKee, County Counsel-Risk Manager

By:  \_\_\_\_\_  
Brian P. Briggs  
Deputy County Counsel

Date: 7-11-19

Approved as to Fiscal Provisions

By:  \_\_\_\_\_  
Auditor/Controller

Date: 7-12-19

Approved as to Indemnity and Insurance Provisions  
Office of the County Counsel-Risk Management  
Charles J. McKee, County Counsel-Risk Manager


By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_


Date: \_\_\_\_\_

Urban Parks Concessionaires  
dba Monterey Lakes Recreation Company  
Contractor's Business Name

By:  \_\_\_\_\_  
(Signature of Chair, President or Vice President)

Its: John Koeberer, Chief Executive Officer,  
(Print Name and Title) Chair

Date: July 10, 2019

By:  \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Its: Richard Bayer, CFO  
(Print Name and Title)

Date: July 10, 2019

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal 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 – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
<b>Buildings:</b>		
Decks and	- Additions to decks/patios	- Maintenance, patching and Cleaning of decks/patios
Patios	- Water sealing, staining or painting of new decks/patios	- Water sealing, staining or painting of existing decks
	- Purchase of deck/patio furniture over \$1,000/unit.	- Purchase of patio/deck furniture under \$1,000/unit.
	- Installation or complete replacement of:	- Repair or partial replacement of:
	• entire decks or patios	• decks/patio
	• floor of deck	• floor of deck/patio
	• footings	• footings
	• patio roofs	• stairs
	• stairs	• railings
	• railings	
<b>Buildings:</b>		
Doors	- Closing off a doorway	- Addition of paneling to a door
	- Cutting of doorways	- Caulking (interior/exterior)
	- Installation or replacement of doors, or doors and frames, or storm doors with related hardware	- Elimination of binding or looseness
	- Painting, varnishing or staining a new door	- Rekeying locks
		- Installation of the following items in an existing door:
		• closers
		• decorative
		• moldings
		• kickplates
		• mailslots
		• peepholes
		• thresholds
		• weather stripping
		- Repair of existing doors
		- Painting, varnishing, or staining existing doors
		- Repair or replacement of:
		• casing
		• locksets
		• closers
		• panels
		• door frames
		• saddles
		• door knobs
		• screens
		• glass panes
		• stiles
		• handles
		• stops



Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
		<ul style="list-style-type: none"> <li>• head jambs</li> <li>• hinges</li> <li>• jambs</li> <li>• locks or latches</li> <li>• thresholds</li> <li>• top rails</li> <li>• trim</li> <li>• weather stripping</li> </ul>
<b>Buildings:</b>		
Exterior	<ul style="list-style-type: none"> <li>- Additions to existing structures</li> <li>- Application of siding to structures</li> <li>- Complete replacement of porches</li> <li>- Complete re-siding of structures</li> <li>- Installation or complete replacement of permanent awnings</li> </ul>	<ul style="list-style-type: none"> <li>- Patching cracks</li> <li>- Repair or maintenance of:                             <ul style="list-style-type: none"> <li>• awnings (including canvas)</li> <li>• exterior surfaces</li> </ul> </li> <li>- Repair, replacement, or maintenance of:                             <ul style="list-style-type: none"> <li>• canvas awnings</li> <li>• flashings</li> <li>• siding (partial)</li> </ul> </li> <li>- Repair woodpecker damage</li> <li>- Caulking/sealing as needed.</li> </ul>
<b>Buildings:</b>		
Fireplaces	<ul style="list-style-type: none"> <li>- Addition or complete replacement of flue or liner (metal or foam)</li> <li>- Complete replacement of chimneys</li> <li>- Installation of new chimneys</li> <li>- Installation or complete replacement of fireplaces (other than freestanding units or inserts)</li> </ul>	<ul style="list-style-type: none"> <li>- Cleaning (including chimney)</li> <li>- Fixing cracks</li> <li>- Installation of spark arrestors</li> <li>- Installation, maintenance or repair of freestanding fireplace unit or insert</li> <li>- Repointing</li> <li>- Sealing of flashings</li> <li>- Repair or replacement of:                             <ul style="list-style-type: none"> <li>• ash pits</li> <li>• caps</li> <li>• cold air inlets</li> <li>• damaged bricks</li> <li>• dampers and controls</li> <li>• flashings</li> <li>• fireboxes</li> <li>• firebricks</li> <li>• firechambers</li> <li>• flues</li> <li>• headers, hearths, lintels and mantels</li> <li>• loose mortar</li> <li>• rain and draft deflectors</li> <li>• smoke chambers</li> <li>• smoke shelves</li> <li>• warm air outlets</li> </ul> </li> </ul>

**Exhibit A – County and Contractor Maintenance and Repair Assignments**

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
<b>Buildings:</b> Fixtures	<ul style="list-style-type: none"> <li>- Complete remodeling of bathrooms (toilet, tub, and vanity)</li> <li>- Complete reconditioning of kitchen cabinets</li> <li>- Complete installation or replacement (including any necessary fixtures) of:                             <ul style="list-style-type: none"> <li>• built-in dishwashers, freezers, ranges, refrigerators, ovens</li> <li>• cabinets (permanent)</li> <li>• Countertops</li> <li>• exhaust fans</li> <li>• floor tiles (if ceramic or quarry type)</li> <li>• garbage disposals</li> <li>• kitchen cabinets</li> <li>• range hoods</li> <li>• tile (floor or wall)</li> <li>• tub or shower enclosures</li> <li>• tubs</li> <li>• wall tiles</li> <li>• water softeners</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Installation of free-standing appliances and cabinets</li> <li>- Unclogging of drains</li> <li>- Replacement of faucets and shower heads</li> <li>- Replacement of (including all parts and accessories):                             <ul style="list-style-type: none"> <li>• cabinet doors</li> <li>• faucets</li> <li>• Freezers</li> <li>• portions of cabinets</li> <li>• portions of countertops</li> <li>• Ranges</li> <li>• Refrigerators</li> <li>• shower</li> <li>• sinks</li> <li>• toilets</li> <li>• vanities</li> </ul> </li> <li>- Repair of (including all parts and accessories):                             <ul style="list-style-type: none"> <li>• cabinets</li> <li>• countertops</li> <li>• dishwashers</li> <li>• ducted or ductless hoods</li> <li>• exhaust fans</li> <li>• faucets</li> <li>• freezers</li> <li>• garbage disposals</li> <li>• mirrors</li> <li>• ovens</li> <li>• ranges</li> <li>• refrigerators</li> <li>• shower heads</li> <li>• sinks</li> <li>• tile</li> <li>• toilets</li> <li>• tub or shower enclosures</li> <li>• tubs</li> <li>• vanities</li> </ul> </li> </ul>
<b>Buildings:</b> Flooring	<ul style="list-style-type: none"> <li>- Installation or complete replacement of carpet, carpet tile, carpet padding, concrete, linoleum and vinyl roll floor covering, tile, wood floor, floating wood laminate, and other similar floors and floor coverings.</li> <li>- Cleaning, sanding, waterproofing, painting, staining, varnishing and waxing new floors.</li> </ul>	<ul style="list-style-type: none"> <li>- Repair, maintenance or partial replacement of carpet, carpet tile, carpet padding, concrete, linoleum and vinyl roll floor covering, tile, wood floor, floating wood laminate, and other similar floors and floor coverings.</li> <li>- Cleaning, stripping, sanding, waterproofing, painting, staining, varnishing and waxing existing floors.</li> </ul>

