

COUNTY OF KERN
DEPARTMENT OF GENERAL SERVICES

REQUEST FOR PROPOSALS

to provide concession services at the Buena Vista
Aquatic Recreation Area

DUE __Thursday, September 4, 2025

TIME Before 4:00 p.m.

COUNTY OF KERN

DEPARTMENT OF GENERAL SERVICES

Request for Proposal to Provide: seasonal concession services at the Buena Vista Aquatic Recreation Area

The County of Kern is seeking a qualified concessionaire vendor to operate and maintain the concession stand located at the Buena Vista Aquatic Recreation Area outside of Bakersfield. Proposers are specifically directed not to contact any County personnel, other than the Contact Person indicated below, for any purpose related to this RFP. **Unauthorized contact of any County personnel may be cause for rejection of a vendor’s proposal.** All inquiries concerning this RFP should be directed to the following Contact Person:

Kern County – General Services Department
Attn: Alisha Shipe
1115 Truxtun Avenue, 3rd Floor
Bakersfield, CA 93301
Telephone (661) 868-3044
shipeali@kerncounty.com

Envelopes containing the Proposals are to be marked:

PROPOSAL: “Concession services at the Buena Vista Aquatic Recreation Area”

Projected Timetable

The following dates are set forth for information and planning purposes only. These dates may be changed by County upon notice to prospective proposers:

Issuance Date Friday, July 18, 2025
Pre-Proposal Meeting Thursday, July 31, 2025
Proposal Due Date Thursday, August 14, 2025
Proposal Due Time Before 4:00 p.m.

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their Proposals. If hand delivery is planned to our offices, please be aware that delays through building security protocol should be planned for by the proposer since timely receipt of all Proposals is required.

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I. GENERAL INFORMATION

A. Project Background

The County's Buena Vista Aquatic Recreation Area (BVARA), located 25 miles southwest of Bakersfield, is improved with two lakes – Lake Webb and Lake Evans. Lake Webb offers boating, jet-skiing and fishing. Lake Evans offers sailing, fishing and slow boating (less than 5mph). The BVARA also offers a large campground with RV hookups and picnic areas.

There is one small concession stand located on the BVARA grounds available for lease. This stand exists to offer food, beverages, fishing supplies and other applicable goods to the general public utilizing the BVARA. This stand would need to be stocked and staffed by the Proposer.

There are two (2) gasoline pumps near the dock at Lake Webb. These pumps are for the use by the general public utilizing the BVARA. Proposer shall be responsible for fueling and managing the pumps.

The campground at BVARA has 112 RV hookup sites and 67 tent-camping sites that are regularly reserved, especially during peak season between April and September. There are many additional camp sites that are infrequently used but are available for overflow and busy holiday weekends.

BVARA also offers areas for bicycling, a basketball court, soccer field, and several playgrounds. By 2025, BVARA will have new improvements such as a dog park, a splash pad, a trail connecting the east and west entrances, and additional boat docks.

B. Services Required of Successful Proposer

The County has developed the attached **Exhibit "A"** which fully describes the scope of work and services required; deliverables; benchmark requirements; and our anticipated timeline for the start and completion of this project.

Proposer will be expected to review the Exhibit "A" to understand the expected outcome, what the desired goals and objectives are, what specific problems and challenges need to be solved in order to achieve the required end result.

C. Services Provided by the County

The County will provide a Contact Person as a primary contact, who will arrange for staff assistance by other County staff as may be required. County will also provide whatever information as may be available. County will also be available to meet and discuss project requirements and development at key times in the process.

D. Selection Process

1. All Proposals received by the specified deadline will be reviewed by a County Evaluation Committee. After the initial scoring, the Evaluation Committee may select those firms deemed most qualified for this project for further evaluation. Interviews of these selected firms may be conducted as part of the final selection process. Proposers are advised that the County, at its option, may award a contract strictly on the basis of the initial Proposals, and not create a short list of Proposals for further consideration. The firm selected by the Evaluation Committee will be recommended to the Board of Supervisors for this project, but the Board is not bound to accept the recommendation or award the project to the recommended firm.
2. If one or more of the proposers is a local vendor as defined herein, said proposer(s) shall be entitled to a local vendor preference as herein described, provided: (i) said proposer(s) achieved a score of at least seventy percent (70%) during the initial scoring phase by the Evaluation Committee; and (ii) they were included in the short list of proposers for further consideration by the Evaluation Committee, if the Evaluation Committee elected to create a short list of Proposals.

All local vendors meeting the above stated criteria shall have their final evaluation score increased by five percent (5%) for purposes of determining the Evaluation Committee's final selection for recommendation to the Board of Supervisors.

A local vendor is defined as a proposer who:

- (a) Has had a fixed office or distribution point located in and having a street address within the county for at least six (6) months immediately prior to the issuance of the request for competitive bids by the purchasing agent
- (b) Holds any required business license by the county or a city within the county; and
- (c) Employs at least one (1) full-time or two (2) part-time employees whose primary residence is located within Kern County, or if the business has no employees shall be at least fifty percent (50%) owned by one or more persons whose primary residence is located within Kern County.

All local vendors with a Local Employee Ratio of 50% or higher will receive an additional 2% score increase, and those with a ratio of 100% will receive a 3% increase to their score. (Rev 11/19)

- (d) Will credit all sales taxes generated pursuant to the contract awarded as a result of the application of this local vendor preference to its business location in Kern County.

This local vendor preference shall not apply to any contracts funded in whole or in part with federal or state funds which do not allow the use of local

preferences, or any other contracts which are statutorily or otherwise precluded from the use of local preferences during the selection process.

At-Risk Employer Preference

Per County Ordinance 2.38.132, the At-Risk Employer preference will be implemented. This ordinance provides a preference to local vendors who are also at-risk employers. If there is a tie for the low bid and both bidders are local vendors but one of the bidders is also an at-risk employer, the contract shall be awarded to the low bidder that is also the at-risk employer. In the event local vendors are allowed to submit a new bid equal to or less than the out of county low bidder, and there is a tie for the low bid and one of the responsible low bidders is also an at-risk employer, the local vendor who is also an at-risk employer will be awarded the contract

To qualify as an “At-Risk Employer,” Vendor shall state below that you have provided gainful employment to “at-risk” individuals residing in Kern County for at least one (1) year prior to submitting this bid; and you continue to provide gainful employment to ‘at-risk individuals. “At-Risk Individuals” are defined in County Ordinance 2.38.132 as those individuals who have been incarcerated within the last five (5) years and/or have been convicted of a misdemeanor or felony within the last five (5) years and/or are youth in foster care.

Vendor has employed at least one (1) at-risk individual residing in the County of Kern for at least one year prior to submitting a bid for this project and continues to provide gainful employment to at-risk individuals residing in the County of Kern.

(state qualifying information with returned RFP response).

3. The following is a list of general criteria that will be used by the Evaluation Committee in determining its recommendation to the Board of Supervisors. (Please note that the Evaluation Committee may consider other additional information they deem relevant in determining a recommendation to the Board of Supervisors and may give each of the criteria considered as little or as much weight as they consider appropriate.)
 - (a) Proposer’s understanding of the RFP requirements and end result.
 - i. Does proposal show comprehension of the scope of services and match Exhibit A requirements?
 - ii. Does proposal address all requested objectives & deliverables?
 - iii. Does proposal offer specific solutions that address problems & our desired objectives?
 - (b) Proposer’s proposed approach to tasks.
 - i. Does the approach show innovative or advanced techniques
 - ii. Does the approach make sense for this project?
 - iii. Does the proposal clearly define deliverables? Are they measurable and realistic?
 - iv. Are there any apparent discrepancies or omissions in proposal?

- v. Is the proposed transition or milestone implementation plans feasible?
- (c) Proposer's experience in similar projects.
- i. Does proposer have a proven track record with similar projects?
 - ii. Has proposer completed relevant or similar projects? What was the length of time performing services for these relevant projects?
 - iii. What is the overall exposure/experience of the proposer with government sector projects?
 - iv. Does proposal provided types, number & duration of current and previous contracts?
- (d) Fee OR proposed rates.
- i. Has proposer revealed and described all costs? Are there any hidden costs?
 - ii. How does the proposer implement cost control techniques? Are there any escalation clauses included?
 - iii. Does proposer list prior contracts that were conducted on time and within budget?
 - iv. Does proposal state length of time for firm pricing?
- (e) Estimated completion date(s) or required start date
- i. Does proposal describe transition start up tasks & time and/or milestone steps to negotiate contract, set up staffing/equipment requirements and begin services?
 - ii. Does proposal address any time frames mandated by law?
 - iii. Does proposal address the length of time to complete one-time services?
 - iv. Does proposal describe in detail each project phase and the time needed for completion?
 - v. Does the proposal benchmark critical events in the completion of the project?
- (f) Client references.
- i. Are proposer's referenced projects similar in size & scope?
 - ii. Do references report any negative aspects with their experience with proposer?
 - iii. Do references report proposer's capabilities in problem solving during project?
 - iv. Do references indicate successful billing/invoicing processes?
 - v. How did the reference award previous business to the proposer?
- (g) Qualifications of proposer's staff for the project.

