

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Community Services Agency

BOARD AGENDA #: *B-2

AGENDA DATE: March 1, 2016

SUBJECT:

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

BOARD ACTION AS FOLLOWS:

No. 2016-95

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Community Services Agency
Urgent Routine

BOARD AGENDA #: *B-2

AGENDA DATE: March 1, 2016

CEO CONCURRENCE: _____ 4/5 Vote Required: Yes No

SUBJECT:

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

STAFF RECOMMENDATIONS:

1. Approve a Concession Lease Agreement by a four-fifths vote with PFD Management, a California Corporation, for the provision of a Cafeteria Solution at the Stanislaus County Community Services Facility, as a result of a Request for Proposals (RFP) process for such services.
2. Authorize the Purchasing Agent to sign the concession lease agreement, future amendments and related documentation with PDF Management.

DISCUSSION:

The Community Services Facility (CSF), located at 251 E. Hackett Road in Modesto, CA, houses four different County agencies, including the Alliance Worknet, the Community Services Agency (CSA), the Department of Child Support Services (DCSS), and the Health Services Agency - Women, Infants and Children (HSA- WIC) program.

Beginning in 1994, Stanislaus County contracted with the California Department of Rehabilitation (DOR) to provide cafeteria services. During this time, the DOR provided its own equipment in the cafeteria. The DOR trained its program participants through the Business Enterprise Program to manage the cafeteria space to provide breakfast and lunch for both the general public and CSF staff. On May 19, 2014, the DOR issued a notice of intent to terminate the agreement, effective September 1, 2014. After September 1, 2014, DOR removed some of the cafeteria equipment, and left other working equipment behind. The Board accepted the DOR-donated cafeteria equipment on August 18, 2015. This equipment will be available to the vendor for use in operating the cafeteria.

In October 2014, a Cafeteria Solution workgroup was created and representatives from each CSF agency met to determine what type of Cafeteria Solution was needed in order to provide healthy breakfast and lunch meals to approximately 900 public customers and 1,200 staff members that visit and work in the CSF daily. The workgroup considered various cafeteria solutions, and administered a Cafeteria Usage Survey in April 2015. The Agency received 415 responses from staff, which is about 34% of the total staff that work in the CSF. The survey revealed that 90% of the survey respondents considered it important to have a cafeteria on

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

site. After reviewing the survey results, the Cafeteria Solution workgroup made the decision to seek vendors who are interested in providing food services at the CSF.

As per the RFP the Hours of Operations and Holidays will be:

Hours of Operation:

- The vendor shall be open for meal service Monday through Friday, from 7:30 A.M. until 4:30 P.M.
- The hours of operation may be evaluated after the first six months to ensure both the vendor's and the County's needs are being met.

Holiday Closures:

- The Cafeteria will be closed on all County Board of Supervisors-approved holidays. The County's holiday schedule for the current year may be view online at the following link: <http://www.stancounty.com/personnel/PDF/county-holidays.pdf>

As per the RFP the vendor shall provide the following menu selections:

- Cooked to order selections, low sodium, low fat, and gluten-free options, potato bar, soup bar, salad bar, and vegetarian options.

On August 18, 2015, the Board of Supervisors approved the request to issue a Request for Proposal (RFP), and on August 19, 2015, RFP #14-89-BD was issued and sent electronically to 210 vendors, 36 of which downloaded the RFP. A mandatory pre-proposal conference was held on September 1, 2015, where three potential vendors were in attendance. When the RFP closed on September 21, 2015, the General Services Agency (GSA) received proposals from the following two (2) vendors:

- Common Grounds Café and Catering, of Modesto, California; and
- PFD Management, of Irvine, California.

All proposers met the minimum qualification set forth in Phase I which included a financial review. A committee of five evaluators was selected to further evaluate the proposers. The Evaluation Committee consisted of staff from the CSA, HSA, GSA and DCSS.

The Evaluation Committee completed Phase II, which consisted of a review and evaluation of each qualification proposal. The RFP was evaluated using the following criteria with the corresponding total number of available points in each category:

Phase II	Maximum Points
Qualifications and Operations Experience	40
Training and Safety Procedures	10
Menu Selection	15
Marketing and Customer Relations	5
Conservation, Recycling & Sustainability	<u>5</u>
Total Phase II	75

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

The scores of each member of the Evaluation Committee were averaged to determine the actual Phase II scores. The scores were posted as follows:

Phase II Total	Total Points Available	Common Grounds	PFD Management
Total Average Points	75	37.4	58.6

GSA Purchasing scored Phase III based on proposed lease pricing. The scoring was as follows:

Phase III Proposed Lease Pricing	Total Points Available	Common Grounds	PFD Management
Pricing Points Awarded	25	13.7	25.0

As per the RFP, the vendors could select a lease that could be an annual flat fee, an annual fee based on the percentage of total sales or a combination of both. PFD Management was chosen to be awarded because their proposal met the criteria set forth in the RFP and best met the needs of the Community Services Facility partners and County with all other factor considered. The recommended concession lease with PFD Management includes a minimum base rent of \$6,480 per year, an additional 3% commission based on gross sales over \$216,000 annually, an additional 3% commission on vending machine sales over \$24,000 estimated to be \$720 and a flat \$500 commission on catering sales per year that can generate an estimated \$7,700 in revenue annually.. The final total scores are as follows:

Totals	Total Points Available	Common Grounds	PFD Management
Total Points Awarded	100	51.1	83.6

On December 4, 2015, the two proposers were notified in writing of the panel's recommendations, and no protests were received before the protest period concluded on December 11, 2015. Staff is now recommending that the Board of Supervisors approve the review panel recommendation and award a concession lease agreement to PFD Management.