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
	- Raised flooring	
<b>Buildings:</b>		
Garage doors	- Installation or replacement of complete garage doors	- Adjustment of spring tension
	- Installation or complete replacement of electric garage door openers and controls	- Lubrication of parts
	- Painting, varnishing or staining of new garage doors	- Repair or maintenance of electric garage door openers and controls
		- Painting, varnishing or staining of existing garage doors
		- Weather-stripping
		- Repair or replacement of:
		<ul style="list-style-type: none"> <li>• cables</li> <li>• casings</li> <li>• door frames</li> <li>• door sections</li> <li>• glass panes</li> <li>• hinges</li> <li>• jambs</li> <li>• locks</li> <li>• panels</li> <li>• rollers</li> <li>• saddles</li> <li>• springs</li> <li>• stiles</li> <li>• stops</li> <li>• tracks</li> <li>• trim</li> </ul>
<b>Buildings:</b>		
Roofs and roofing materials	- Complete replacement of a roof or roofing materials (entire building), or the complete side of a peaked roof, or the complete roof or roofing materials on a wing, turret, dormer, etc.	- Application of roof coating or repairs to existing roofs
	- Installation or replacement of complete gutter and downspout systems	- Cleaning and repairing of all types of roof systems, gutters, downspouts, drains, etc.
	- Original installation of all types of roof systems including accessories	- Repair or spot replacement of all types of roofs or roofing materials (asphalt, shingle, slate, tile, built-up, metal, single ply)
		- Repair or replacement of the following items or accessories:
		<ul style="list-style-type: none"> <li>• Copings</li> <li>• Cornices</li> <li>• drip edges</li> <li>• expansion joints</li> <li>• flashings (all types)</li> <li>• gravel stops and facias</li> <li>• metal or composition valleys</li> <li>• metal ornaments</li> <li>• metal stacks</li> <li>• rain and draft deflectors</li> <li>• shingles (all types)</li> <li>• skylights and scuttles</li> <li>• ventilators</li> </ul>

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
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- gutter and downspout systems (partial)
- louvers and screens
- Eliminating squeaks and tightening of loose balusters
- Painting, varnishing or staining of existing stairs
- Repair or replacement of:
  - balusters
  - handrails
  - newels
  - risers
  - termite damage
  - treads
  - wet and dry rot

**Buildings:**  
Stairs

- Installation or complete replacement of sets of stairs or staircases

**Buildings:**  
Ventilation

- Installation or complete replacement of permanent:
  - permanent attic fans
  - exhaust fans
  - gable vents
  - roof vents
  - soffit vents
  - wind turbines
- Installation or replacement of portable attic fans
- Repair, maintenance or replacement of the following in permanent or portable attic or exhaust fans:
  - bearings
  - blades
  - motors
  - shutters

**Buildings:**  
Walls

- Baseboards and trim installed in connection with paneling walls
- Baseboards and trim installed on new or completely replaced walls
- Complete paneling of new or existing walls
- Finishing of new or completely replaced walls
- Installation or complete replacement of tile walls
- Installation or complete replacement of a wall
- Original insulation of new or completely replaced walls
- Cleaning
- Fixing nail pops
- Painting of existing walls (including murals)
- Patching cracks
- Regrouting of ceramic tile
- Repair of:
  - dents
  - split wallboard tape
  - termite damage
  - wet and dry rot

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
	<ul style="list-style-type: none"> <li>- Painting of new or completely replaced walls (including murals)</li> <li>- Removal of a wall</li> <li>- Wallpapering of new or completely replaced walls</li> <li>- Waterproofing new or completely replaced walls</li> <li>- Application of window film or coating in connection with original installation or complete replacement</li> <li>- Caulking of new or completely replaced windows</li> <li>- Installation or complete replacement of permanent combination storm windows</li> <li>- Installation or complete replacement of complete windows (frames and sashes)</li> <li>- Painting, varnishing or staining of new or completely replaced windows</li> <li>- Installation or complete replacement louvers and window shutters.</li> </ul>	<ul style="list-style-type: none"> <li>- Replacement of:                             <ul style="list-style-type: none"> <li>• ceramic fixtures</li> <li>• damaged ceramic tiles</li> <li>• existing baseboards, molding, trim</li> <li>• wallboard panels and wood panels</li> </ul> </li> <li>- Stopping water leaks</li> <li>- Wallpapering of existing walls</li> <li>- Applying putty, window film or coating to existing windows</li> <li>- Caulking of existing windows (interior/exterior)</li> <li>- Eliminating sticking</li> <li>- Installation of:                             <ul style="list-style-type: none"> <li>• drapery rods/ hardware</li> <li>• Shades</li> <li>• Valances</li> <li>• Venetian blinds</li> <li>• window quilts</li> </ul> </li> <li>- Lubricating sashes</li> <li>- Weather-stripping</li> <li>- Painting, varnishing or staining of existing window.</li> <li>- Replacement and/or replacement of:                             <ul style="list-style-type: none"> <li>• aprons</li> <li>• balances</li> <li>• broken glass</li> <li>• frames</li> <li>• hardware (latches, handles, locks, etc.)</li> <li>• inside stops</li> <li>• louvers</li> <li>• parting strips</li> <li>• pocket covers</li> <li>• shutters side casings</li> <li>• side jambs</li> <li>• stools</li> <li>• storm windows panes or screens</li> <li>• termite damage</li> <li>• window frames</li> <li>• window panes (glass or plastic)</li> <li>• wet and dry rot</li> </ul> </li> </ul>
<b>Buildings:</b> Windows		