- i. Does proposer offer a combination of experience, education, licensing, certification & background undertaking with similar projects relevant to our needs?
 - ii. Is the technical experience of proposer's personnel specific to the needs detailed in Exhibit A?
 - iii. Does proposer's response address productivity and utilization of staff/management assignments?
 - (h) Any other factors the Evaluation Committee deems relevant, for example:
 - i. Does proposal offer technology advances included in work approach?
 - ii. How feasible is the transition plan/milestone steps of proposer's plan?
 - iii. Other
4. The County reserves the right to reject any and all Proposals and to waive informalities and irregularities in any Proposals received. Absence of required information may render a Proposal non-responsive, in the sole discretion of the County, resulting in rejection of the Proposal.
5. The County may, during the evaluation process, request from any proposer additional information which the County deems necessary to determine the proposer's ability to perform the required services. If such information is requested, the Proposer shall be permitted five (5) working days to submit the information requested.
6. An error in the Proposal may cause the rejection of that Proposal; however, the County may, in its sole discretion, retain the Proposal and make any corrections it deems appropriate. In determining if a correction will be made, the County will consider the conformance of the Proposal to the format and content required by the RFP, and any unusual complexity of the format and content required by the RFP. If the proposer's intent is clearly established based on review of the complete Proposal submittal, the County may, at its sole option, correct an error based on that established content. The County may also correct obvious clerical errors. The County may also request clarification from a proposer on any item in a Proposal that County believes to be in error, and make corrections accordingly.
7. The County reserves the right to select the Proposal which in its sole judgment best meets the needs of the County. The recommendation by the Evaluation Committee, and the final selection of a proposer by the Board of Supervisors, shall be based on any information and criteria the Evaluation Committee and Board consider relevant, which may include criteria not listed in paragraph 2 above. **The lowest proposed cost is *not* the sole criterion for recommending contract award.**
8. All proposers responding to this RFP will be notified of their selection or non-selection in writing.

- a. All proposers shall have seven (7) calendar days from the date of the written notice to submit any additional information **not previously submitted** to the County representative for final consideration.
 - b. Proposers may request a debrief during the same seven (7) daytime period. **No extension will be given.**
9. The County representative will notify the proposers in writing of the date the Department's recommendation is placed on the Board of Supervisors' agenda.
10. County employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a Proposal which would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or business entity submitting a Proposal who has such a relationship with a County employee who may be involved in the selection process shall advise the County of the name of the County employee in the Proposal.
11. Any person or business entity which engages in practices which might result in unlawful activity relating to the selection process including, but not limited to, kickbacks or other unlawful consideration paid to County employees, will be disqualified from the selection process.
12. The process, procedures and evaluation criteria used by County in developing and issuing this RFP and evaluating the Proposals received for purposes of making a recommendation to the Board of Supervisors shall be determined in the sole discretion of the County. Potential proposers shall have no rights whatsoever regarding the processes and procedures used by the County relating to this RFP or the manner in which a proposer is selected by the Board of Supervisors, provided their decisions are not arbitrary and capricious, and there is some reasonable basis for the selection(s) made.

E. Solicitation Caveat

The issuance of this solicitation does not constitute an award commitment on the part of the County, and the County shall not pay for costs incurred in the preparation or submission of Proposals. **The County reserves the right to reject any or all Proposals or portions thereof if the County determines that it is in the best interest of the County to do so.**

Failure to furnish all information requested or to follow the format requested herein, or the submission of false information, may disqualify the proposer, in the sole discretion of the County. The County may waive **any** deviation in a Proposal. The County's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful proposer from full compliance with any resultant agreement requirements or obligations.

F. Time

Time and the time limits stated in this RFP are of the essence of this Request for Proposal.

G. Standard County Master Terms & Conditions

No agreement with the County is in effect until a contract has been signed by both parties. Attached to this RFP as **Exhibit "B"** is the standard County Master Terms & Conditions which are in substantially the form the successful proposer will be expected to sign. The final agreement may include the contents of the RFP, any addenda to this RFP, portions of the successful proposer's Proposal and any other modifications determined by the County to be necessary prior to its execution by the parties.

Until such time as the Evaluation Committee has completed its deliberative process and the matter has been set for consideration before the Board of Supervisors, the agreement and all documents and materials relating thereto, the negotiation and execution thereof, including, without limitation, the existence of the Agreement and the negotiations taking place between the parties, shall be confidential.

The standard County master terms and conditions included in this RFP is for informational purposes and should not be returned with a Proposal; however, the Proposal shall include a statement that the proposer has reviewed the standard County master terms and conditions and either i) will agree to and accept the master terms and conditions contained therein if selected, or ii) indicate those specific provisions of the standard County master terms and conditions to which the proposer takes exception and why. Raising of significant exceptions in a Proposal, as determined in the sole discretion of the County, may be cause for rejection of the Consultant's Proposal.

The selected Consultant will be required to execute an agreement with the County for the services requested within 60 calendar days of the award. If agreement on the terms and conditions of the contract that are acceptable to the County including, but not limited to, compensation, cannot be achieved within that timeframe, the County reserves the right to continue negotiations or to award the bid to another Consultant and begin negotiations with that Consultant.

Consultant must identify and provide contact information in their Proposal of the individual within their organization who is authorized to negotiate the terms and conditions of any agreement between Consultant and County.

H. Insurance Requirements

Vendor, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Vendor's actions in connection with the performance of Vendor's obligations, as required in this Agreement, shall secure and maintain insurance as described below.

Vendor shall not perform any work under this Agreement until Vendor has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the County's authorized insurance representative.

Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Vendor shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon.

The Vendor shall promptly deliver to the County's authorized insurance representative a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to the County's authorized insurance representative prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Vendor shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Vendor or County as an additional insured.

- a. **Workers' Compensation and Employers Liability Insurance Requirement:**
In the event Vendor has employees who may perform any services pursuant to this Agreement, Vendor shall submit written proof that Vendor is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Vendor shall require any sub-contractors to provide workers' compensation for all of the subcontractors' employees, unless the sub-contractors' employees are covered by the insurance afforded by Vendor. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Vendor shall provide and/or require each sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

Vendor shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

- b. **Liability Insurance Requirements:**
 - (1) Vendor shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:
 - (a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury

(including bodily injury and death), and Property Damage for liability arising out of Vendor's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Vendor shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

- (b) If vendor will be supplying alcoholic beverages, the General Liability insurance shall include host liquor liability coverage. If Vendor is using a caterer or other vendor to supply alcohol, that vendor must have liquor liability coverage. If Vendor intends to sell alcohol either the Vendor or the other vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.
 - (c) Pollution Legal Liability Insurance requirements for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate with at least 72 hours of emergency response dedicated coverage in addition to covering third party claims for bodily injury and property damage, remediation costs, civil fines and penalties.
 - (d) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.
 - (e) Property Insurance against all risks of loss to the Premises and any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. The policy limits shall be at least equal to the replacement cost of the leased property.
- (2) The Commercial General Liability and Automobile liability Insurance required in this sub-paragraph b. shall include an endorsement naming the County and County's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms

which provide coverage at least equal to or better than form CG 20 10 11 85.

- (3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager.
 - (4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, Vendor, at Vendor's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- c. Cancellation of Insurance -- The above stated insurance coverages required to be maintained by Vendor shall be maintained until the completion of all of Vendor's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the Vendor shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Vendor in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Vendor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
 - d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.
 - e. If Vendor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Vendor shall provide coverage equivalent to the insurance coverages and endorsements required above. The County will not accept such coverage unless the County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Vendor is equivalent to the above-required coverages.
 - f. All insurance afforded by Vendor pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the County. A waiver of right of recovery (waiver of subrogation) is only required on Workers' Compensation policies when a Vendor's personnel deliver or perform services for the County while on County property.

- g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Vendor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the County from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
- h. Failure by Vendor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Vendor. County, at its sole option, may terminate this Agreement and obtain damages from Vendor resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Vendor, County shall deduct from sums due to Vendor any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Vendor pursuant to this Agreement are insufficient to reimburse County for the premiums and any associated costs, Vendor agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Vendor of its obligation to obtain and maintain the insurance coverages required by this Agreement.

I. Modifications to Scope of Work

In the event that sufficient funds do not become available to complete all the services identified in this RFP, the scope of services may be amended, as determined in the sole discretion of the County. The County may also, from time-to-time, request changes in and/or additions to the services to be provided by the successful proposer. Such changes, including any increase or decrease in compensation, which are mutually agreed upon by and between the County and the successful proposer, shall be incorporated into the contract prior to execution of the contract, and by written amendments thereto after execution.

J. News Releases

News releases pertaining to any award resulting from this RFP may not be made without prior written approval of the Chief General Services Officer.

K. Compensation

Compensation shall be agreed upon by County and Vendor to be included in the final agreement for services.

L. Statutes and Rules

The terms and conditions of this RFP, and the resulting consulting services and activities performed by the successful proposer, shall conform to all applicable statutes, rules and regulations of the federal government, the State of California and the County of Kern.

M. Background Review

The County reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a Proposal to the County the proposer consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the review.

N. Organizational Conflict of Interest

Contractor warrants, to the best of its knowledge, that neither Contractor nor its officers, agents or employees presently has any consulting or contractual arrangement with any firm or organization that would give rise to an organizational conflict of interest with respect to the work to be performed under this Agreement. Neither Contractor nor its officers, agents or employees shall enter into any contractual arrangement that would give rise to any potential conflict of interest, without first obtaining County's prior written approval before entering the agreement. If any organizational conflict of interest is discovered by Contractor relating to this Agreement, Contractor shall immediately notify County, and attempt to present a suitable mitigation plan. County may, at its sole discretion, terminate this agreement in the event that Contractor has any actual or potential organizational conflict of interest. As used in this paragraph, "**Organization conflict of interest**" means any relationship whereby Contractor has present or planned interests related to the work to be performed under this Agreement which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair advantage.

II. PROPOSAL INFORMATION AND REQUIREMENTS

A. General Instructions

To receive consideration, Proposals shall be made in accordance with the following general instructions:

1. The completed Proposal shall be without alterations or erasures. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in ink by an authorized representative of the proposer.
2. No oral, telephonic, telegraphic, e-mailed or faxed Proposals will be considered.
3. The submission of a Proposal shall be an indication that the proposer has investigated and satisfied him/herself as to the selection process to be used by the County, the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the County.

4. All Proposals shall remain firm for one hundred and eighty (180) days from the Proposal submission deadline.

B. Business Address

Proposers shall furnish their business street address. Any communications directed either to the address so given, or to the address listed on the sealed Proposal container, and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service thereof upon the proposer.