POLICY ISSUE:

The Board of Supervisors' approval is necessary by a four-fifths vote to approve the lease or sale of county property according to Stanislaus County Code 4.24.010 Lease of Real Property, pursuant to the provisions of California Government Code Section 25526 – 25537.

Government Code section 25536 requires the board of supervisors by a four-fifths vote, entering into leases, or concession or managerial contracts involving leasing or subleasing all or any part of county-owned, leased, or managed property devoted to or held for ultimate use for airport, vehicle parking, fairground, beach, park, amusement, recreation, or employee cafeteria purposes, or industrial or commercial development incidental thereto or not inconsistent therewith without compliance with this article. In addition, the board of supervisors may sell or lease all or any part of county-owned property without compliance with this article if the county repurchases or leases back the property as part of the same transaction.

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

FISCAL IMPACT:

Cost of recommended action:		\$	6,480
Source(s) of Funding:			
Rents & Concessions	6,480		
Funding Total:		\$	6,480
Net Cost to County General Fund		\$	-
Fiscal Year:	2015/2016		
Budget Adjustment/Appropriations needed:	No		
Fund Balance as of	N/A		

The recommended lease with PFD Management includes a minimum base rent of \$6,480 per year, an additional 3% commission based on gross sales over \$216,000, an additional 3% commission on vending machine sales over \$24,000 estimated to be \$720 and a flat \$500 commission on catering sales per year that can generate an estimated \$7,700 in revenue annually. The initial lease term will begin the day after Board approval and terminates February 28, 2017 and may be renewed for four additional one-year terms. The total maximum term of this lease shall be limited to five years, terminating on February 28, 2021 This agreement has the potential to generate \$38,500 in revenue over the five-year lease term. Revenue generated from the lease of the cafeteria will be used to offset costs for utilities, pest control, facility and equipment maintenance costs directly related to the cafeteria space. Any excess revenues at the end of the fiscal year will be reserved in assigned fund balance to offset future costs directly related to the cafeteria space.

The recommended lease requires PDF Management to keep in good order, condition and repair the leased premises including all grease traps and shall, at its own expense, keep the leased premises in a safe and clean condition. PDF Management shall pay all costs associated with equipment maintenance and regulatory inspections of the leased premises including but not limited to cost of equipment replace, the cost of labor, insurance, and applicable taxes which are necessary and/or appropriate to operate and manage the leased premises.

The Community Services Agency 2015-2016 Adopted Final Budget includes sufficient appropriations and estimated revenue to support this agreement. There is no impact to the County General Fund.

BOARD OF SUPERVISORS' PRIORITY:

Approval of these requests supports the Board of Supervisor's priority of A Healthy Community, Effective Partnerships and Efficient Delivery of Public Services by providing cafeteria services to customers and staff.

Approval to Enter Into a Concession Lease Agreement with PFD Management, a California Corporation, for the Provision of a Cafeteria Solution at the Stanislaus County Community Services Facility

STAFFING IMPACT:

Existing staff from the General Services Agency and Community Services Agency are available to support the cafeteria concession lease. In the future, if the workload demand increases, the Agencies will analyze available options and return to the Board of Supervisors for consideration of any necessary staffing changes.

CONTACT PERSON:

Keith Boggs, Purchasing Agent General Services Agency (209) 525-7640

Kathryn M. Harwell, Community Services Agency Director (209) 558-2500

ATTACHMENT(S):

A. Concession Lease Agreement

CONCESSION LEASE AGREEMENT

AGREEMENT FOR THE OPERATION OF CAFETERIA AND VENDING MACHINES AT THE STANISLAUS COMMUNITY SERVICES FACILITY

SUMMARY:

Landlord and County Project Manager:	Stanislaus County General Services Agency Purchasing Agent 1010 10th Street, Suite 5400 Modesto, California 95354
Concessionaire Tenant:	PFD Management Inc. 8 Mariposa Irvine CA 92604
Leased Premises (Concession Area):	Approximately 1,950 square feet of Cafeteria Space located at 251 E. Hackett Road, in the County of Stanislaus, State of California.
Permitted Use:	Exclusive use of Concession Area for the purposes of preparation and serving of food and non-alcoholic beverages, sale of food products through vending machines, and food preparation to provide outside catering and for no other purposes.
Base Rent:	Minimum Base Rent is \$6,480.00 per year, and;
Concession Fees:	A. Three per-cent (3%) commission on Concessionaire's cafe sales, and; B. Three per-cent (3%) commission of Concessionaire's vending machine sales, and; C. \$500 commission on Concessionaire's catering sales.
Term:	Total of 5 years.
Commencement Date	March 1, 2016 at 12:01 a.m.
Termination Date	February 28, 2019 at 11:59 p.m., subject to earlier termination or extension as provided herein.
Exhibits:	Exhibit A: RFP No. 14-89-BD, including associated addenda thereto (collectively, "RFP"). Exhibit B: Concessionaire's proposal response to the RFP. Exhibit C: Itemized list and photos of existing County Equipment available for use by Concessionaire

CONCESSION LEASE AGREEMENT

This Concession Lease Agreement ("Agreement") is made and entered in this 2nd day of February, 2016, by and between the County of Stanislaus, a subdivision of the State of California ("County"), and PFD Management Inc., a California limited partnership, ("Concessionaire"), in consideration of the premises, and the agreements, terms and conditions set forth, below.