**Exhibit A – County and Contractor Maintenance and Repair Assignments**

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
		<ul style="list-style-type: none"> <li>• sash balances</li> <li>• sash cords</li> <li>• sash stiles</li> <li>• sash weights/pulleys</li> <li>• window frames</li> <li>• window sills yoke or head jambs</li> </ul>
<b>Campgrounds</b>	<ul style="list-style-type: none"> <li>- Purchase of picnic tables and fire pits</li> </ul>	<ul style="list-style-type: none"> <li>- Replace campsite hookup pedestals (connect to existing utilities)</li> <li>- Installation and maintenance of picnic tables including painting and replacing boards.</li> <li>- Installation and maintenance of fire pits</li> <li>- Stabilize and backfill washouts and erosion with aggregate</li> <li>- Maintaining 10ft clearing around all fire pits</li> </ul>
<b>Generators</b>	<ul style="list-style-type: none"> <li>- Installation of new generators, overhaul</li> </ul>	<ul style="list-style-type: none"> <li>- Regular inspection and record keeping as required by federal, state and local laws and regulations.                             <ul style="list-style-type: none"> <li>• Inspect generator housing condition</li> <li>• Check fluid levels, line fittings, hoses for leaks</li> </ul> </li> <li>- Coordinating third-party inspections as necessary.</li> </ul>
<b>Grounds and Open Space</b>	<ul style="list-style-type: none"> <li>- Original installation or complete replacement of:                             <ul style="list-style-type: none"> <li>• fences (permanent)</li> <li>• fountains (except free standing)</li> <li>• gates</li> <li>• ponds (permanent)</li> <li>• retaining walls</li> <li>• rock gardens</li> <li>• sprinkler systems</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Application of fertilizers, herbicides and pesticides</li> <li>- Installation of free-standing fountains</li> <li>- Mowing of lawns, weed-eating</li> <li>- Pruning, fertilizing of trees and shrubs</li> <li>- Removal without replacement of trees or shrubs (when not part of a capital improvement project)</li> <li>- Repair of gates, fence pickets, posts, rails or sections</li> <li>- Repair or replacement of lawn sprinkler systems including:                             <ul style="list-style-type: none"> <li>• centrifugal pumps</li> <li>• pump controllers</li> <li>• remote control valves</li> <li>• sections of piping</li> <li>• sprinkler controllers</li> <li>• sprinkler heads</li> </ul> </li> <li>- Repairing sections of retaining walls</li> </ul>

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
		<ul style="list-style-type: none"> <li>- Replacement of fence fabric</li> <li>- Reseeding or over-seeding of lawns</li> <li>- Sodding bare spots</li> <li>- Straightening or repairing retaining walls</li> <li>- Planting or replacing perennials, annuals, shrubs and trees</li> <li>- Aerating and dethatching</li> <li>- Replace divots, fill in squirrel holes</li> <li>- Maintain fire breaks</li> <li>- Herbicide spraying</li> </ul>
<b>Marina</b>	<ul style="list-style-type: none"> <li>• Marina floats, railings, anchors, structural components.</li> <li>• Fuel pumps and tanks, main fuel line to land</li> </ul>	<ul style="list-style-type: none"> <li>• Moving docks (including use of barge) to maintain access with changing water levels</li> <li>• Repair or replace cleats, bumpers, small repairs to marina deck.</li> <li>- See applicable category (electrical, buildings: fixtures, etc.) for maintenance and repair assignments for the marina store building</li> </ul>
<b>Masonry and Blockwork</b>	<ul style="list-style-type: none"> <li>- Installation or complete replacement of:                             <ul style="list-style-type: none"> <li>• block walls</li> <li>• brick walls</li> <li>• footings</li> <li>• foundations</li> <li>• poured concrete</li> <li>• posts</li> <li>• slabs</li> <li>• stairways</li> <li>• walls</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Repair or partial replacement of:                             <ul style="list-style-type: none"> <li>• block walls</li> <li>• brick walls</li> <li>• footings</li> <li>• foundations</li> <li>• poured concrete</li> <li>• posts</li> <li>• slabs</li> <li>• Stairways</li> <li>• Walls</li> </ul> </li> </ul>
<b>Miscellaneous</b>	<ul style="list-style-type: none"> <li>- Asbestos removal (when done as part of a capital improvement contract)</li> <li>- Debris removal from construction sites (when done as part of a capital improvement contract)</li> </ul>	<ul style="list-style-type: none"> <li>- Debris removal from construction sites (when done as part of a repair or maintenance contract)</li> <li>- Installation or replacement of:                             <ul style="list-style-type: none"> <li>• mail boxes (installed on wall or post)</li> </ul> </li> </ul>

**Exhibit A – County and Contractor Maintenance and Repair Assignments**

<b>Category</b>	<b>Capital Expense (County)</b>	<b>Maintenance (CONTRACTOR)</b>
	<ul style="list-style-type: none"> <li>- Fire sprinkler system installed or replaced in ceilings and connected to water supply systems</li> <li>- Installation or complete replacement of suspended ceilings</li> <li>- Installation hard-wired smoke and CO2 detectors</li> <li>- Installation of temporary heat, electric and plumbing at construction sites</li> <li>- Excavation work if for a capital improvement</li> <li>- Insulating structures</li> <li>- Installation or complete replacement of docks</li> <li>- Construction of:                         <ul style="list-style-type: none"> <li>• footings</li> <li>• foundations</li> <li>• new homes/structures</li> <li>• new porches</li> </ul> </li> <li>- Termite tenting</li> <li>- Installation of bat exclusions</li> </ul>	<ul style="list-style-type: none"> <li>• smoke and CO2 detectors (battery operated)</li> <li>- Replacement of hard-wired smoke and CO2 detectors</li> <li>- Excavation work - if for repair and maintenance</li> <li>- Repair or maintenance of docks</li> <li>- Pest control, including baiting and maintenance of pest control preventative measures</li> </ul>
<b>Miscellaneous</b>	<ul style="list-style-type: none"> <li>- Fire, water, wind damage</li> <li>- Rehabilitation of damaged structures (See appropriate sections for work performed.)</li> <li>- Demolition of a building or structure</li> </ul>	<ul style="list-style-type: none"> <li>- Cleaning</li> <li>- Deodorizing</li> <li>- Refinishing floors</li> <li>- Removal of water or debris</li> <li>- Repainting</li> <li>- Replacement of broken glass</li> </ul>
<b>Painting</b>	<ul style="list-style-type: none"> <li>- Painting of new buildings, structures, or additions</li> <li>- Painting, varnishing or staining of new kitchen cabinets</li> </ul>	<ul style="list-style-type: none"> <li>- Painting or repainting of existing buildings, structures, facilities or parts thereof</li> <li>- Painting, varnishing or staining of existing kitchen cabinets</li> </ul>
<b>Road Surfaces, Parking Lots</b>	<ul style="list-style-type: none"> <li>- Original installation of decomposed granite, gravel, crushed stone, flagstone patio block or other types of walks and paths.</li> </ul>	<ul style="list-style-type: none"> <li>- Repair of walks; adding stone, replacing damaged patio blocks or bricks, releveling walks, repairing cracks in concrete</li> <li>- Campground/Lodging road surfaces and parking lots:</li> </ul>



Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
<b>and Sidewalks</b>		
-	Original installation or complete replacement of concrete and blacktop sidewalks	- Replacement of cobblestones and crushed stone Campground/Lodging road surfaces and parking lots
-	Resurfacing of blacktop sidewalks	• Replace and compact aggregate or other appropriate materials along roads
-	Jetting road gutters and culverts	• Repairing and patching of holes and cracks with decomposed granite, cold mix asphalt or other aggregate as needed
-	Campground/Lodging road surfaces and parking lots:	• Repairing and patching sections of concrete or blacktop driveways, parking lots, and walks
	• Installation or complete repaving (resurfacing) of driveways, parking lots, and walks;	• Restriping, sealing, and dressing
	• Original installation of gravel or crushed stone driveway;	• Resurfacing of gravel or crushed stone driveways with new gravel or crushed stone
	• Original striping (line painting) on new parking lot.	• Maintaining or repairing of parking lot islands, including ongoing landscaping
-	All installation, repair and maintenance work on road surfaces other than work identified under CONTRACTOR responsibilities.	• Clear and maintain road gutters and culverts as is reasonable using hand tools
<b>Swimming Pools</b>		
-	Installation of in-ground swimming pool, including excavation work done in connection with the installation	- Installation or replacement of: <ul style="list-style-type: none"> <li>• above ground swimming pool including excavation work done in connection with the installation</li> <li>• pumps, filters etc.</li> <li>• heater for above ground swimming pool</li> </ul>
-	Original installation or complete replacement of: <ul style="list-style-type: none"> <li>• heater for in-ground swimming pool</li> <li>• liner for in-ground swimming pool</li> </ul>	- Repair or maintenance of above ground or inground swimming pool, including: <ul style="list-style-type: none"> <li>• cleaning</li> <li>• repairing of liners</li> <li>• repairing pumps and heaters</li> </ul>

**Exhibit A – County and Contractor Maintenance and Repair Assignments**

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
<b>Systems:</b> Air conditioners	<ul style="list-style-type: none"> <li>- Original installation or complete replacement of ductless mini-split unit.</li> </ul>	<ul style="list-style-type: none"> <li>- Installation or replacement of window air conditioner</li> <li>- Repair or replacement of the following in in-window or through-the-wall mounted units:                             <ul style="list-style-type: none"> <li>• air flow controls</li> <li>• fans</li> <li>• blowers</li> <li>• fan motors</li> <li>• casings</li> <li>• filters</li> <li>• compressors</li> <li>• grilles</li> <li>• copper tubing</li> <li>• motors</li> </ul> </li> </ul>
<b>Systems:</b> Air cleaners	<ul style="list-style-type: none"> <li>- Installation of central air cleaner systems</li> <li>- Original installation of ductwork or required additional ductwork</li> <li>- Replacement of complete central air cleaner units</li> </ul>	<ul style="list-style-type: none"> <li>- Installation or replacement of self-contained air cleaners</li> <li>- Repair or replacement of the following in self-contained or central units:                             <ul style="list-style-type: none"> <li>• collector plates</li> <li>• power boxes</li> <li>• electronic plates</li> <li>• return/supply air ducts</li> <li>• filters</li> <li>• sails</li> </ul> </li> </ul>
<b>Systems:</b> Electrical	<ul style="list-style-type: none"> <li>- Complete wiring or rewiring of structures or the upgrading of a service</li> <li>- Additions to wiring systems; for example, new circuits</li> <li>- In-wall installations of electrical wiring and communications cables in connection with the installation of burglar alarms or security systems</li> <li>- Original in-wall installations of telephone wiring, speaker wire, computer cable or coaxial cable, with the exception of the installation of telephone wiring installed by the telephone service provider, in connection with the telephone service that it is selling or cable television cable installed by the cable television service provider in connection with its service.</li> </ul>	<ul style="list-style-type: none"> <li>- Repair of:                             <ul style="list-style-type: none"> <li>• floor outlets</li> <li>• Fluorescent fixtures</li> <li>• lighting fixtures</li> <li>• fluorescent fixture parts: (ballasts, starters, tubes)</li> <li>• fuses</li> <li>• light bulbs</li> <li>• outlets</li> <li>• receptacles</li> <li>• switches</li> <li>• ceiling fixtures</li> <li>• fluorescent fixtures</li> <li>• wall fixtures</li> </ul> </li> <li>- Replacement of (no new wiring):                             <ul style="list-style-type: none"> <li>• circuit breakers</li> </ul> </li> </ul>

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
	<ul style="list-style-type: none"> <li>- Installation of a dimmer switch to replace an existing switch</li> <li>- Original installation of:                             <ul style="list-style-type: none"> <li>• circuit breakers</li> <li>• outlets</li> <li>• receptacles</li> <li>• switches</li> <li>• add-on panels</li> <li>• breaker panels</li> <li>• ceiling fixtures</li> <li>• door bells</li> <li>• door buzzers</li> <li>• door chimes</li> <li>• floor outlets</li> <li>• fluorescent fixtures</li> <li>• main power boxes</li> <li>• metal raceways</li> <li>• multi-outlet strips</li> <li>• outdoor lamp posts</li> <li>• wall boxes</li> <li>• wall fixtures</li> <li>• wiring</li> </ul> </li> </ul>	
<b>Systems:</b>		
Heating -	- Installation or complete replacement of any system.	- Cleaning and regular inspection/maintenance
electric furnace,	- Addition to permanently installed electric heating systems	- Repair or replacement of: <ul style="list-style-type: none"> <li>• angle boots</li> <li>• balance dampers</li> <li>• blowers</li> <li>• burner heads</li> <li>• coils</li> <li>• cold air returns</li> <li>• compressors</li> <li>• condensers</li> <li>• draft hoods</li> <li>• duct sections</li> <li>• elbows</li> <li>• elements</li> <li>• endcaps</li> <li>• filters</li> <li>• floor diffusers</li> <li>• fuses</li> <li>• main shutoff valves</li> <li>• pilot gas lines</li> <li>• plenum takeoffs</li> <li>• pressure regulators</li> <li>• relays</li> <li>• safety control valves</li> <li>• safety thermostat elements</li> <li>• sequencers</li> <li>• side stack takeoffs</li> <li>• starting collars</li> <li>• supply stackheads</li> <li>• thermostats</li> <li>• top stack takeoffs</li> <li>• transformers</li> <li>• valves</li> </ul>
gas, heat pump,		
solar, warm air		
duct, etc.		