C. Corrections and Addenda

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

If a proposer fails to notify the Contact Person prior to the date fixed for submission of Proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a Proposal at their own risk, and if the proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Addenda issued by the County interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the Proposal. The proposer shall sign and date the Addenda Cover Sheet and submit same with the Proposal (or deliver them to the General Services Department, Attn: Alisha Shipe, 1115 Truxtun Ave., 3rd Floor, Bakersfield, CA 93301), if the proposer has previously submitted a Proposal to the department).

Any oral communication by the County's designated Contact Person or any other County staff member concerning this RFP is not binding on the County and shall in no way modify this RFP or the obligations of the County or any proposers.

D. Proposal Format and Contents

For ease of review and to facilitate evaluation, the Proposals for this project should be organized and presented in the order requested as follows:

1. Cover Page:

Include a letter of introduction signed by an authorized representative of the firm containing the following language:

- The undersigned certifies that all statements in the Proposal are true and correct; and that any material false statement contained in this proposal shall entitle Kern County to pursue any and all remedies authorized by law and/or declare any contract made as a result thereof, to be void.
- Indicate the name of the firm and the RFP project title clearly on your cover sheet.

2. Corporate/Agency Profile:

Provide specific information concerning the firm in this section, including all of the following:

- The legal name, address and telephone number of your company
- The type of entity (sole proprietorship, partnership, or corporation and whether public or private).
- Whether you are a local Kern County vendor as defined in section I.D.2. of this RFP (provide the street address of the local office).
- The name and telephone number of the person(s) in your company authorized to execute the proposed contract.

If two or more firms are involved in a joint venture or association, the Proposal(s) should clearly delineate the respective areas of authority and responsibility of each party.

All parties signing the Agreement with the County shall be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.

3. **Qualifications and Experience:**

This section is designed to establish the proposer as an entity with the ability and experience to operate the program, or provide the services, as specified in the RFP.

Provide specific information in this section concerning the firm's experience and qualifications (skill sets, contractor licensing, certifications etc) in the services specified in this RFP, preferably within the State of California. Include all of the following:

- The number of employees involved in providing services
- Number of years providing services
- Financial statements (balance sheet and Dun & Bradstreet credit rating acceptable)
- Examples of completed projects
- Skill sets
- Contractor licensing, if applicable
- Certifications, if applicable

Documentation of Satisfactory Past Performance/References

Provide a minimum of three (3) reference letters for similar services rendered (must be within the last twelve (12) months on the reference company's letterhead. Each reference shall include a current point of contact and a phone number. Each reference letter must have all of the following information:

- Date of the original contract;
- End date of the contract;
- Services rendered;
- Names, addresses, email and telephone numbers of contact persons within client agencies for whom the services have been provided.

Provide a list of all clients with current contact information including email, to which you have provided similar services over the last two years, but are not currently working for. Please indicate why you are not currently providing services to said client(s).

4. **Credentials/Resumes:**

Of critical importance is the composition of the team proposed to provide services on this project. Credentials and resumes of the person(s) responsible for administering or providing the services must be provided.

Include a statement of qualifications and resumes/backgrounds of key personnel assigned to the project, including training certifications of professional and non-professional personnel.

Proposer shall specifically provide the following information on all management, supervisory and other key employees who will be providing service:

- a. Name, business address and phone number
- b. Description of education
- c. General experience
- d. Experience or education related to the RFP project
- e. Letters of reference, if available

List consultant firms, if any, that you plan to use for this project and their relevant experience.

5. Project Approach, Work Schedule, Transition Plan and Technology Requirements:

- a. Provide a detailed description of the methodology proposed to perform all required services.
- b. The project approach should include specific details with regard to how and what services, training, installation, etc. are included in your response to the County. Provide specific information and details.
- c. Describe approach and methodology that will be used to address obstructions, constraints or roadblocks in the submitted proposal.
- d. List, and describe actions that will be done in order to comply and meet required benchmarks, performance standards and quality assurance.
- e. Detail and describe security clearance and information technology requirements.
- f. If applicable, detailed description of proposed utilization of Business and/or Work Environment provided by County.
- g. Include any additional information and options that you feel may be advantageous to the County. Label options clearly and specify all costs and fees associated with each option.
- h. Include specific details with regard to a work schedule/transition plan which contains an aggressive schedule that will complete, or start up, the project before 12/31/2025. This schedule should contain specific milestones and dates of completion which will be used to set schedules.
- i. Also identify the extent of County personnel involvement deemed necessary, including key decision points at each stage of the project.
- j. Identify deliverables that will be produced in order to receive payment. This may include deliverables with milestone dates or time periods that are required to be completed.

- k. Specify all software and computer technology that is anticipated to be used in rendering the services. If the Proposal includes the purchase of any software by the County, provide a copy of any software license agreements that the County would be required to execute.
- l. Describe how each of the County's desired outcomes will be met.
- m. Do not include brochures and advertisements in your Proposal unless the content they provide is identified and included specifically in your description of the methodology and/or approach to the services you are proposing to provide the County.

6. Cost of Service:

The Proposal shall clearly state all of the costs associated with the project, broken down by category of products and services, and all on-going costs for recommended/required products/services such as maintenance.

As a general rule, the County prefers a set price or hourly rate for the entire term of any contract. Price escalators such as the CPI may also have a detrimental impact on the proposer's score determined by the Evaluation Committee and are disfavored by Kern County.

The project costs should include all expenses that will be charged to the County including but not limited to costs for shipping, insurance, communications, documentation reproduction, travel, taxes, etc. **Failure to not clearly identify all costs associated with the Proposal may be cause for rejection of the Consultant's Proposal.**

7. Insurance:

The selected proposer will be required to obtain, as a condition of the award of a contract, and the Proposal shall state that the proposer will obtain the insurance as required in the attached agreement.

All insurance shall be issued consistent with the final Agreement with County. Insurance coverage at a minimum must be provided by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of A-, VII rating; or in special circumstances, as pre-approved by the Risk Management Division of the Office of County Counsel. The selected proposer shall file with the Contact Person a Certificate(s) of Insurance stating the required coverages are in effect.

8. Additional Information:

Include any other information you believe to be pertinent but not required.

9. Confidential Information:

Proposers are cautioned that because the County is a public entity, materials designated as “confidential” may nevertheless be subject to disclosure. Proposers are advised that the County does not wish to receive confidential or proprietary information and that proposers are not to supply such information except when it is absolutely necessary.

IF CONFIDENTIAL INFORMATION IS SUBMITTED:

a. ALL CONFIDENTIAL INFORMATION MUST BE STAMPED WITH A “CONFIDENTIAL” WATERMARK AND PLACED IN A SEPARATE TABBED SECTION #9 OF THE RFP MARKED “CONFIDENTIAL”.

b. Any documents labeled “CONFIDENTIAL” shall include the following statement signed and placed on the first page of the CONFIDENTIAL material:

“ _____ (legal name of proposer) shall indemnify, defend and hold harmless the County of Kern, its officers, agents and employees from and against any request, action or proceeding of any nature and any damages or liability of any nature, specifically including attorneys' fees awarded under the California Public Records Act (Government Code §7920.000 et seq.) arising out of, concerning or in any way involving any materials or information in this Proposal that (legal name of proposer) has labeled as confidential, proprietary or otherwise not subject to disclosure as a public record.”

By: _____ Date: _____

Confidential information as discussed in this section II.D.9 may include:

Technical Information

a. Any trade secret, know-how, invention, software program, application, documentation, schematic, procedure, contract, information, knowledge, data, process, technique, design, drawing, program, formula or test data, work in progress, engineering, manufacturing, marketing, financial, sales, supplier, customer, employee, investor, or business information;

b. Any non-public business information, including, without limitation, personnel data; correspondence with governmental agencies; historical customer information and data; historical cost information such as budgets and operating expenses and capital costs; and projected capital additions and operating cost information;

Financial Information

a. financial statements, business plans, strategic plans, proprietary market information, analyses, compilations and any other strategic,

competitively sensitive or proprietary information shared between the parties as a result of the discussions contemplated by this Agreement;

Business Development-Related Information

- a. All trade secrets or proprietary information protected as intellectual property that relates to the business of the Vendor and is not generally available to the public, or generally known in the industry;
- b. Customers' identities and requirements, customer lists, suppliers' identities and products, pricing information, product price discount information, manufacturing processes and procedures, new product research, financial information not generally available to the public; and
- c. Any techniques, know how, processes or combinations thereof, or compilations of information, records and specifications, utilized or owned by the vendor regarding business development, marketing, pricing, business methods, strategies, financial or other analyses, policies or business opportunities.

E. Disposition of Proposals and Proprietary Data

All materials submitted in response to this RFP become the property of the County. Any and all Proposals received by the County shall be subject to public disclosure and inspection, except to the extent the proposer designates trade secrets or other proprietary data to be confidential, after the Evaluation Committee has completed its deliberative process and either the proposer has been informed that they are not the vendor selected by the Evaluation Committee for recommendation to the Board of Supervisors, or the matter has been set for consideration before the Board of Supervisors, whichever comes first.

Material designated as proprietary or confidential shall accompany the Proposal and each page shall be clearly marked and readily separable from the Proposal in order to facilitate public inspection of the non-confidential portion of the Proposal. Prices, makes and models or catalog numbers of the items offered, deliverables, and terms of payment shall be publicly available regardless of any designation to the contrary. The County will endeavor to restrict distribution of material designated as confidential or proprietary to only those individuals involved in the review and analysis of the Proposals.

F. Post RFP Issuance

1. Questions

- a. Before pre-proposal meeting: Questions may be submitted by email or fax prior to the pre-proposal meeting.
- b. After pre-proposal meeting: Following the pre-proposal meeting, an addendum will be issued with written responses to those questions where the answers may change the scope of services detailed in Exhibit "A." Questions with content about the RFP process, where to mail response or other information not related to Exhibit "A" may be answered by the Project Facilitator as they are received.
- c. Subsequent to addenda: Questions received subsequent to the issuance of addenda and within the last week prior to the due date and time may be answered. The County will accommodate these last minute questions, but will not guarantee that they will be answered if not submitted timely.