WHEREAS, County operates the Community Services Facility ("Premises") in Modesto;

WHEREAS, County has advertised and requested interested persons to submit proposals in response to Request for Proposal #14-89-BD ("RFP") for the operation and maintenance of a Cafeteria Solution ("the Concession") at the Premises; and

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

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

1. CONCESSION AREA:

- 1.1. County hereby leases to Concessionaire approximately 1,950 square feet of cafeteria space ("Concession Area"), in the County of Stanislaus, State of California located inside the Community Services Facility ("CSF") at 251 E. Hackett Road, Modesto, CA ("Premises").
- 1.2. County does hereby grant a license to Concessionaire, and Concessionaire does hereby accept a license from County, upon the terms and conditions herein set forth, over the Concession Area, and more particularly described in Exhibits A and B attached hereto and made a part hereof.

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

3. CONDITION OF CONCESSION AREA: Concessionaire hereby accepts the Concession Area (a) in the condition existing as of the Effective Date, and (b) subject to all applicable zoning, county and state laws, ordinances and regulations governing and regulating the use of the Concession Area and any covenants or restrictions of record. Concessionaire has independently evaluated the condition of the Concession Area and has determined that it is acceptable for Concessionaire's use. Concessionaire acknowledges that neither County nor any agent or employee of County has made any representations or warranties with respect to (a) the Concession Area; (b) the condition of the Concession Area; (c) the improvements on the Concession Area; to conduct of Concessionaire's business.

4. CONCESSIONAIRE'S DUTIES AND OBLIGATIONS:

- 4.1. Use of Concession Area: The Concession Area is released to Concessionaire exclusively for the purposes of preparing and serving of food as set forth herein, and in RFP No. 14-89-BD, including associated addenda (attached hereto as Exhibit A), and in Concessionaire's Response to the RFP (attached hereto as Exhibit B), and for no other purposes.

CONCESSION LEASE AGREEMENT

- 4.2. Sanitation: Concessionaire shall, at its own expense, keep the Concession Area clean and sanitary at all times. No refuse or offensive matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor material detrimental to the public health, shall be permitted to remain in or on the Concession Area, and Concessionaire shall prevent any such matter or material from being or accumulating upon said Concession Area. If the County, in its sole discretion, deems the Concession Area unclean, unsanitary, or if the Concession Area does not meet the standards of either the County or the County Public Health Department, County shall provide 10 days prior written notice to Concessionaire to correct such deficiencies. Should Concessionaire fail to correct such deficiencies by the end of the 10 days, then the County may, in its sole discretion, terminate this Agreement for cause and all terms and conditions contained herein. For further cleaning requirements, refer to Pages 6-7 and 28 of the RFP (Exhibit A).
- A. Garbage. Concessionaire shall hire a dumpster of appropriate size as approved by the County. The Concessionaire shall pay the cost of all garbage pickup from the dumpster for the Concession Area during the term of this Agreement. Concessionaire, at its own expense, shall ensure that garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the dumpster. Concessionaire shall furnish all equipment and materials necessary therefore, including trash receptacles of a size, type, and number approved by County. For further garbage management requirements, refer to Pages 6 and 20 of the RFP (Exhibit A).
- B. Janitorial Services: Concessionaire shall furnish janitorial service as is necessary for the Concession Area.
- 4.3. General Maintenance and Repairs: Concessionaire shall, at its own expense, keep the Concession Area in good order, in a safe and clean condition, including all grease traps. Concessionaire expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Concessionaire the right to make repairs at County's expense or to terminate this Agreement due to County's failure to keep the Concession Area in good order, condition and repair.
- 4.4. Equipment Maintenance: Concessionaire shall pay all costs associated with equipment maintenance and regulatory inspections of the Concession Area including but not limited to cost of equipment replace, the cost of labor, insurance, and applicable taxes which are necessary and/or appropriate to operate and manage the Concession Area.
- A. Concessionaire shall be responsible to maintain the fire suppression/smoke detector in the range hood, which must be checked by the Fire Marshall and serviced on an annual basis. Concessionaire shall pay for the cost of repair and maintenance of the fire suppression/smoke detector. If such repair work is performed by the County, all such repair and maintenance charges shall be submitted to Concessionaire in writing and shall be due and payable within 30 days.
- 4.5. Trade Fixtures: Concessionaire may install such fixtures, equipment, and personal property as may be necessary and convenient for its operation. Such furniture, equipment, and personal property shall not be considered part of the Concession Area. Removal of the same shall not damage or deface the Concession Area, and if the Concession Area shall be so damaged, Concessionaire shall repair such damage at its own expense.
- 4.6. Hiring: Concessionaire shall use its best efforts to hire employees, contractors, suppliers, custom operators, and agents who are located in Stanislaus County.