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
		<ul style="list-style-type: none"> <li>• low-voltage terminals</li> <li>• main gas valves</li> <li>• vent pipes</li> </ul>
<b>Systems:</b>		
Hot water heaters	<ul style="list-style-type: none"> <li>• Installation of new hot water heaters</li> </ul>	<ul style="list-style-type: none"> <li>- Cleaning of hot water heaters</li> <li>- Replace existing hot water heaters (no new plumbing)</li> <li>- Repair or replacement of:                             <ul style="list-style-type: none"> <li>• anode rods</li> <li>• burners</li> <li>• casing covers</li> <li>• Connectors</li> <li>• drain pipes</li> <li>• drain valves</li> <li>• draft diverters</li> <li>• flue baffles, bodies or collars</li> <li>• glass inner tanks</li> <li>• heating elements</li> <li>• inlet-outlet pipes</li> <li>• outlet pipes</li> <li>• tank linings</li> <li>• temperature control knobs</li> <li>• temperature-pressure relief valves</li> <li>• thermocouples</li> <li>• thermostats</li> </ul> </li> </ul>
<b>Systems:</b>		
Plumbing (General)	<ul style="list-style-type: none"> <li>- Additions to piping systems</li> <li>- Excavation required for installation or complete replacement of piping systems</li> <li>- Original insulation of new or replacement piping systems</li> <li>- Installation or complete replacement of:                             <ul style="list-style-type: none"> <li>• piping systems</li> <li>• water pumps</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Repair of pipes and fittings</li> <li>- Repair of sprinklers, water softeners and well pumps</li> <li>- Repair or replacement of:                             <ul style="list-style-type: none"> <li>• air chambers</li> <li>• Cabinets</li> <li>• relief valves</li> <li>• shutoff valves</li> <li>• storage tanks</li> <li>• Traps</li> <li>- Unclogging of main drain pipes</li> </ul> </li> </ul>

Exhibit A – County and Contractor Maintenance and Repair Assignments

Category	Capital Expense (County)	Maintenance (CONTRACTOR)
<b>Systems:</b> Lift Stations	<ul style="list-style-type: none"> <li>- Digging of sump pump holes</li> <li>- Installation or replacement of motors, valves, plumbing, electrical.</li> </ul>	<ul style="list-style-type: none"> <li>- Repair or replacement of floats and switches</li> </ul>
<b>Systems:</b> Septic systems	<ul style="list-style-type: none"> <li>- Installation or complete replacement of:                             <ul style="list-style-type: none"> <li>• distribution boxes</li> <li>• dry wells</li> <li>• grease traps</li> <li>• leach fields</li> <li>• Lines</li> <li>• seepage pits</li> <li>• septic tanks</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Cleaning or pumping out of septic tank</li> <li>- Excavation required for repair or maintenance</li> <li>- Repair or maintenance of:                             <ul style="list-style-type: none"> <li>• distribution boxes</li> <li>• dry wells</li> <li>• grease traps</li> <li>• leach fields</li> <li>• lines</li> <li>• seepage pits</li> <li>• septic tanks</li> </ul> </li> </ul>
<b>Systems:</b> Water	<ul style="list-style-type: none"> <li>- Deepening existing water wells</li> <li>- Drilling or boring new water wells                             <ul style="list-style-type: none"> <li>• water well pumps</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Repair and maintenance of water well pumps</li> </ul>

## **Exhibit – B**

### **VEHICLE/VESSEL LEASE AGREEMENT**

#### **RECITALS**

This Lease is entered into as of this 1st day of August 2019 by and between County of Monterey, hereinafter referred to as “COUNTY” and Urban Park Concessionaires, dba Monterey Lakes Recreation Company, (hereinafter referred to as the “CONTRACTOR” (collectively, the “Parties”, or individually, “Party”)

#### **ARTICLE 1: DESCRIPTION IN SCHEDULE**

- 1.1 The property to be leased is described in the attached Schedule A (“Property”)

#### **ARTICLE 2: TERM OF LEASE**

- 2.1 The Initial Term of this Lease is from the date of final execution of the Lease through and including December 31, 2026, so long as the Management Agreement between the Parties is in effect.
- 2.2 The Initial Term shall automatically extend for the same extension period as the Management Agreement between the parties, if amended pursuant to Section 41 of the Management Agreement.

#### **ARTICLE 3: PAYMENTS BY CONTRACTOR**

- 3.1 The amount of monthly rental payments is \$1.00 per vehicle, per year. CONTRACTOR shall make rental payments at County’s address as set forth above or at any place that may be designated by COUNTY. All rental payments shall be due and payable in advance on the first day of July thereafter during the term of this Lease.

#### **ARTICLE 4: OWNERSHIP**

- 4.1 This Lease constitutes a lease or bailment of the Property described and not a sale or the creation of a security interest. CONTRACTOR shall not have, or at any time acquire any right, title, or interest in the property except the right to possession and use as provided for in this Lease. COUNTY shall at all times be the sole owner of the property. However, CONTRACTOR shall be allowed, but not required, to transfer title to all Property, at CONTRACTOR’s expense to CONTRACTOR for insurance purposes. At termination of this Lease, CONTRACTOR shall transfer title, as appropriate, to all Property back to COUNTY, at CONTRACTOR’s expense.
- 4.2 CONTRACTOR authorizes COUNTY to file and record a UCC-1 financing statement to establish the respective rights between the parties regarding the Property. In addition,

CONTRACTOR agrees to show COUNTY as a lien holder on all titles for the vehicles/vessels that are part of the Property with the California Department of Motor Vehicles.

#### **ARTICLE 5: OPERATING EXPENSES**

- 5.1 CONTRACTOR shall be responsible for all expenses in connection with the operation of the Property.

#### **ARTICLE 6: MAINTENANCE AND REPAIRS**

6.1 **CONTRACTOR Responsibility:**

CONTRACTOR shall assume all obligations and liability with respect to the possession of the Property, and for its use, operation, condition, and storage during the lease term. CONTRACTOR shall, at CONTRACTOR's expense, maintain the Property in good mechanical condition and running order, allowing for reasonable wear and tear. The rent on any item shall not be prorated or abated while the Property is being serviced or repaired. COUNTY shall not be under any liability or obligation in any manner to provide service, maintenance, repairs, or parts for the Property.

CONTRACTOR's regular operating expenses incurred under this Lease, other than those costs identified under Article 13 below shall be included in CONTRACTOR's Profit & Loss (P&L) statement as defined under the Management Agreement Section 20.

6.2 **Accessions:**

All installations, replacements, and substitutions of parts or accessories with respect to any of the Property shall constitute accessions and shall become part of the Property and shall be owned by COUNTY. CONTRACTOR shall obtain written permission of COUNTY before any changes are made to the Property or before any additional parts or accessories are installed on any of the Property.