2. Pre-Proposal Meeting

A Pre-Proposal meeting has been set for July 31, 2025, at 9:00 a.m. The meeting will be held at 13601 Ironbark Rd, Bakersfield, CA 93311. The purpose of the conference is to permit proposers an opportunity to ask questions and/or provide feedback to County staff on specifics of this RFP. Preliminary answers may be given at the Pre-Proposal meeting. However, these responses are only preliminary and will not be final until they are provided as an addendum to the RFP. While some input obtained at the meeting may be incorporated into the RFP via addenda, remarks and explanations made at the meeting shall not change the provisions of the final RFP. **All interested parties who may have questions are urged to attend.**

G. Proposal Submission

The proposer shall submit six (6) written copies of the Proposal and one (1) copy on thumb drive. The thumb drive (virus free) must be a standard Microsoft Windows (Word, Adobe, Excel etc) compatible format readable by the County; using word processing software that is Windows based, preferably Microsoft Word. Proposer agrees to be fully responsible for any damage caused by any materials submitted to County. Please submit all Proposals to:

Kern County General Services Division
REQUEST FOR PROPOSAL
1115 Truxtun Ave., 3rd Floor
Bakersfield, CA 93301
Telephone (661) 868-3000

Proposals may be delivered in person, by courier service or by mail to the address indicated above. **ALL PROPOSALS MUST BE SEALED AND RECEIVED BEFORE 11:00 A.M. on Tuesday, July 22, 2025**, at the above office and address. Proposals submitted after the above deadline will not be accepted. It is strongly

suggested that any proposers intending to hand deliver a proposal on the last day for submission arrive at the General Services Division third floor main lobby at least ten (10) minutes prior to the proposal receipt deadline to receive a “test” time stamp to validate the official current time. The time stamp clock in the main lobby of General Services will be the official time. Any Proposal received at or after 11:00 a.m. will be returned unopened.

Only one (1) Proposal may be submitted from each proposer. For purposes of this RFP, a proposer is defined to include a parent corporation of the proposer and any other subsidiary of that parent corporation. If a proposer submits more than one (1) Proposal, all Proposals from that proposer shall be rejected.

RFP Proposals are not publicly opened.

H. Withdrawal and Submission of Modified Proposal

A proposer may withdraw a Proposal at any time prior to the submission deadline by submitting a written notification of withdrawal signed by the proposer or his/her authorized agent. The proposer must, in person, retrieve the entire sealed submission package. Another Proposal may be submitted prior to the deadline. A Proposal may not be changed after the designated deadline for submission of Proposals.

Exhibit A

I. BACKGROUND

The following is a brief summary including details that generally describe the services the County is currently receiving including data and usages in order to provide additional context.

The County's Buena Vista Aquatic Recreation Area (BVARA), located 25 miles southwest of Bakersfield, is improved with two lakes – Lake Webb and Lake Evans. Lake Webb offers boating, jet-skiing and fishing. Lake Evans offers sailing, fishing and slow boating (less than 5mph). The BVARA also offers a large campground with RV hookups and picnic areas.

There is one small concession stand located on the BVARA grounds available for lease. This stand exists to offer food, beverages, fishing supplies and other applicable goods to the general public utilizing the BVARA. This stand would need to be stocked and staffed by the Proposer. The Proposer will be required to temporarily surrender their Liquor License during County-sponsored events like Lightning in a Bottle.

There are two (2) gasoline pumps near the dock at Lake Webb. These pumps are for the use by the general public utilizing the BVARA. Proposer shall be responsible for fueling and managing the pumps.

The campground at BVARA has 112 RV hookup sites and 67 tent-camping sites that are regularly reserved, especially during peak season between April and September. There are many additional camp sites that are infrequently used but are available for overflow and busy holiday weekends.

BVARA also offers areas for bicycling, a basketball court, soccer field, and several playgrounds. By 2025, BVARA will have new improvements such as a dog park, a splash pad, a trail connecting the east and west entrances, and additional boat docks.

In 2021, approx. 62,000 vehicles entered BVARA for either day use or overnight camping.

II. DESIRED OBJECTIVE(S)

The following is a general list of the desired outcome(s) that are essential to be achieved as a result of this request to provide concessionaire services within Kern County.

- a) Goods and Services – Concessionaire shall have the capacity to provide sufficient goods and services for daily use, special events and holiday weekends.
- b) Maintenance – County shall maintain the exterior, structural components of the concession stand (including the roof and exterior walls), boat docks and boat slips. Concessionaire shall maintain, repair and keep the exterior

doors/windows and interiors of the concession stands in good, clean, sanitary and safe condition. Concessionaire shall provide pest control as needed to the interior and exterior of the concession building. Concessionaire shall maintain the certificate required by the Kern County Department of Environmental Health, along with any other requirements by Environmental Health.

- c) Improvements/Upgrades – Concessionaire agrees to upgrade and modernize the interior of the concession building at the sole cost of the Concessionaire (improvements should add attractiveness and functionality to the buildings).
- d) Fuel – Concessionaire shall procure and sell gasoline for purchase by the general public utilizing the BVARA. Concessionaire shall also stock and sell other fuels and oil commonly used in camping and/or boating activities. County shall be responsible for the installation, maintenance and repair of the fuel tank system and for obtaining all required permits.
- e) Revenue – Generate sufficient revenue to sustain the successful on-going operation of the concessions.

III. ESTIMATED VALUE/COST

The following is a general outline of the estimated budget or value/cost of the work and/or services to be performed:

Estimated Cost:

- a) Annual Rent – Annual rent shall total \$4,800, payable monthly as follows:

April	=	\$500
May	=	\$700
June	=	\$900
July	=	\$900
August	=	\$900
September	=	\$900
- b) Percentage of Gross Receipts – Due to County as revenue, 3% of annual gross receipts.
- c) Fuel Fee – Due to County as revenue, \$0.10 per gallon of fuel sold.

Estimated Value:

2021 total revenue for current concession vendor was approximately \$118,000 gross.

IV. BUSINESS AND/OR WORK ENVIRONMENT

The following is a general outline of the Business and Work Environment which includes a description of where and how the work will be performed (operation requirements of the work and programs, systems and infrastructure) for the concessionaire vendor services that will be required.

N/A

V. DESCRIPTION AND SCOPE OF WORK

The following is a general outline of the Description and Scope of Work that will be required. It is anticipated that the final scope of work will be a product created through the negotiation process with changes based upon the professional input from the selected consultants.

Minimum Requirements for goods and services to be provided by Concessionaire:

- 1) Stock and sell, in quantities to meet the day-to-day needs of the peak-season users of BVARA, food, beverages (including alcoholic beverages with some restrictions), ice, bait, gifts, picnic supplies, firewood, water sports gear and fishing gear. Concessionaire will be required to temporarily surrender their Liquor License during County sponsored events like Lightning in a Bottle; and
- 2) Procure and sell gasoline, keeping accurate sales records, and operate the fuel pumps; stock and sell fuels and oils commonly used in camping/boating; and
- 3) Provide a sufficient number of trained staff to provide service and retail assistance for the quantity of customers that would reasonably be expected to require goods or service given seasonal and event-based fluctuations within BVARA; and
- 4) Negotiate volume buying transactions and maintain adequate inventory to meet the needs of the park users; and
- 5) Operate and maintain the concession areas so as to attract patrons; and
- 6) Acquire, use and maintain a proof-of-sales system to record gasoline sales and reimbursement to County; and
- 7) Provide and maintain sufficient types and sizes of coolers, refrigerators, ovens, hot and cold storage necessary for the storage, preparation and service of food and beverages; and
- 8) Immediately notify County if at any time the concession stands are given a “B” or lower rating from the Kern County Dept. of Environmental Health; and
- 9) Equip the concession stand with convenient, safe, and serviceable display fixtures, racks and shelves, as needed.
- 10) Provide any other goods and services with the approval of the Chief General Services Officer.

VI. DELIVERABLES

The following are objective tangible results that the Contractor must produce in order to receive payment. This may also include deliverables with milestones dates or time periods that are required to be completed.

Gross Receipts – by the 25th of each month a verified statement through the close of the preceding month; rental fee for the preceding month (the minimum rent, the percentage of gross receipts and fuel fees), number of gallons of fuel pumped.

Annual Reports – within 90 days of close of fiscal year, audited financial statements prepared by a CPA licensed to do business in the state of California. Certification that all gross receipts during the year have been duly reported to County.

Annual Marketing Plan – By January 1st of each calendar year, submit a marketing plan, including any planned advertising and promotions.

VII. CONTRACTOR LICENSING, CERTIFICATIONS & QUALIFICATIONS

Proposer shall be responsible for any and all required licensing or certifications.

VIII. CONSTRAINTS TO PROPOSER’S APPROACH AND METHODOLOGY

The following is a general outline of the constraints, obstructions, roadblocks that may affect the Proposer’s approach and methodology that will be needed and/or considered in order for the concessionaire service consultant to submit as part of their proposal response.

- Knowledge of the buying habits and desires of the general public at BVARA.
- Ability to hire staff to appropriately service the concession stand.

IX. PERFORMANCE STANDARDS AND QUALITY ASSURANCE

The following is a general outline of the Performance Standards and Quality Assurance benchmarks that are required as part of this proposal. For additional standards, see Section II – Objectives.

All performance and quality assurance shall be to the satisfaction of the Chief General Services Officer, which shall not be unreasonably withheld.

X. SECURITY REQUIREMENTS

The following is a general outline of the Security Clearance and Information Technology Requirements necessary as part of this proposal.

N/A

XI. SUMMARY OF DESIRED OUTCOME(S) AND DELIVERABLES

The following is a general Summary of Desired Outcome(s) and Deliverables required as part of this proposal. The items below are only key factors in the proposal to provide concessionaire services at BVARA for the Department of General Services.