CONCESSION LEASE AGREEMENT

- 4.7. Hazardous Materials: Concessionaire shall submit a Hazardous Materials Business Plan to the Stanislaus County Department of Environmental Resources. Concessionaire shall make the Concession Area and its operations available for inspection regarding the storage of hazardous materials on the Concession Area.
 - 4.8. Fire Prevention: Concessionaire shall comply with applicable fire control and prevention rules, practices and regulations. All equipment, fuel and oil may be stored in an appropriate storage area.
 - 4.9. Debris Removal: Concessionaire, at its own expense, shall dispose of all debris and empty containers generated on the Concession Area.
 - 4.10. Alterations: Concessionaire shall not make or permit any other person to make any permanent alterations to the Concession Area or any improvement thereon without the prior written consent of the County. Concessionaire shall not erect or permit to be erected any permanent structure in the Concession Area. Concessionaire shall not remove any structures located in the Concession Area without the prior written consent of County.
 - 4.11. Temporary Installations: Subject to the prior written approval of the County, Concessionaire may erect, at its own expense, temporary structures in the Concession Area as may be necessary or incidental to its use under the Agreement. All such structures shall remain the Concession Area of Concessionaire and shall be removed from the Concession Area prior to the expiration of the Agreement term.
 - 4.12. Damage: At the termination of the Agreement, Concessionaire shall pay to County reasonable compensation for any damage to the Concession Area caused by Concessionaire or its invitees, agents or employees, excepting ordinary wear and tear or depreciation.
 - 4.13. Entry by County: Concessionaire shall permit County, its employees, agents, representatives, invitees, as well as any Federal, State and Local officials responsible for remediation of hazardous conditions on the Premises, to enter the Concession Area at all reasonable times.
 - 4.14. Entry by Others: Concessionaire shall have the right to post signs to deny service as defined within any Amendments to this Agreement as agreed to in writing by both the Concessionaire and County.
 - 4.15. Surrender: Concessionaire shall surrender the Concession Area to County at the expiration of this Agreement in as good a condition as at the commencement of it, excepting reasonable wear and tear, damages and destruction by the elements, or other persons.
5. STATUS OF CONCESSIONAIRE:
- 5.1. Independent Contractor. The Concessionaire is acting hereunder as an independent contractor and not as an agent or employee of the County. At all times during this Agreement, the Concessionaire shall not represent or otherwise hold itself or any of its directors, officers, partners, employees, agents, representatives or subcontractors as employees of the County. This Agreement shall not be deemed nor is it intended to create a partnership relationship between the County and Concessionaire.
 - 5.2. Authority. Concessionaire represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Concessionaire are the duly designated agents of Concessionaire and are authorized to do so.

CONCESSION LEASE AGREEMENT

6. CONCESSION PERMISSIONS GRANTED.

- 6.1. All services provided by Concessionaire and the manner in which services are to be provided are more particularly set forth in County's Request for Proposal #14-89-BD; the Concessionaire's responding proposal, as well as any plans, specifications, addenda, and any documents particularly required or provided (as may be applicable), all of which are incorporated herein by reference and made a part hereof (collectively, the "RFP"). All of the foregoing documents, as may be applicable, together with this Agreement, comprise the contract and all services provided hereunder shall be performed in accordance therewith. In the event there is a conflict between the terms and conditions set forth in this Agreement, those set forth in the RFP, and those set forth in Exhibit A and/or Exhibit B, then in such case, the terms and conditions shall control in this order: 1st, this Concession Lease Agreement for Cafeteria Space ("Agreement"), 2nd, Exhibit A (the RFP), and 2rd Exhibit B (Concessionaire's proposal response to the RFP).

7. ASSIGNMENT, TRANSFER, SUBLEASE, BANKRUPTCY:

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

8. TERM:

- 8.1. Term. The total maximum term for this Agreement shall be limited to five (5) years. The initial term of this Agreement shall be for a period of one (1) year, commencing on March 1, 2016 at 12:01 a.m., and terminating on February 28, 2017 at 11:59 p.m. Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and

CONCESSION LEASE AGREEMENT

conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term.

- 8.2. Option to Renew. This Agreement has an initial effective period of one year, and will not automatically renew, but may be renewed for four (4) additional one-year terms (each a "Renewal Term") at a rate to be negotiated by the parties. Such renewal shall be in the form of a written Amendment to the Agreement to be executed at least thirty (30) days prior to the expiration of the then-current term.
 - 8.3. Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Concession Area with County's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the minimum monthly rent shall be due monthly at a rate increased by 10% over the previous rent, unless otherwise agreed to in writing by County. Concessionaire shall pay such monthly rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this contract except those pertaining to the term shall apply to the month-to-month tenancy.
 - 8.4. Temporary Tenancy. This tenancy is of a temporary nature and the parties to this contract agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.
9. FEES AND CHARGES: Concessionaire agrees to pay to County for the Concession Area above-described, and County agrees to accept as payment for, the use and possession of the Concession Area as set forth below.
- 9.1. Minimum Base Rent:
 - A. Minimum Base Rent is \$6,480.00 (US dollars) per year, payable annually in one installment due February 1st of at the beginning of each year during the Term;
 - 9.2. Concession Fees: Commissions on Concessionaire's previous calendar year (January – December) sales occurring during the Agreement Term shall be calculated as follows:
 - A. Additional Rent of three per-cent (3%) commission based on Concessionaire's annual gross sales over \$216,000.00 for cafeteria, internal catering, and other sales and service sales;
 - B. Additional Rent of three per-cent (3%) commission on Concessionaire's annual gross sales over \$24,000.00 for vending machine sales, and;
 - C. Additional Rent of \$500 commission based on Concessionaire's annual outside catering sales.
 - 9.3. Concession Fees Payment Schedule: Commissions on Concessionaire's previous calendar year (January – December) sales occurring during the Agreement Term, payable annually on February 1st following each such calendar year:
 - A. Year 1 (March 1, 2016 - February 28, 2017, 12 months total) Sales Commissions are payable on April 1, 2017;
 - B. Year 2 (March 1, 2017 - February 28, 2018, 12 months total) Sales Commissions are payable on April 1, 2018;
 - C. Year 3 (March 1, 2018 - February 28, 2019, 122 months total) Sales Commissions are payable on April 1, 2019;

CONCESSION LEASE AGREEMENT

- D. Year 4 (March 1, 2019 – February 28, 2020, 12 months total) Sales Commissions are payable on April 1, 2020;
- E. Year 5 (March 1, 2020 – February 28, 2021, 12 months total) Sales Commissions are payable on April 1, 2021;

9.4. All payments shall be payable to Stanislaus County and delivered to:

Stanislaus County Auditor-Controller
1010 10th Street, Suite 5100
PO Box 770
Modesto, California 95353