#### **ARTICLE 7: USE OF PROPERTY**

7.1 **Rights of CONTRACTOR:**

CONTRACTOR shall be entitled to the absolute right to use, operation, possession, and control of the Property during the term of this Lease, provided CONTRACTOR is not in default of any provision of this Lease or subject to any security interest COUNTY may have given or may give to any third party during the term of this Lease.

CONTRACTOR shall employ and have absolute control, supervision and responsibility over any operators or users of the Property. However, all Property shall only be used, maintained and kept (except for removal for short periods of repairs or as otherwise approved by COUNTY) at the Resort Operations in order for CONTRACTOR to provide

the services pursuant to the terms of the Management Agreement. Use of the Property for any other purpose is a material breach of this Lease.

**7.2 Duties of CONTRACTOR:**

CONTRACTOR shall use the Property in a careful and proper manner and shall not permit any Property to be operated or used in violation of any applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession, use, or maintenance of the Property. CONTRACTOR agrees to reimburse COUNTY in full for all damage to COUNTY, its employees, and its agents. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liabilities, fines, forfeitures, or penalties for violations of any statute, law, ordinance, rule, or regulation of any duly constituted public authority.

**7.3 Commercial Use Limitations:**

CONTRACTOR represents and warrants that the Property will be used for commercial or business purposes only as contemplated under the Management Agreement.

**7.4 Damage or Loss of Property:**

CONTRACTOR shall be responsible for the risk of loss, damage or destruction of the Property during the Lease term and until the Property has been returned to COUNTY. If the Property is damaged or destroyed in an accident or other occurrence or confiscated by any governmental authority, or is stolen, abandoned, or subject to undue peril, CONTRACTOR will immediately notify COUNTY in writing of the occurrence or condition.

**ARTICLE 8: COUNTY'S RIGHT OF INSPECTION AND REPAIR**

**8.1 Inspection and Repair:**

COUNTY, at its discretion during CONTRACTOR's regular business hours shall have the right to inspect the Property. If any Property covered by this Lease is not being properly maintained in the sole opinion of COUNTY, COUNTY shall have the right, but not the obligation, to have it repaired or maintained at a service facility at the expense of CONTRACTOR. All property will be inspected, mutually agreed upon status of repairs, and documented in writing prior to the commencement of the contract.

**ARTICLE 9: ASSIGNMENT OF COUNTY'S WARRANTIES**

**9.1 Warranty Assignment:**

COUNTY shall assign to CONTRACTOR all manufacturer, dealer, or supplier warranties applicable to the Property to enable CONTRACTOR to obtain any warranty service available for the Property. COUNTY appoints CONTRACTOR as COUNTY's attorney-in-fact for the purpose of enforcing any warranty. Any enforcement by CONTRACTOR shall



be at the expense of CONTRACTOR and shall in no way render COUNTY responsible to CONTRACTOR for the performance of any warranties.

## **ARTICLE 10: TAXES AND OTHER CHARGES**

### **10.1 Taxes:**

CONTRACTOR shall pay on or before their due dates, all sales taxes, use taxes, personal property taxes, business personal property taxes, vehicle taxes and assessments, or other direct taxes or governmental charges imposed on the Property. CONTRACTOR shall promptly notify COUNTY and send COUNTY copies of any notices, reports, and inquiries from taxing authorities concerning delinquent taxes, fees, or other charges received, or assessments received by CONTRACTOR.

### **10.2 Other Charges:**

CONTRACTOR shall be liable for any fees for licenses, registrations, permits, and other certificates as may be required for the lawful operation of the Property. All certificates of title shall initially be applied for in the State of California and shall be issued and maintained in the name of CONTRACTOR, as lessee. CONTRACTOR is responsible for the payment in a timely manner of all fines (such as parking tickets) related to the Property during the term of the Lease.

### **10.3 Taxes Paid by County:**

If any taxing authority requires that a tax as set forth in Paragraph 10.1, above, be paid to the taxing authority directly by COUNTY, CONTRACTOR shall, on notice from COUNTY pay to COUNTY the amount of the tax, together with the next rent installment.

## **ARTICLE 11: CONTRACTOR'S INSPECTION**

### **11.1 Inspection by CONTRACTOR:**

CONTRACTOR agrees that it shall be conclusively presumed, as between COUNTY and CONTRACTOR, that CONTRACTOR has fully inspected the Property and acknowledges that the Property is in good condition and repair, and that CONTRACTOR is satisfied with and has accepted the Property in such good condition and repair, as per mutual agreement and documented inspection methodology.

## **ARTICLE 12: INSURANCE**

### **12.1 CONTRACTOR Duty to Insure:**

CONTRACTOR shall procure, and thereafter maintain, sufficient property and liability insurance coverage to protect COUNTY and CONTRACTOR from public liability and property damage resulting from the Property in amounts no less than one (1) million for

each occurrence and three (3) million in the aggregate. CONTRACTOR shall not commit or permit the commission of any acts on the neither Property nor use or permit the use of the Property in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Property or improvements thereon. CONTRACTOR will obtain comprehensive and collision coverage, including fire and theft insurance in an amount equal to the fair market value. CONTRACTOR agrees to cause the insurance company to name COUNTY as "Loss Payee" on the comprehensive and collision coverage's and to provide COUNTY as an "Additional Insured" for all liability coverage. The insurance policy must provide COUNTY with thirty (30) days notice of any cancellation, reduction, or other material change in coverage. CONTRACTOR appoints COUNTY as its attorney-in-fact to arrange for and procure payment of insurance proceeds directly with each insurance company and to provide an insurance policy hereunder and to endorse, present, and collect insurance proceeds checks, the appointment being irrevocable and coupled with an interest.

#### **12.2 Excess Liability Indemnity:**

CONTRACTOR shall indemnify and hold COUNTY, its agents, and employees, harmless from against all loss, liability, and expense, including reasonable attorney's fees, in excess of the provided limits of liability insurance for bodily injury (including death) or property damage caused by or arising out of the leasehold interest, maintenance, use or operation of the Property. CONTRACTOR shall further indemnify and hold harmless COUNTY, its agents, and employees, from and against loss, liability, and expense, including reasonable attorneys' fees, because of CONTRACTOR's failure to comply with any terms, provisions, and conditions of any insurance policy insuring COUNTY and CONTRACTOR, or because of CONTRACTOR's failure to comply with the terms and provisions of this article.

### **ARTICLE 13: INDEMNIFICATION AND LIABILITY**

#### **13.1 All Liability Assumed by CONTRACTOR:**

CONTRACTOR assumes all risk and liability for the loss of or damage to the Property, for the death of or injury to any person or property of another, and for all other risks and liabilities arising from the use, operation, condition, possession, or storage of the Property. Nothing in this Lease shall authorize CONTRACTOR or any other person to operate any of the Property so as to impose any liability or other obligation on COUNTY.