For a more comprehensive list of outcomes, see Section II – Objectives. For a comprehensive list of deliverables, see Section V – Description and Scope of Work and Section VI – Deliverables.

Concessionaire shall provide goods and services for the benefit of the general public at BVARA, creating sufficient revenue to staff, maintain and improve the concession stand at a desirable level, and keep accurate records to pay consideration to County for a percentage of gross receipts and a fuel fees.

LEASE AND CONCESSION AGREEMENT FOR A PORTION
OF BUENA VISTA AQUATIC RECREATION AREA

(County of Kern – _____)

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**LEASE AND CONCESSION AGREEMENT FOR A PORTION OF
BUENA VISTA AQUATIC RECREATION AREA**

(County of Kern – _____)

THIS AGREEMENT (“Agreement”) is executed at Bakersfield, California, on _____ (“**Execution Date**”) by and between the **COUNTY OF KERN**, a political subdivision of the State of California (“**County**”) and _____, (“**Lessee**”). County and Lessee are referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

- A.** County owns and operates the Buena Vista Aquatic Recreation Area in the County of Kern (“**Recreation Area**”).
- B.** County also owns the concession area inside the Recreation Area which includes the general store and adjacent vehicle and marina gas pumps, designed for concession purposes (collectively “**Premises**”).
- C.** Pursuant to the provisions of Section 25536 and 25907 of the Government Code of the State of California, County may enter into concession agreements for the development and use of property used for park, amusement, or recreation purposes, for the benefit of the general public.

AGREEMENT:

- 1. Premises:** For and in consideration of the terms, covenants, and conditions contained in this Agreement, County leases to Lessee, and Lessee leases from County, exclusive use of the concession area, inside the Recreation Area, which includes the general store and adjacent vehicle, and marina gas pumps as depicted on the attached **Exhibit “A”**, (“**Premises**”).
- 2. Term:**
 - a. Initial Term** - The initial term of this Agreement shall commence on the execution date (“**Effective Date**”) and terminate three years thereafter, unless sooner terminated as provided herein. The County has determined and the Parties agree that the concession operations described in this Agreement shall occur on a seasonal basis, annually from April 1 through September 30 (“**Operational Season**”), aligning with peak public use of the Recreation Area. Additional operational times may be approved as mutually agreed by the Parties.
 - b. Extension of Term to Remove Hazardous Materials** – If any Hazardous Materials are found on the Premises, County may, at its sole discretion, require Lessee to remain in possession of the Premises beyond the expiration of the Term until the County determines that the Hazardous Materials are no longer present. “**Hazardous Materials,**” as used in this Agreement, shall be defined as stated in **Exhibit “B.”**

3. **Options to Extend Term:** Provided Lessee is not in default of any of the terms, covenants, or conditions of this Agreement, beyond applicable cure periods, Lessee shall have two (2), three-year options to renew and extend the term of this Agreement from and after the expiration of the original term. Lessee may exercise the option by giving County written notice of Lessee's desire to extend, not less than 180 calendar days prior to the expiration of the then-current term of this Agreement or exercised option. The Chief General Services Officer ("CGSO"), at the CGSO's sole discretion, may accept or reject the request to extend. All terms, covenants and conditions of this Agreement shall remain in full force and effect during any extension hereof or holding over.

4. **Right to Terminate:** Either Party may terminate this Agreement by providing a 180-days prior written notice to the other Party.

5. **Hold Over:** If Lessee holds over after the initial term or any extension term with the express or implied consent of County, such holding over shall be a tenancy only from month-to-month and shall be governed by the terms, covenants, and conditions contained in this Agreement.

6. **Rental Consideration:**

a. **Amount** – As for rental consideration, Lessee agrees to pay to County Rent and a Percentage of Gross Receipts. The rent amount shall be Four Thousand Eight Hundred Dollars (\$4,800) and payable as follows:

April	\$500
May	\$700
June	\$900
July	\$900
August	\$900
September	\$900

The percentage of gross receipts due to County as Revenue derived from the Premises, shall be based on Lessee's annual gross receipts and computed as follows: 3% of Lessee's monthly gross receipts or any part thereof, excluding gas sales. In addition, Lessee shall pay County the equivalent of \$.10/gallon of gas sold monthly.

b. **Gross Receipts** - The term "gross receipts", wherever used in this Agreement, is intended to and shall mean all monies, property, or any other thing of value received by Lessee through the operation of said concession, or from any other business carried on any portion of the Premises, or from any other use of the Premises, by Lessee without deduction, except for the exclusions provided in the paragraph following which shall be excluded from gross receipts in use of the Premises, or subtracted if previously included, in the following:

- 1) All uncollected credit and installment balances determined and shown on Lessee's book to be uncollectible.
- 2) All sums collected and paid out for sales taxes, luxury taxes, excise taxes and similar taxes required by law to be added to the total purchase price,

whether now or hereafter in force, to be collected from customers and paid by Lessee.

- 3) All credits and cash refunds made on any sale that occurred on, upon, or from the Premises.
- 4) Gift certificates or like vouchers, if not issued for value, until the time they have converted into a sale by redemption.
- 5) That portion of the purchase price by which the price is actually reduced for merchandise traded in for credit.
- 6) Any fee or charge for services rendered to others by County, collected by Lessee for County.
- 7) Any income or receipts that, under generally accepted accounting principles, are derived from the sale or disposal of any capital assets, or from Lessee's investment of any funds not invested in improvements to the Premises, or the operation of the concession business.

c. **Method of Payment** – The payment(s) shall be made in lawful money of the United States, without deduction or offset, except as provided herein, to the County of Kern, General Services, 1115 Truxtun Avenue, 3rd Floor, Bakersfield, CA 93301, or to such person or persons and at such place or places as may be designated from time to time by County, and shall be received no later than 15 days after the end of the prior month. The first monthly payment shall be paid within 30 days of the Effective Date or when the concessions reopens, whichever is sooner. Each month's rental payment shall only be in consideration for the right to possess, occupy, and use the Premises for the subsequent month. In the event Lessee occupies the Premises for a partial month at any time, Lessee shall only be responsible for a prorated portion of the monthly rental consideration.

d. **Failure by Lessee to Comply** – Failure of Lessee to comply with any of the provisions of this **Section 6**, shall be considered a material breach of this Agreement by Lessee. County, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from the breach.

e. **Late Fees** – If money payable to County as a condition of this Agreement is not paid in full when due, a late fee of 5% of the amount due and unpaid shall be added to the amount due, and the total sum of the then-due rental plus late fee shall become immediately due and payable to County. A further late fee of 10% of the amount due and unpaid, including previously assessed late fees, shall be added for each additional month that said amount remains unpaid. The assessment and collection of the 10% late fee is in addition to any other rights of County, if Lessee does not faithfully perform the terms, covenants, and conditions of this Agreement.

7. **Purpose:**

a. **General** – The Premises shall be used for the purpose of providing goods and services consistent with the needs of the public using the Buena Vista Aquatic Recreation Area. Lessee shall provide goods and services as set forth in the attached **Exhibit "C"**. Lessee shall have the right to bring food/catering trucks to the Premises, at no charge, to support public or private events. Lessee shall not use or permit the Premises to be used for any other purpose without the prior written consent of CGSO, which may be withheld at CGSO's sole and absolute discretion.

b. **No Nuisance** – Lessee shall not do or permit any act or thing to be done upon

the Premises that will obstruct or interfere with the rights of County or any other lessee, or injure or annoy County or others. Lessee shall not cause, maintain, or permit any nuisance or waste on or about the Premises, or allow the Premises to be used for any unlawful purpose. Lessee further agrees, within 72 hours from receiving written notice by County that a nuisance exists, to abate or otherwise cause the nuisance to be cured.

8. Goods and Services: Lessee shall provide the Services and adhere to the standards of service described in **Exhibit “C”**.

9. Financial Reporting:

a. Annual - Lessee shall submit to County, no later than 90 days after the close of the business year, audited financial statements prepared by a public accountant licensed to do business in the State of California. Said statements shall contain an appropriate certification that all gross receipts during the yearly accounting period shall have been duly and properly report to County. The licensed public accountant engaged by Lessee to conduct the independent audit shall be instructed and authorized by Lessee to send the CGSO and the Kern County Auditor-Controller/County Clerk a copy of the Financial Statements/Report as a part of said public accountant’s engagement requirements. Should the public accountant prepare any other reports about Lessee’s performance, internal control, adherence to applicable laws, rules and regulations or any other matters, such other reports shall also be copies to CGSO and Kern County Auditor-Controller/County Clerk by the public accountant.

b. Monthly – Lessee shall furnish to County by the 25th day of each month of the term hereof, and upon the 25th day for the month next following the end of the term, a verified statement, attached as **Exhibit “D”**, through the close of the preceding month, for the then current year. With such monthly statement, the Lessee shall pay to County the rental fee for the preceding calendar month. Said rental payment for each preceding month shall be the Minimum Rent for the month and the appropriate percentage rent. In addition, Lessee’s monthly statement shall be accompanied by a verified statement indicating the number of gallons of gasoline pumped during that month. All statement required under this section shall be signed under penalty of perjury by an authorized representative of Lessee.

c. Record Keeping – Lessee shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession in a manner acceptable to County, and County shall have the right, through it representatives, and at all reasonable times, to inspect such books and records, including State of California sales tax return records, and Lessee hereby agrees that such records and instruments are available to County. County further reserves the right to examine all such books and records at any time during the one (1) year period following the termination of this contract.

10. Days and Hours of Operation: Lessee agrees to provide all of the services set forth in **Exhibit “E”** during such days and hours which are in accordance with a schedule approved by the CGSO. Any deviation from the scheduled days and hours of operation specified, shall be subject to 30-day prior written request and subsequent approval from the CGSO, which may be withheld at the CGSO’s sole and absolute discretion.