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

9.6. Reimbursements.

- A. If County pays any sum or incurs any obligations or expense which Concessionaire has agreed to pay or reimburse County for, or if County is required or elects to pay any sum or to incur any obligations or expense by reason of the failure, neglect, or refusal of Concessionaire to perform or fulfill its obligations under this Agreement, or as a result of an act or omission of Concessionaire contrary to the obligations set forth in this Agreement, Concessionaire agrees to pay to County the sum so paid or the expense so incurred and costs, plus interest at 10%, plus 15% for County's administrative overhead cost, and damages. This amount shall be due and payable upon within 10 days of County issuing an invoice detailing such charges.
- B. For all purposes in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum by County for any work done or material furnished shall be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable. If County elects to use its own personnel in making any repairs, replacements, and/or alterations, and elects to charge Concessionaire with the cost of same, receipts and timesheets will be used to establish the charges, and shall be presumed to be reasonable in absence of contrary proof submitted by Concessionaire.

9.7. Returned check charge. Concessionaire agrees to pay a \$25.00 fee for each check that is returned for insufficient funds.

10. NON-DISCRIMINATION.

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

10.2. Concessionaire and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's

CONCESSION LEASE AGREEMENT

nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

- 10.3. Concessionaire shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
- 10.4. Concessionaire shall provide a system by which recipients of service shall have the opportunity to express and have considered their views, grievances, and complaints regarding Concessionaire's delivery of services.

11. PERSONNEL.

- 11.1. Conduct. Concessionaire and its representatives, agents, servants, and employees shall at all times conduct business in a quiet and orderly manner to the satisfaction of the County.
- 11.2. Qualified Personnel. Concessionaire will employ or permit the employment of only such personnel as will assure a high standard of service to the public and cooperation with the County. Concessionaire shall ensure that each of its personnel, while on or about the Concession Area, shall be neat in appearance and courteous at all times and shall be appropriately attired, with badges or other suitable means of identification. No person employed by Concessionaire shall be under the influence of alcohol, illegal drugs, narcotics, or other controlled substances, or use inappropriate language, or engage in otherwise inappropriate conduct for a work environment while on or about the Concession Area. In the event the County deems an employee unsatisfactory, the County may direct Concessionaire to remove that person.
- 11.3. Approval of Employees, Volunteers and Subcontractors. The County shall have the right to approve or disapprove all employees, volunteers and subcontractors (including all employees and volunteers for any subcontractor) of Concessionaire. It shall be a material breach of this Agreement for the Concessionaire to fail to obtain the County's written approval of all persons operating under the authority of this Agreement within the Concession Area. Concessionaire shall submit a list of all persons employed by, or volunteering or subcontracting for, Concessionaire to the County prior to commencing operations. Concessionaire shall obtain written approval from the County for all changes to the list of employees, volunteers and subcontractors prior to any employee, volunteer or subcontractor commencing work. Concessionaire shall not hire as an employee or volunteer, or subcontract with, any person whom the County would be prohibited from hiring as an employee or volunteer pursuant to California Public Resources Code Section 5164. Each employee, volunteer or subcontractor (including all employees or volunteers of any subcontractor) shall be required to fill out a form requesting the information required by Section 5164, and the County reserves the right to fingerprint and conduct a Department of Justice criminal background check on any such person prior to approving their employment, volunteer service or subcontract. Failure to comply with this hiring standard shall be a material breach of this Agreement and Concessionaire shall immediately remove any employee, volunteer or subcontractor when notified by the County to do so.
- 11.4. Concession Manager.
 - A. Concessionaire shall appoint a Concession Manager for Concessionaire's operations at the Premises. Concessionaire shall obtain the written approval of the County prior to appointing a Concession Manager. If Concessionaire elects to subcontract the

CONCESSION LEASE AGREEMENT

management of any or all of the Concession operations to a managing entity or entities, the provisions of this section shall also apply to any such entity.

- B. The Concession Manager must be a qualified and experienced food service manager or supervisor of food service operations. Additionally, the Concession Manager shall be delegated with full power and authority with regard to the operation of the Concession, including the quality and prices of Concession goods and services, and the appearance, conduct, and demeanor of Concessionaire's agents, servants, and employees.
- C. If the Concession Manager becomes unwilling or incapable of fulfilling his/her obligations under this Agreement, County may, in its sole discretion, suspend or terminate this Agreement and all terms and conditions contained therein.
- D. A competent person shall be on the premises at all times while the concession is in operation. If the on-site Concession Manager is other than the Concessionaire, the County reserves the right to approve such manager.

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

12. CASH AND RECORD HANDLING REQUIREMENTS.

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

- A. Regular books of accounting such as general ledgers.
- B. Journals including supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- C. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown.
- D. Cash register tapes shall be retained so that day-to-day sales can be identified. A cash register must be used in public view which prints a dated double tape indicating each sale and the daily total.
- E. Any other accounting records that County, in its sole discretion, deems necessary for proper reporting of receipts.

12.2. Business Records.

- A. Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this contract in a manner that conforms to industry standards and practices and in a manner acceptable to the County.
- B. Concessionaire shall maintain during the term of this Agreement and for three years thereafter, all of its books, ledgers, journals, and accounts wherein are kept all entries reflecting the gross receipts received or billed by it from the business transacted pursuant to this Agreement. Such books, ledgers, journals, accounts, and records shall be available for inspection and examination by the County, or a duly authorized representative, during ordinary business hours at any time during the term of this agreement and for at least three years thereafter.
- C. Concessionaire will submit to the County, no later than February 1st of each year during the term of this contract, a verified profit and loss statement for the previous calendar year. Within thirty (30) days of the expiration or termination of this contract,

CONCESSION LEASE AGREEMENT

Concessionaire shall submit to the County a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

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

12.3. Gross Receipts.

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

13. PRICE SCHEDULES AND MERCHANDISE. Concessionaire shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. County reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety and/or to ensure that the public receives, in the County's view, fair pricing, proper service, and appropriate quality.