#### **13.2 CONTRACTOR Duty to Indemnify:**

CONTRACTOR shall indemnify, defend, and hold harmless COUNTY, its agents, and employees from all claims, loss, or damage COUNTY may sustain or suffer for any of the following reasons:

- a) The loss of or damage to any of the Property for any cause; or

- b) The injury to or death of any person including but not limited to agents or employees of CONTRACTOR; or
- c) Damage to any property arising from the use, possession, selection, delivery, return, condition, or operation of any Property.

CONTRACTOR shall reimburse COUNTY for all expenses, losses, liabilities, fines, penalties, and claims of every type, including reasonable attorneys' fees, imposed on or incurred by COUNTY because of CONTRACTOR's use or operation of any Property, or because of the failure by CONTRACTOR to perform any of the Lease terms.

### **13.3 Obligations Survive Lease Term:**

The indemnities and assumptions of risk, liabilities, and obligations by CONTRACTOR arising under the Lease during the Lease's term shall continue in effect after the termination of Lease, regardless of the reason for termination.

## **ARTICLE 14: ACCIDENT, LOSS OF PROPERTY, OR DAMAGE TO PROPERTY**

### **14.1 Notification to COUNTY:**

If any Property covered by this Lease is damaged, lost, stolen, or destroyed, or if any person is injured or dies, or if any property is damaged as a result of its operation, use, maintenance, or possession, CONTRACTOR shall promptly notify COUNTY of the occurrence, and shall file all necessary accident reports, including those required by law and those required by insurers of the Property.

### **14.2 Cooperation in Defense of Claims:**

CONTRACTOR, its employees, and agents shall cooperate fully with COUNTY and all insurers providing the insurance under this Lease in the investigation and defense of any and all claims or suits. CONTRACTOR shall promptly deliver to COUNTY any and all papers, notices, and documents served on or delivered to CONTRACTOR, its employees, or its agents in connection with any claim, suit, action, or proceeding at law or in equity commenced or threatened against CONTRACTOR, COUNTY, or both concerning the Property.

### **14.3 Fair Market Value:**

If any Property becomes lost, stolen, destroyed, or damaged beyond repair, CONTRACTOR shall pay COUNTY the fair market value, less any net proceeds of insurance for the property received by COUNTY. Upon payment, this Lease shall terminate with respect to that item of Property and CONTRACTOR shall become entitled to the Property on an "as-is-where-is" basis, without warranty, express or implied, for any matter whatsoever.

## **ARTICLE 15: ASSIGNMENT**

**15.1 Assignment or Subletting by CONTRACTOR:**

CONTRACTOR shall not assign this Lease or any properties described in it, or assign any interest in the Lease or Property, or sublet any of the Property without the express written consent of COUNTY.

**ARTICLE 16: ACTIONS CONSTITUTING DEFAULT**

**16.1 CONTRACTOR in Default:**

COUNTY, at its option, may by written notice to CONTRACTOR declare CONTRACTOR in default on the occurrence of any of the following:

- a) Failure by CONTRACTOR to make payments or perform any of its obligations under this Lease; or
- b) Institution by or against CONTRACTOR of any proceeding in bankruptcy or insolvency, or the reorganization of CONTRACTOR under any law, or the appointment of a receiver or trustee for the goods and chattels of CONTRACTOR, or any assignment by CONTRACTOR for the benefit of creditors; or
- c) Expiration or cancellation of any insurance policy to be paid for by CONTRACTOR as provided for under the terms of this Lease; or
- d) Involuntary transfer of CONTRACTOR's interest in this Lease by operation of law; or
- e) Termination of the Management Agreement for any reason.

**ARTICLE 17: RIGHTS, REMEDIES, AND OBLIGATIONS ON DEFAULT**

**17.1 COUNTY Rights and Remedies:**

After the default of CONTRACTOR, and on notice from COUNTY that CONTRACTOR is in default, COUNTY shall have the following options:

- a) To terminate the Lease and CONTRACTOR's rights under the Lease; or
- b) To declare the balance of all unpaid rent and all other charges of any kind required of CONTRACTOR under the Lease to be due and payable immediately, in which event COUNTY shall be entitled to the balance due together with interest at the rate of 1.5% per month from the date of notification of default to the date of payment; or
- c) To repossess the Property without legal process free of all rights of CONTRACTOR in and to the Property. CONTRACTOR authorizes COUNTY or COUNTY's agent to enter on any premises where the Property is located and repossess and remove it. CONTRACTOR specifically waives any right of action CONTRACTOR might otherwise have arising out of the entry and repossession, and releases COUNTY of

any claim for trespass or damage caused by reason of the entry, repossession, or removal.

**17.2 CONTRACTOR Obligation for COUNTY's Costs:**

After default, CONTRACTOR shall reimburse COUNTY for all reasonable expenses of repossession and enforcement of COUNTY's rights and remedies, together with interest at the rate of 1.5% percent per month from the date of payment.

**17.3 Remedies Cumulative:**

The remedies of COUNTY shall be cumulative to the extent permitted by law, and may be exercised partially, concurrently, or separately. The exercise of one remedy shall not be deemed to preclude the exercise of any other remedy.

**17.4 Effect of Forbearance:**

No failure on the part of COUNTY to exercise any remedy or right and no delay in the exercise of any remedy or right shall operate as a waiver. No single or partial exercise by COUNTY of any remedy or right shall preclude any other or further exercise of that remedy or right or the exercise of any other rights or remedies. No forbearance by COUNTY to exercise any rights or privileges under this Lease shall be construed as a waiver, but all rights and privileges shall continue in effect as if no forbearance had occurred. Acceptance by COUNTY of rent or other payments made by CONTRACTOR after default shall not be deemed a waiver of COUNTY's rights and remedies arising from CONTRACTOR's default.

**17.5 Forfeiture of CONTRACTOR Interest on Default:**

Upon default, for any reason, CONTRACTOR and CONTRACTOR's successor in interest shall have no right, title or interest in the Property, its possession, or its use. COUNTY shall retain all rents and other payments of any kind made by CONTRACTOR under the Lease.

**ARTICLE 18: RETURN OF PROPERTY ON EXPIRATION**

**18.1 CONTRACTOR Return of Property:**

Upon the expiration date of this Lease with respect to any or all of the Property, CONTRACTOR shall return the property to COUNTY, together with all accessories, free from all damage and in the same condition and appearance as when received by CONTRACTOR, allowing for ordinary wear and tear. If CONTRACTOR fails or refuses to return the equipment to COUNTY, COUNTY shall the right to take possession of the Property and for that purpose to enter any premises where the Property is located without being liable in any suit, action, defense, or other proceedings to CONTRACTOR.