11. **Special Event Restrictions** – The CGSO may impose further reasonable rules and limitations respecting the sale and use of beer and wine on the Premises. The CGSO may temporarily suspend Lessee’s privilege to sell beer and wine during a planned special event at the recreation area by providing Lessee a 30-day prior written notice. CGSO may suspend or terminate the privilege of such sale provided in this paragraph for any violation of such rules and limitations.

12. **Condition of Premises:** Lessee has inspected the Premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent and/or patent.

13. **Alterations:** Lessee shall make no structural, electrical, or plumbing modifications or additions to the Premises without the prior written consent of the CGSO, which consent shall not be unreasonably withheld. Lessee may make nonstructural, and or cosmetic modifications to the Premises that do not require a permit.

14. **Repair and Maintenance:**

a. **County** – County shall provide maintenance, repair and upkeep of the roof and exterior walls of any County constructed structures situated on the Premises, including boat docks and slips. County shall improve and maintain the public restrooms adjacent the Premises. County shall maintain parking lot lighting fixtures, including ballast and lamp replacement, glass replacement, and exterior painting. County shall be responsible for landscaping, sprinklers, and parking lot maintenance and upkeep.

b. **Lessee** – Lessee shall provide all other maintenance, repair and upkeep required to keep the Premises, and any other structures, including all exterior doors and any windows in good clean, sanitary, and safe condition. Unless approved by County in writing, all interior maintenance shall be performed during non-business hours as to not interfere with the Services provided to the general public. To the extent that Lessee or its invitees willfully cause damage to the Premises, Lessee shall be responsible for such damage. Lessee shall, at its sole cost, repair and maintain the Premises, the Equipment, and its own furniture, fixtures, and equipment (“**FF&E**”) in a clean, sanitary, and safe condition and in compliance with the terms, covenants, and conditions of this Agreement and all applicable federal, state, and local laws, rules, and regulations (“**Applicable Laws**”).

c. **Equipment Maintenance** – Lessee, at Lessee’s sole cost, shall be responsible for the maintenance and repair of all FF&E, detailed in **Exhibit “E”**.

d. **Sublessee** – Should Lessee hire a sublessee to perform maintenance and repair on the Equipment, Lessee shall be solely responsible for the sublessee and sublessee’s actions. All work performed by a sublessee shall be to the satisfaction of County.

15. **Janitorial:** Lessee shall be responsible for janitorial service to the Premises.

16. **Utilities and Services; Modification of Utilities:** County shall provide, at its expense, during the term of this Agreement or any extension period or holding over of the term, for all utilities used by Lessee in connection with its operations in the Premises. The term “utilities” for the purposes of this Agreement shall include electricity, water, sewer, telephone service, and

trash and refuse disposal services. Lessee shall not modify any utilities on the Premises without the prior written consent of the CGSO, which may be granted or withheld at the CGSO's sole discretion.

17. **Taxes and Assessments:** Lessee shall be responsible for and shall pay all possessory taxes and assessments due and owing in connection with the Premises throughout the Term and any Holdover Period.

18. **Lessee's Furniture, Fixtures and Equipment:**

a. **In General** – Lessee may install its own FF&E in the interior of the Premises, at its sole cost. In addition to Lessee's obligations under **Section 33**, at the expiration or termination of this Agreement, Lessee may remove its FF&E, and repair any damage to the Premises as a result of removal, at Lessee's sole cost. All FF&E paid for by County, and detailed in **Exhibit "E"**, shall remain County's property at the expiration or termination of the Agreement.

b. **Abandonment of FF&E** – Any FF&E belonging to Lessee and left on the Premises shall be kept for a reasonable time by County, but in no event longer than 30 days after County gives Lessee written notice to remove such property from the Premises. After the 30-day period, if not removed, the FF&E may be treated by County as abandoned and declared to be County-owned property, and County may, at Lessee's sole cost, repair any damage to the Premises as a result of removal. The costs charged to Lessee may include, without limitation, consideration for the additional time Lessee or its FF&E occupied the Premises beyond the deadlines and disallowed County's full utilization of the Premises as the owner of the property.

c. **FF&E as Security** – If, at the time of expiration or termination of this Agreement, Lessee is in default of any of the terms, covenants, or conditions of this Agreement, including the payment of rent or any other sums due under this Agreement, Lessee shall not remove from the Premises any of its FF&E, and such personal property shall remain in the Premises as security for the cure of such default, until such time as such default is fully cured by Lessee and any costs incurred by County, including attorneys' fees, are paid in full by Lessee to County.

19. **Signs:** Lessee, at its sole cost, shall have the right to install signs to identify the Premises, and such signs shall comply with all Applicable Laws, including those of County, and shall be approved by the CGSO in writing prior to installation. Any damage to the Premises, landscaping, or irrigation system occasioned by the installation and maintenance of any such sign, and the cost of removal or obliteration thereof upon the expiration or termination of this Agreement, shall be paid by Lessee.

20. **Damage and Destruction:** If the Premises shall be damaged or destroyed by fire or casualty, not the fault of Lessee or any person in or about the Premises with the express or implied consent of the Lessee, the damaged Premises shall be repaired by County at its sole cost, with the use of available insurance proceeds required under **Section 24**, or County or Lessee may, at its option, terminate this Agreement. In the event that County elects to repair the damaged Premises, this Agreement shall continue in full force and effect except that certain obligations of Lessee may be subject to Force Majeure as provided in **Section 30**. The provisions of California Civil Code Section

1932(2) and Section 1933(4) shall not apply to this Agreement, and Lessee hereby waives the benefits thereof.

21. Right of Inspection: County, and such agents as County may designate, may enter upon the Premises at all reasonable times for the purpose of inspecting, maintaining, repairing, and altering the Premises in a manner consistent with the purpose of this Agreement and in accordance with reasonable commercial practices in the management of property.

22. Indemnification:

a. In General – Lessee shall indemnify and defend, upon request of County, County, its governing board, commissions, elected and appointed officials, employees, agents, volunteers, and authorized representatives, and each of them (“**Indemnified Parties**”), against any and all actions, lawsuits, proceedings, losses, costs, expenses, claims, fines, liabilities, fees and costs of County Counsel and outside counsel retained by County, costs of County staff time, investigation, expert and consultant fees and costs, and damages, including liability for personal injuries or death or property damage, regardless of where located, including property of County, and workers’ compensation claims or suits arising from or connected with any services performed under this Agreement on behalf of Lessee by any person or entity (“**Claims**”), arising out of or in any way connected with the acts or omissions of Lessee, its employees, agents, independent Lessees, or invitees (“**Lessee Acts**”), unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of County or the Indemnified Parties.

b. Environmental – In addition, Lessee shall indemnify and defend, upon request of County, County and the Indemnified Parties against any and all Claims arising out of or in any way connected with any deposit, spill, discharge, or other release of any Hazardous Materials, or as a result of Lessee’s acts or omissions, including failure to provide any or all information, make any or all of its submissions, and take any or all steps required by any governmental authority or court which has jurisdiction or by any Environmental Requirements.

c. Survival of Indemnification Obligations – Lessee’s obligations under this **Section 22** shall survive the expiration or termination of this Agreement.

23. Release and Waiver; Waiver of Civil Code Section 1542:

a. Release and Waiver – Lessee releases County and the Indemnified Parties from all Claims, and waives all Claims against County and the Indemnified Parties, that it may have as of the Execution Date, or may have in the future, relating to this Agreement and any acts or omissions of County or the Indemnified Parties, unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of County or the Indemnified Parties.

b. Waiver of Civil Code Section 1542 – Lessee waives all rights under California Civil Code 1542, and all rights arising under any similar laws, whether local, state, or federal. Section 1542 provides:

“A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

24. Lessee's Maintenance of Insurance: In order to protect County and the Indemnified Parties against Claims as a result of Lessee Acts, Lessee shall secure and maintain insurance as described below. Lessee shall not perform any work under this Agreement until Lessee has obtained all insurance required under this **Section 24** and the required certificates of insurance, and all required endorsements have been filed with the County's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of these insurance requirements. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request by County, Lessee shall supply proof that such person is an authorized representative thereof and is authorized to bind the named underwriter and company to the coverage, limits, and termination provisions shown thereon. Lessee shall promptly deliver a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term of this Agreement or as otherwise specified herein. Such certificates and endorsements shall be delivered to County prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Lessee shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Lessee or County as an additional insured.

a. Workers' Compensation and Employer's Liability Insurance Requirements

1) **Worker's Compensation Insurance – Lessee Employees** – If Lessee has employees who may perform any services pursuant to this Agreement, Lessee shall submit written proof that Lessee is insured against liability for worker's compensation in accordance with the provisions of California Labor Code section 3700.

2) **Worker's Compensation Insurance – Lessee Sublessees** – Lessee shall require any sublessee to provide worker's compensation for all of the sublessees' employees, unless the sublessees' employees are covered by the insurance afforded by Lessee. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Lessee shall provide and/or require each sublessee to provide adequate insurance for the coverage of employees not otherwise covered.

3) **Employer's Liability Insurance** – Lessee shall also maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. Liability Insurance Requirements

1) **In General** – Lessee shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) **Commercial General Liability Insurance**, including without limitation Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Lessee's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for

independent Lessees working on the behalf of the named insured. Lessee shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

- (b) If Lessee will be supplying alcoholic beverages, the General Liability insurance shall include host liquor liability coverage. If Lessee is using a caterer or other vendor to supply alcohol, that vendor must have liquor liability coverage. If Lessee intends to sell alcohol either the Lessee or the other vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.
- (c) **Pollution Legal Liability Insurance** requirements for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate with at least 72 hours of emergency response dedicated coverage in addition to covering third party claims for bodily injury and property damage, remediation costs, civil fines and penalties.
- (d) **Automobile Liability Insurance**, against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

2) **Additional Insureds** – The Commercial General Liability and Automobile liability Insurance required in this **Section 24.b.2** shall include an endorsement naming the County and the Indemnified Parties as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

3) **Self-Insurance** – Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County Risk Manager, which may be granted or withheld at the County Risk Manager’s sole discretion.