- 13.1. Prices. County agrees that Concessionaire's merchandise, including its prices for same, shall be within Concessionaire's discretion; subject, however, to disapproval by County if the selection of items offered is inadequate, of inferior quality, or if any of said prices are excessively high or low in the sole opinion of County. Such determination shall not be unreasonable and shall take into account the business considerations presented by Concessionaire. All prices shall be comparable to prices charged in similar local retail food service facilities. Concessionaire shall annually provide the County with a list of prices for all goods and services. Concessionaire shall notify the County of any price changes within a reasonable time prior to the change.

- 13.2. Quality of Goods. All food items, goods and service offered for sale and/or sold by Concessionaire shall be of high quality. All merchandise sold, kept for sale, or rented by Concessionaire shall be of a quality acceptable to industry standards and conform to all federal, state and municipal laws, ordinances, and regulations in every respect. No imitation, adulterated, misbranded, or impure articles shall be sold or kept for sale by Concessionaire and all edible merchandise kept on hand shall be stored and handled with due regard for sanitation. In addition, no substitutes, fillers, dilutants, nor reduction in size of standard manufactured or processed food products will be permitted. No adulterated, misbranded, or impure articles shall be sold or kept for sale. All merchandise for sale or rented shall be subject to the County's approval prior to being offered for sale. Concessionaire shall remove any goods which are not approved by County and shall not again offer such goods for sale or rent without the prior written approval of the County. The County reserves the right to order the improvement of the quality of any merchandise kept or offered for sale or rental.

CONCESSION LEASE AGREEMENT

- 13.3. Food Items. Concessionaire shall offer for sale a variety of food items and beverage products, as further defined in the RFP and Concessionaire's proposal response thereto (Exhibits A & B to this Agreement).
- 13.4. Waste or Nuisance: Concessionaire shall not commit or permit the commission by others of any waste on the Concession Area; Concessionaire shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code; and Concessionaire shall not use or permit the use of the Concession Area for any unlawful purpose.
- 13.5. Waste Diversion: Concessionaire shall minimize the paper items (straw covers, serving cartons, etc.) distributed with food products. County reserves the right to prohibit the sale or use of non-recyclable containers or plastics. Concessionaire is prohibited from selling merchandise in non-returnable bottles, and shall not dispense food or beverage items in glass or Styrofoam containers. Concessionaire shall not sell or give away or otherwise dispose of any commodity which in the opinion of County will cause undue litter. Concessionaire expressly agrees to comply with all County recycling programs.
- 13.6. Business Diversion Prohibited. Concessionaire shall not divert, cause, allow, or permit to be diverted any business from the Concession Area and shall take all reasonable measures, in every proper manner, to develop, maintain, and increase the business conducted by it.

14. EQUIPMENT, FURNISHINGS, AND EXPENDABLES

- 14.1. Equipment. Concessionaire may lease or purchase any equipment, furnishings, and expendables (collectively, "Equipment") required for its operation of the Concession upon the Concession Area with County's prior written approval. Any such Equipment shall be leased, purchased, and installed by Concessionaire at its sole cost and expense, and shall remain its personal property.
- 14.2. County-Owned Equipment. County may, as a courtesy and at no cost to Concessionaire, provide equipment for the operation of the concession, which shall remain the property of the County. Concessionaire shall annually provide the County with a list of County-Owned Equipment located within the Concession Area and/or used for the Concession. Nothing herein shall delegate to the County responsibility of providing the necessary equipment to operate the Concession. County reserves the right at any time to replace or remove any and all items of County-owned equipment.
- A. The Concession Area contains County-Owned Equipment available for Concessionaire's use, as identified in the RFP (Exhibit A) and in the Inventory List of County-Owned Equipment attached hereto as Exhibit C. All such County-Owned Equipment is provided in "as-is" condition, and is presumed to be operational unless otherwise noted by Concessionaire when Concessionaire takes possession of the leased Concession Area.
- B. County-Owned Equipment shall be returned to the County at the expiration of this agreement in the same condition as received, reasonable use, wear and tear, and damage by the elements excepted. State shall, periodically, conduct an inventory of said objects and evaluate their care and condition and document renewal of the loan agreement.
- C. County may, periodically, conduct an inventory of said objects and evaluate their care and condition.
- D. Should Concessionaire fail, neglect or refuse to undertake and complete any required maintenance or restoration to County-Owned Equipment, County shall have the right to terminate the Agreement and take immediate possession of the County-Owned Equipment to perform maintenance or repairs for the Concessionaire's account.

CONCESSION LEASE AGREEMENT

Concessionaire agrees to promptly reimburse the County for the cost thereof, provided, however, that the County shall first give Concessionaire ten (10) days written notice of its intent to perform such maintenance or repairs enabling Concessionaire to proceed with such maintenance or repairs at Concessionaire's own expense.