## **ARTICLE 19: LIENS**

### **19.1 Encumbrances or Liens Notice:**

CONTRACTOR shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any Property. If any of these events take place, CONTRACTOR shall be deemed to be in default at the option of COUNTY. CONTRACTOR shall promptly notify COUNTY of any liens, charges, or other encumbrances of which CONTRACTOR has knowledge. CONTRACTOR shall promptly pay or satisfy any obligation from which any lien or encumbrance arises, and shall otherwise keep the property and all right, title, and interest free and clear of all liens, charges, and encumbrances. CONTRACTOR shall deliver to COUNTY appropriate satisfactions, waivers, or evidence of payment.

## **ARTICLE 20: NOTICES**

### **20.1 Service of Notice:**

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either Party by the other Party shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom they are directed, or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid, to the addresses identified in the Lease. Either Party may change its address for the purpose of this Paragraph by giving written notice of the change to the other Party in the manner provided in this Paragraph.

## **ARTICLE 21: AMENDMENT OR MODIFICATION**

### **21.1 Method of Amendment or Modification**

Additional property may from time to time be added as the subject matter of this Lease as agreed on by both Parties. Any additional property shall be added to the attached Schedule A in an amendment describing the Property, the rental, the term of the leasing period, security deposit, and stipulated loss value of additional property. All amendments to any attached Schedule(s) must be in writing and signed by both Parties. Other than by this amendment procedure, this Lease shall not be amended, modified, or altered in any manner except in writing signed by both Parties.

## **ARTICLE 22: ENTIRE AGREEMENT**

### **22.1 Incorporation by Reference:**

This Lease and any attached Schedule(s), which is incorporated by reference and made an integral part of the Lease, constitute the entire Agreement between the Parties. No agreements, representations, or warranties other than those specifically set forth in this

Lease or in the annexed Schedule(s) shall be binding on any of the Parties unless set forth in writing and signed by both Parties.

#### **ARTICLE 23: GOVERNING LAW**

##### **23.1 Venue/Choice of Law:**

This Lease shall be deemed to be executed and delivered in Monterey County, California and governed by and construed in accordance with the laws of California.

#### **ARTICLE 24: EFFECT ON SUCCESSORS**

##### **24.1 Successors:**

This Lease and each of its provisions shall be binding on and shall inure to the benefit of the respective successors and assigns of the Parties to this Lease. Nothing contained in this Paragraph shall be construed as consent by COUNTY to any assignment of this Lease or any interest therein by CONTRACTOR except as provided in Paragraph 15.1 of this Lease.

#### **ARTICLE 25: TIME OF ESSENCE**

##### **25.1 Time:**

Time is of the essence in this Lease and in each provision contained within, and each provision is made and declared to be a material, necessary, and essential part of this Lease.

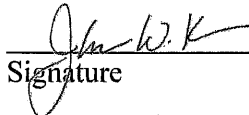
#### **ARTICLE 26: SEVERABILITY CLAUSE**

##### **26.1 Agreement Survives Partial Invalidity:**

If any provisions of this Lease or the application of any of its provisions to any party or circumstance is held invalid or unenforceable, the remainder of this Lease and the application of the provisions to the other parties or circumstances shall remain valid and in full force and effect.

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

URBAN PARK CONCESSIONAIRES

  
\_\_\_\_\_  
Signature

John Koeberer  
Printed Name

Chief Executive Officer, Chair  
Title:

Dated: July 10, 2019

COUNTY OF MONTEREY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title:

Approved as to Form:  
County Counsel

By:   
Deputy County Counsel

Reviewed as to fiscal provisions

  
\_\_\_\_\_  
Auditor-Controller  
County of Monterey 7-12-19



## SCHEDULE - A

### Description of Property

**The following is a tentative list of Vehicles and Vessels assigned to CONTRACTOR,  
subject to final revision and approval by Parties.**

#### Vehicles:

VEHICLE MAKE	YEAR	COUNTY #	COLOR	VIN
Chrysler Town & Country	2010	6LYBS17	Blue	2A4RR5D19AR306807
Dodge	2001	01E014	White	1B7HC16Y41S235052
Dodge	2002	02E009	White	3B7KF23Z02M254756
Dodge	2001	01E017	White	1B7GG26X91S258548
Dodge	2001	01E020	White	1B7HC16Y31S249220
Dodge	2002	02E007	White	3B6KC26Z52M259234
Dodge Caravan	1998	98A023	Purple	2B4G25R9WR781268
Dodge Caravan	2001	02A050	White	2B4GP44302R671387
Dodge Dakota	2001	01E015	White	1B7FL26X81S248925
Dodge Dakota	2001	01E016	White	1B7FL26XX15248926
Dodge Dakota	2001	01E025	White	1B7GG26X01S258549
Dodge Dakota	2001	01E023	White	1B7FL26X81S351486
Dodge Ram 1500	2001	01E022	White	1B7HC16Y1S249222
Dodge Ram 1500	2001	01E013	White	1B7HC16491S249223
Dodge Ram 2500 (rack)	2001	01E009	White	3B7KC23ZX1G776039
Dodge Stratus	2002	02A046	Silver	1B3EL36X52N212032
Ford F150	2010	10EF34	White	1FTFW1EVXAKE32796
Ford F150	2016	4116	White	1FTMF1E84GKE49877
Ford F-150 (rack)	1998	98E004	White	1FTZF172XWKB48303
Ford Ranger	2008	08EF18	White	1FTYR10UX8PA92447
Ford Ranger	2006	06EF09	White	1FTR15E0PA27024
Ford Ranger	2008	08EF17	White	1FTYR10UX8PA92446
GMC	1996	96EF10	White	1GDJC34JXTE548591
Kubota	2005	OSP004	Orange	S/N 38969
Kubota	2006	06P001	Orange	S/N 57328
Toyota Prius	2009	09AF45	White	JTDKB200797837883
Toyota Prius	2009	09AF59	White	JTDKB20U797834448

**Boats:**

<u>CF #</u>	<u>HIN</u>	<u>Description</u>
CF 7585 LE	PFWMW099E111	2011 21' Four Winns Ski Boat
CF 7596 LE	PFWMW100E111	2011 21' Four Winns Ski Boat
CF 7600 LE	PFWMW094D111	2011 21' Four Winns Ski Boat

<u>ID #</u>	<u>HIN</u>	<u>Description</u>
SW 1	GDY4224TE808	2008 24' Sweetwater Pontoon
SW 2	GDY3747TD808	2008 24' Sweetwater Pontoon
SW 3	GDY3745TD808	2008 21' Sweetwater Pontoon
SW 6	GDY1980YK809	2009 21' Sweetwater Pontoon
SW 13	GDY3302TD212	2012 20' Sweetwater Pontoon
SW 14	GDY3301TD212	2012 20' Sweetwater Pontoon

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