4) **Claims-Made** – If any of the insurance coverages required under this Agreement is written on a claims-made basis, Lessee, at Lessee’s option, shall either (i) maintain said coverage for at least five years following the termination of

this Agreement with coverage extending back to the Execution Date; **(ii)** purchase an extended reporting period of not less than five years following the termination of this Agreement; or **(iii)** acquire a full prior acts provision on any renewal or replacement policy.

c. Fire and Casualty Insurance – Lessee shall, at its sole cost, maintain on the Premises a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of full replacement value. The insurance policy shall be issued in the names of County, Lessee, and any lender, as their interests appear. The insurance policy shall provide that any proceeds shall be made payable to Lessee, and Lessee shall apply and use such proceeds as required by **Section 20**, subject to the priority rights of any lender. Such insurance shall satisfy the requirements of this **Section 24** and shall be issued by a company or companies satisfying the requirements of this **Section 24.e**. On or before the Execution Date, Lessee shall deliver to County certificates of insurance and necessary endorsements indicating that Lessee has complied with the provisions of this **Section 24.c**.

d. Cancellation of Insurance – The above-stated insurance coverages required to be maintained by Lessee shall be maintained until the completion of all of Lessee’s obligations under this Agreement. Each insurance policy supplied by Lessee must be endorsed to provide that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 10 days written notice in the case of non-payment of premiums, or 30 days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Lessee shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

e. Insurance Company Rating – All insurance shall be issued by a company or companies admitted to do business in California and listed in the current “Best’s Key Rating Guide” publication with a minimum rating of A-; VII. Any exception to these requirements must be approved in writing by the County Risk Manager, which may be granted or withheld at the County Risk Manager’s sole discretion.

f. Lessee Self-Insured – If Lessee is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Lessee shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless the County Risk Manager determines, in his/her sole discretion and by written acceptance, that the coverage proposed to be provided by Lessee is equivalent to the above-required coverages.

g. Primary Insurance – All insurance afforded by Lessee pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.

h. No Limitations by Policy Limits – Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Lessee for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage, or to preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise under Applicable Laws.

i. Failure to Maintain Insurance – Failure by Lessee to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Lessee. County, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Lessee, County shall deduct from sums due to Lessee any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Lessee pursuant to this Agreement is insufficient to reimburse County for the premiums and any associated costs, Lessee shall reimburse County for the premiums and pay for all costs associated with the purchase of said insurance within 10 days of demand by County. Any failure by County to take this alternative action shall not relieve Lessee of its obligation to obtain and maintain the insurance coverages required by this Agreement.

25. Liens and Encumbrances: Lessee shall keep the Premises free from any liens and encumbrances arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause. If a lien or encumbrance is recorded against the Premises, and Lessee fails to remove the lien or encumbrance or post a bond to remove same within 15 days after its filing, County shall give a 15-days' notice to Lessee, requiring Lessee to remove or bond around the lien or encumbrance within the 15-days period. If Lessee fails to do so within the 15-days period, County, at its sole discretion after expiration of the 15-days period, may obtain a bond, with all costs of the bond to be reimbursed by Lessee to County.

26. Administrative Processing Fee: Lessee shall pay to County, upon County's request, a processing fee in the amount of \$1,200 for processing any request by Lessee for County to sign documents. The fee shall not be refundable and shall be paid prior to County's review of Lessee's request for signature. The fee may be waived by the CGSO if, in his/her opinion, the simplicity of processing such request for signature does not warrant the fee. Refusal to pay the fee is grounds for the denial of the request for signature.

27. Breach by Lessee: In the event of the breach by Lessee of any term, covenant, or condition of this Agreement, Lessee shall have 30 days after written notice has been given to Lessee by County to cure, except for breach of the nuisance provisions of **Section 7.b**, which allows 72 hours to cure. If Lessee fails to cure within the stated time periods, County may exercise its remedies under **Section 28**.

28. Remedies of County: In the event of a breach by Lessee, then County shall have the right either to terminate Lessee's right to possession of the Premises, by giving written notice of termination to Lessee, and thereby terminating this Agreement, or to have this Agreement continue in full force and effect with Lessee at all times having the right to possession of the Premises.

a. Agreement and Possession Continue – If County elects to have this Agreement continue in full force and effect, Lessee shall remain liable to perform all of its obligations under this Agreement and County may enforce all of County's rights and remedies. If Lessee abandons the Premises or fails to maintain and protect the same as herein provided, County

shall have the right (i) to do all things necessary or appropriate to maintain, preserve and protect the Premises, without limitation the installation of keepers or guards or the appointment of a receiver, and (ii) to relet the Premises as the agent of Lessee and for Lessee's account and to do all things appropriate for such reletting. In the event of such reletting, rental received by County shall be credited to Lessee's account. None of the foregoing acts shall be deemed to terminate Lessee's right of possession, and Lessee shall reimburse County on demand for all amounts reasonably expended by County in connection with the foregoing acts, together with interest on all amounts expended by County from time to time at the maximum legal rate from the date due until paid. Notwithstanding any such election to have this Agreement remain in full force and effect, County may at any time thereafter elect to terminate Lessee's right to possession of the Premises and thereby terminate this Agreement for any previous breach by Lessee which remains uncured or for any subsequent breach.

b. Agreement and Possession Terminate – If County gives notice of election to terminate Lessee's possession of the Premises, County shall be entitled to recover from Lessee the amounts specified in paragraph (a)(4) of Section 1951.2 of the California Civil Code, as such section reads as of the Execution Date.

c. Remedies Not Exclusive – No right or remedy herein conferred upon or reserved to County is intended to be exclusive of any other right or remedy herein or by law, provided that each shall be cumulative and in addition to every other right or remedy given herein or now, or hereafter existing at law or in equity or by statute.

d. County Right to Cure – In addition to County's remedies upon Lessee's breach, upon 10 days prior written notice to Lessee by County, County may cure any breach by Lessee and, if necessary, may enter upon the Premises for such purpose. In such event, the cost of cure, plus interest at the maximum legal rate from the date due until paid, shall become immediately due and payable.

29. No Waiver of Breach: The waiver by County of any term, covenant, or condition contained in this Agreement must be in writing and shall not be deemed to be a waiver of any subsequent breach of the term, covenant or condition contained in this Agreement, and no custom or practice that may arise between the Parties during the course of this Agreement shall be construed to waive or lessen the right of County to the performance by Lessee in strict accordance with the terms of this Agreement.

30. Force Majeure:

a. Definition – Neither Party shall be held responsible or be deemed to be in default under this Agreement for any delay in performance or failure to perform any of its obligations if such delay or failure is the result of causes beyond the control and without negligence of the Party. Such causes include, without limitation, acts of nature, strikes, lockouts, riots, insurrections, civil disturbances or uprisings, sabotage, embargoes, blockages, acts of war or terrorism, acts or failure to act by any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes, tsunamis, or other natural or man-made disasters (“**Force Majeure**”). Lack of funds shall not be a Force Majeure event.

b. Consequences – The Party affected by a Force Majeure event, upon giving prompt notice to the other Party, shall be excused from performance to the extent of such

prevention, restriction, or interference, on a day-to-day basis until the Force Majeure event is removed, and the other Party shall likewise be excused from performance of its obligation which relate to the performance so prevented, restricted, or interfered with. The affected Party shall use its best efforts to avoid or remove the causes of nonperformance and to minimize the consequences thereof, and both Parties shall resume performance when the Force Majeure event is removed.

31. Quiet Possession: Lessee, in keeping and performing the terms, covenants and conditions herein contained on the part of Lessee to be kept and performed, shall at all times during the term of this Agreement peaceably and quietly have, hold, and enjoy the Premises.

32. Assignment and Subletting:

a. No Assignment or Subletting – Lessee shall not sublease, assign, transfer, mortgage, or otherwise convey this Agreement, or any of its rights and interests hereunder, including its leasehold rights and interests granted by this Agreement, without the prior written consent of the CGSO.

b. Referral to Board of Supervisors – However, the CGSO may, at his/her discretion, refer Lessee's request to (i) sublease, (ii) assign, (iii) transfer, (iv) mortgage, or (v) otherwise convey this Agreement or Lessee's ground leasehold rights and interests, to the Board for the Board's consideration.

c. Failure to Obtain Consent – If Lessee shall sublease, assign, transfer, mortgage, or otherwise convey this Agreement, or its rights and interests hereunder, or attempt to do so in violation of the foregoing provision, then in addition to any and all other rights and remedies available to it, County may, at its option by written notice to Lessee, either declare such sublease, assignment, transfer, mortgage, or other conveyance void or terminate this Agreement and all rights and interests of Lessee and all other persons hereunder.

d. No Waiver or Limitation on Consent – Any consent to any sublease, assignment, transfer, mortgage, or conveyance shall not be deemed or construed as consent to any different or subsequent sublease, assignment, transfer, mortgage, or conveyance. This clause shall not be construed to limit any right or remedy which County may become entitled to as a matter of law or become entitled to by reason of Lessee's actions or failures to act.

e. Lessee in Compliance – As a condition of County's consent to any conveyance of this Agreement, Lessee must be in compliance with all terms, covenants, and conditions of this Agreement, including without limitation the payment of all monies due to County.

33. Surrender of Premises: On the last day of the term, or extension thereof, or sooner termination of this Agreement, Lessee shall peaceably and quietly leave, surrender, and yield up to County the Premises, in as good a condition and state of repair as it existed on the Execution Date, subject to damage by Force Majeure, and shall comply with **Section 19** relating to its FF&E and Improvements. By the expiration or termination date, Lessee shall have paid all utility bills and contacted the appropriate utility companies to have the utility services properly discontinued.