- 14.3. Maintenance of Equipment. Concessionaire shall, at all times and at its sole expense, keep and maintain all equipment, whether owned and/or installed by Concessionaire or County-owned, together with all of the fixtures, equipment and personal property therein, in good repair and in a clean, sanitary, and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Concessionaire without the prior written consent of the County. If County provides such consent, such removal and/or replacement shall be at the expense of Concessionaire.
- 14.4. Claims for Labor and Materials. Concessionaire shall promptly pay when due all amounts payable for labor and materials installed within the Concession Area. Concessionaire shall take all steps necessary and reasonable to prevent any lien or other claim under any provision of law from arising against any property owned by County (including reports, documents, and other tangible matter produced by the Concessionaire hereunder), against the Concessionaire's rights hereunder, or against the County, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.
- 14.5. Removal. Concessionaire shall, within 30 days of the termination of this Agreement, remove all equipment, furnishings, expendables, and personal items belonging to the Concessionaire from the PREMISES at its sole expense. Concessionaire shall not disturb any improvements; fixtures; or County-owned equipment. Concessionaire agrees that the County may sell scrap, or dispose of any article owned by the Concessionaire remaining after 30 days. Concessionaire shall pay the County all costs incurred by the County to remove any article owned by the by the Concessionaire plus 15% for administrative overhead, within 30 days after payment is demanded. Concessionaire stipulates that any article remaining after 30 days may, at the County's option and upon written notice, become the property of County and may be sold, scraped, or disposed of as the County sees fit without compensation to the Concessionaire.

15. SIGNS AND ADVERTISEMENTS.

- 15.1. County Approval Required. Concessionaire shall not erect, construct, or place any signs, banners, ads, or displays of any kind whatsoever upon any portion of County property without the prior written approval from the County, who may require the removal or refurbishment of any sign previously approved. Certain signs and advertisements may also require the prior written approval other appropriate agencies. Concessionaire shall not permit vendors to display wares within the Concession Area without prior written permission from the County, and such permission shall be subject to revocation at any time.
- 15.2. Sign Removal. Upon the expiration or termination of this Agreement, at the County's direction, Concessionaire shall, at its own expense, remove or paint over, any and all of its signs and displays, and shall restore the Concession Area and any improvements thereto to the same condition as prior to the placement of any such signs or displays.
- 15.3. Concession Notice. Concessionaire shall place a sign, in a prominent place approved by the County, stating that the Concessionaire is operating under a Concession Agreement.

16. UTILITIES.

CONCESSION LEASE AGREEMENT

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

16.2. Heating, Ventilation, Air Conditioning (HVAC).

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

16.3. Water/Sewer Service.

- A. The Concession Area is located inside a building with water and sewer connections for use by the Concessionaire, but the Concessionaire shall be responsible for the cost of connecting the water and sewer lines to any devices.
- B. Concessionaire shall exercise care and caution with respect to the use of the water and sewer systems, and shall pay for the cost of repair and maintenance of the system located within the Concession Area. If such repair work is performed by the County, all such repair and maintenance charges shall be submitted to Concessionaire in writing and shall be due and payable within 30 days.

16.4. Energy & Water Conservation.

- A. County is required to comply with all laws and regulations requiring the installation of energy-efficient systems, fixtures, and equipment at Concession Area. In accordance with all laws and regulations and this Agreement, Concessionaire shall maintain or repair, or cause to maintain or repair, any structures, buildings, and related systems in accordance with current energy conservation standards.
- B. Concessionaire shall be responsible for promoting energy and water conservation measures in the operation of all activities at the Concession. Concessionaire shall cooperate with the County in all forms of energy and water conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Concessionaire shall comply with all existing and newly-enacted laws, by-laws, regulations, etc., relating to the conservation of energy and water. Concessionaire shall comply with all reasonable requests and demands of County pertaining to the installation and maintenance of energy and water conservation systems, fixtures, and equipment.

17. SAFETY & SECURITY.

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

CONCESSION LEASE AGREEMENT

shall reasonably ensure that the injured person receives prompt and qualified medical attention, and as soon as possible thereafter, Concessionaire shall submit a County Accident or Illness Report. If Concessionaire fails to correct hazardous conditions specified by the County in a written notice, which have led, or in the opinion of County could lead, to injury, the County may, in addition to all other remedies which may be available to County, improve, repair, replace, rebuild, redecorate, or paint any improvements to correct the hazardous condition, with the cost thereof, plus 15% for administrative overhead, to be paid by Concessionaire to County with the next month's Concession Fee.

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

17.3. Disorderly Persons. Concessionaire shall use its best efforts to permit no intoxicated person or persons, profane or indecent language, or boisterous or loud conduct in or about the Concession Area. Concessionaire shall not knowingly allow the use or possession of controlled substances.

18. MAINTENANCE.

18.1. County Representations: County represents to Concessionaire that (i) the Premises, the Community Services Facility building ("Building"), and the Concession Area within the Building, and all common areas (including electrical, heating, ventilating and air conditioning ("HVAC"), mechanical, plumbing, gas and fire/life safety systems in the Building and similar Building service systems) comply with all current laws, codes, and ordinances, including the Americans With Disabilities Act; and are in reasonable good working order and condition; (ii) the Premises comply with all covenants, conditions, restrictions and underwriter's requirements; and (iii) the Premises, Building, Concession Area, and Common Areas are free of the presence of any Hazardous Materials (as hereinafter defined) and (iv) County has not received any notice from any governmental agency that the Building or the Premises are in violation of any law or regulation. County represents, based upon a professional inspection of the Premises and the Building and the Asbestos Report that the Premises and the Building contain no asbestos containing materials (other than as may be reflected in the Asbestos Report). County shall, prior to Concessionaire's occupancy, abate, at County's sole cost and expense, all asbestos containing materials to the extent required by law and provide Concessionaire with an updated report from a licensed California Asbestos contractor to that effect.