34. Turn Over of Equipment:

a. Turn Over of Equipment – Lessee shall turn over the Equipment, as described in **Exhibit "E,"** to County at the expiration or termination of this Agreement. Equipment

shall be turned over in a state of good condition and repair, with reasonable use and wear, and subject to damage by Force Majeure events.

b. Removal of Hazardous Materials – All hazardous materials on the Premises used or stored by Lessee must be removed, in accordance with all Applicable Laws, prior to the expiration or termination of this Agreement.

35. Notices: All notices herein provided to be given, or which may be given, by either Party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

To Lessee: _____

To County: County of Kern
General Services Department
1115 Truxtun Avenue, 3rd Floor
Bakersfield, CA 93301
Attn: Property Management

The address to which the notices shall be mailed to either Party may be changed by written notice given by such Party to the other, but nothing shall preclude the giving of any such notice by personal service.

36. Authorized Agent of County: The CGSO is the duly authorized agent of County for purposes of this Agreement, and as to any obligations assumed by Lessee, they shall be performed to the sole satisfaction of the CGSO, unless another standard is specified in this Agreement.

37. Miscellaneous Provisions:

a. Negation of Partnership – County shall not become or be deemed a partner or joint venturer with Lessee or associate in any relationship with Lessee other than that of landlord and tenant by reason of the provisions of this Agreement. Lessee shall not for any purpose be considered an agent, officer, or employee of County.

b. Conflict of Interest – The Parties have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All Parties agree that they are unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist as of the Execution Date, County may immediately terminate this Agreement by giving written notice to Lessee. County shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.

c. Nondiscrimination –

(1) Lessee, in the use of the Premises and in the operations to be conducted under this Agreement, shall not discriminate or permit discrimination against any person

or class of persons by reason of race, color, creed, religion, ancestry, sex, age, disability, sexual orientation, or national origin in any manner prohibited by Applicable Laws.

(2) Lessee shall furnish its accommodations and services on a fair, equal, and nondiscriminatory basis to all Users, and Lessee shall charge only fair, reasonable, and nondiscriminatory prices for its services. However, Lessee may make reasonable and nondiscriminatory rebates, discounts, or other similar price reductions to volume service Users to the extent permitted by Applicable Laws.

(3) Lessee shall make its accommodations and services available to the public on fair and reasonable terms without discrimination on the basis of race, color, creed, religion, ancestry, sex, age, disability, sexual orientation, or national origin.

(4) Lessee shall not discriminate nor allow discrimination, either directly or indirectly, in hiring or employing persons to work at the Premises.

(5) Lessee shall include the language in **subsections (1) through (4)** in any agreement by which Lessee assigns or transfers any interest in the Premises or this Agreement, or grants a right or privilege to any person, firm, or corporation to use the Premises or to render accommodations and services to the public on the Premises.

(6) Non-compliance with **subsections (1) through (4)** shall constitute a material breach of this Agreement, and in addition to any other remedies provided by Applicable Laws or this Agreement, County shall have the right to terminate this Agreement without liability therefore, may seek an injunction to enforce **subsections (1) through (4)**, and may charge Lessee the sum of \$25.00 per day for each incident of a failure to comply.

d. Incorporation of Prior Agreements – This Agreement contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.

e. Remedies not Exclusive – The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive such Party of, or limit the application of, any other remedy provided by law, at equity, or otherwise.

f. Severability – If any part, term, portion, or provision of this Agreement is decided finally to be in conflict with any law of the United States, the State of California, the County of Kern, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

g. Governing Law; Venue – The Parties agree that the provisions of this Agreement shall be construed pursuant to the laws of the State of California. If either Lessee or County initiates an action to enforce the terms of this Agreement or declare rights hereunder, including actions on any bonds and/or surety agreements, the venue thereof shall be the County of Kern, State of California, it being understood that this Agreement is entered into, and will be performed, within the County of Kern.

h. Compliance with Laws – Lessee shall, at its sole cost, promptly comply with all Applicable Laws, including Environmental Requirements, which may in any way apply

to the use, operation, repair, maintenance, occupation of, or operations or construction on, the Premises.

i. Successors – Subject to **Section 32**, all terms, covenants, and conditions of this Agreement shall extend to, be binding upon, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

j. No Third Party Beneficiaries – This Agreement is made for the sole benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, and no other persons shall have any right of action hereon.

k. Covenants and Conditions – Each provision of this Agreement performable by Lessee shall be deemed both a covenant and a condition.

l. Modification – This Agreement may be modified or amended only by a written document signed by both Parties.

m. Authorization – Each individual executing this Agreement on behalf of either Party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of that Party, and that this Agreement is binding upon both Parties in accordance with its terms.

n. Construction – The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

o. Recitals – Each of the recitals is incorporated in this Agreement by reference as if fully set forth in this Agreement at length, is deemed to be the agreement and a reflection of the intent of the Parties and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

p. Captions – Paragraph headings in this Agreement are used solely for convenience and shall be wholly disregarded in the construction of this Agreement.

q. Exhibits – All exhibits attached to this Agreement are incorporated into this Agreement by reference.

r. Time of Essence – Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.

The Parties have executed this Agreement on the Execution Date.

APPROVED AS TO CONTENT:

General Services

By _____
Deputy Chief General Services

COUNTY OF KERN

By _____
Chief General Services Officer
"County"

APPROVED AS TO FORM

Office of County Counsel

By _____
Deputy

By _____
"Lessee"

EXHIBIT "A" – Premises



EXHIBIT “B” – Environmental Terms

Definition of Environmental Terms

For the purpose of this Agreement, the following terms and words shall have the meaning given below:

1. Environmental Requirements. All applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items of any governmental agency, department, commission, board, bureau, or instrumentality of the United States of America, California, or its political or municipal subdivisions, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human life or the environment.

2. Hazardous Materials. All flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminates, hazardous waste, toxic substances or related materials, petroleum products, and any substances declared to be hazardous or toxic under any present or future Environmental Requirements or which requires investigation or remediation under any present or future federal, state, or local law, statute, regulation, environmental requirement, order, or rule.

EXHIBIT "C" Goods and Services

Goods and Services to be Provided by Lessee

1. The following are the minimum requirement for good and services to be supplied in connection with the Agreement. Lessee may provide additional goods and/or services consistent with its own business plan and the needs of its customers.
 - a. Lessee shall stock and sell, in quantities sufficient to meet the day to day needs of users of BVARA, food, beverages, ice, bait, gifts, picnic supplies, and firewood. Lessee shall stock and sell a reasonable selection of water sports and fishing equipment.
 - b. Lessee shall procure and sell gasoline. Lessee shall also stock and sell other fuels and oil commonly used in camping and/or boating.

County shall be responsible for the maintenance and repair of the fuel tank system and for obtaining all required permits.

Lessee shall be responsible for the purchase of gasoline for the fuel tank system, sales of the gasoline, keeping accurate sales records and operating the fuel pump. Any damage caused by the Lessee's failure to properly operate the fuel tank system will be Lessee's responsibility. Proof of such sale shall be provided to County in a manner acceptable to the CGSO.

2. Lessee shall cooperate and coordinate with General Services Parks Division by promoting BVARA in addition to its operations. Consistent with Lessee's business plan and good business practices Lessee's operations shall observe the following:
 - a. The customer area should provide adequate stock to meet the needs of the customers and effectively display merchandise.
 - b. At all times when the Premises is open to the public Lessee shall provide sufficient numbers of trained staff to provide service and retail assistance for the quantity of customers that would reasonably be expected to require goods or services given seasonal and event-based fluctuations in Park population.
 - c. Lessee shall be expected to negotiate volume buying transactions and maintain adequate inventory to meet the needs of BVARA users.
 - d. Lessee shall operate and maintain the concession areas so as to attract patrons and meet their needs.
 - e. Lessee shall generate sufficient revenue to sustain the successful on-going operation of the concessions.
 - f. Lessee shall acquire, use, and maintain a proof-of-sales system to record gasoline sales and reimbursement to County.
 - g. Lessee shall provide and maintain sufficient types and sizes of coolers, refrigerators, ovens, hot and cold storage necessary for the storage, preparation and

service of food and beverages.

- h.** Lessee shall immediately notify the CGSO if at any time the Premises is given a B or lower rating from Kern County Department of Environmental Health.
- i.** Lessee shall equip the concession areas with convenient, safe, and serviceable display fixtures, racks, shelves, as needed.
- j.** Lessee shall submit an annual marketing plan by January 1, of each calendar year during the term of this Agreement and any extensions, including any planned advertising and promotions. The CGSO shall provide Lessee with the suggested format and content of the marketing plan.

EXHIBIT “D” – Monthly Statement Form

LESSEE: _____

MONTH, YEAR: _____

<u>Sales</u>	<u>Amount</u>
Food	\$ _____
Beverages	\$ _____
Snacks	\$ _____
Other	\$ _____
TOTAL	\$ _____

<u>Expenses</u>	<u>Amount</u>
Total Expenses	\$ _____

Declaration

I, _____, serving as the authorized representative of the Lessee, and after having reviewed all necessary records and receipts of the Lessee, declare that the information set forth above is true and correct.

EXHIBIT “E” – Facility Equipment List and Lessee Maintained Equipment

Facility Equipment List And Lessee Maintained Equipment

Kitchen Equipment	Model #
Hashiaki Ice Machine	H793FX-299
Intertek Fire Hood System	4818-ESX2
Ansul Fire Suppression System	R-102
Avantco refrigerator	178APT71HC
Avantco Double Electric Fryers	177EF40C
Avantco Electric Flat Top	EG4823110062
Bakers Pride Pizza Oven	BP-376A
Handwash sink	None
Stiebel Eltron Electric Water Heater	Tempra Plus
Nemo Duel Burners	311-1-240
Ojeda Produce Refrigerator	ALPA -0120 G2
Everest Refrigerator	ESFH2
Heatcraft Beer cooler motor	D08F11189
Heatcraft Beer cooler motor	D08F11188
9 Various shelving units	None