18.2. County Obligations: County shall, at County's own expense, keep and maintain in good repair and working order and promptly make repairs to and perform maintenance upon and replace as needed: (i) the structural elements of the Building, including without limitation, all permanent exterior and interior walls, floors and ceilings, roof, concealed plumbing, stairways, concealed electrical systems and telephone intrabuilding network cable (ii) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building (iii) the Common Areas; (iv) exterior windows of the Building; and (v) elevators serving the Building. County, at its sole cost and expense, shall also perform all maintenance and repairs to the Premises, and shall keep the Premises in good condition and repair, reasonable wear and tear excepted. County's repair obligations include, without limitation, repairs to: (1) the floor covering (if such floor covering is carpeting it shall be replaced as needed but not less often than after five (5) years of use); (2) interior partitions; (3) doors; (4) the interior side of demising walls (which shall be repainted as needed but not less often than every five (5) years and (5) signage.

18.3. County to provide HVAC: County shall supply cooling, ventilating and heating with capacity to

CONCESSION LEASE AGREEMENT

produce the following results effective during Normal Working Hours established by the Agreement and within tolerances normal in comparable office buildings. If energy requirements prohibit County from complying with these requirements, Concessionaire shall not unreasonably withhold its consent to temporary waivers or modifications.

- 18.4. Maintenance of Concession Area. Concessionaire shall be responsible for all necessary janitorial duties and maintenance repairs within the Concession Area to the satisfaction of the County, regardless of the cause including, without limitation, normal wear and tear and vandalism.
- 18.5. Maintenance Duties. Concessionaire's maintenance duties shall include all sweeping, washing, servicing, repairing, replacing, cleaning, and interior painting that may be required to properly maintain the Concession Area in a safe, clean, operable, and attractive condition. Concessionaire shall provide for such repairs, replacements, rebuilding, and restoration as may be required by or given prior written approval by the County to comply with the requirements hereof. Those duties shall also include electrical, mechanical, and plumbing maintenance in the interior of any structures, such as light fixtures, toilets, and faucets.
- 18.6. Correction of Conditions Leading to Damage.
- A. Excluding normal wear and tear, and, excluding heating and cooling equipment, Concessionaire shall, at Concessionaire's sole expense, be responsible for the cost of repairing any area damaged by Concessionaire or Concessionaire's agents, employees, invitees and visitors and the repair of low voltage electronic, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Concessionaire. All repairs and replacements shall: (a) be made and performed by contractors or mechanics approved by Concessionaire, which consent shall not be unreasonably withheld or delayed, (b) be at least equal in quality, value and utility to the original work or installation, (c) be in accordance with all laws.
 - B. If Concessionaire fails, after written notice, to correct conditions that have led or, in the opinion of County, could lead to significant damage to County property, the County may at its option, and in addition to all other remedies available to it, repair, replace, rebuild, redecorate or paint any such Concession Area included in said notice, with the cost thereof, plus 15% for administrative overhead, to be paid by Concessionaire to County as part of the next month's Concession Fee.
- 18.7. Right to Enter. Concessionaire shall permit County, or its authorized representatives, to enter the Concession Area at all times to inspect the same, and to perform any work therein that (a) may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) County may deem necessary to prevent waste or deterioration in connection with the Concession Area if Concessionaire does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from County, and (c) County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off of the Concession Area. Nothing herein shall imply any duty on the part of County to do any such work which, under any provision of this Agreement, Concessionaire may be required to do, nor shall County's performance of any repairs on behalf of Concessionaire constitute a waiver of Concessionaire's default in failing to do the same. If County exercises any of its rights under this section, Concessionaire shall not be entitled to any compensation, damages or abatement of fees from County for any injury or inconvenience occasioned thereby.
- 18.8. Pest Control. Concessionaire shall be responsible for pest control in and around the Concession Area, including, but not limited to, abatement of insects (including roaches, bees,

CONCESSION LEASE AGREEMENT

etc.), spiders, rodents, vermin, and other nuisance pests, if the pests are found in or on the Concession Area or structures or areas used by Concessionaire

- 18.9. Waiver of California Civil Code Section 1942. To the extent applicable to this Agreement and that any remedies specified in this Agreement conflict or are inconsistent with any provisions of California Civil Code section 1942, or any successor statute thereto ("CC §1942"), the provisions of this Agreement shall control. Concessionaire specifically waives any right it may have pursuant to CC §1942 to effect maintenance or repairs to the Concession Area and to abate the costs thereof from Concession Fees due to the County under this Agreement.
- 18.10. Mechanics' Liens. Concessionaire shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Concession Area, and for all materials furnished for or in connection with any such work. If any lien is filed against the Concession Area, Concessionaire shall cause the lien to be discharged of record within 10 days after it is filed. Concessionaire shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material-men or others for work performed or materials or supplies furnished for Concessionaire or persons claiming under Concessionaire.
- 18.11. Property Damage and Theft Reporting. In the event that any portion of the Concession Area or County-owned property is damaged or destroyed, in whole or in part, from any cause whatsoever, or in the event of theft, burglary, or other crime committed on the Concession Area. Concessionaire shall complete and submit to the County a report for this purpose, which shall be provided by the County.

19. DAMAGE OR DESTRUCTION TO CONCESSION AREA.

- 19.1. Partial Damage. If all or a portion of the Concession Area, or any permanent improvements made thereon, are partially damaged by fire, explosion, flooding inundation, floods, the elements, public enemy, or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by County at its own cost and expense, subject to the limitations as hereinafter provided; if said damage is caused by the negligent acts or omissions of Concessionaire, its agents, officers, or employees, Concessionaire shall be responsible for the cost and expense incurred in making such repairs, plus 15% for administrative overhead.
- 19.2. Extensive Damage. If the damages as described above in "Partial Damage" are so extensive as to render the Concession Area, or any permanent improvements made thereon, or a portion thereof uninhabitable, but are capable of being repaired within a reasonable time not to exceed 60 days, the same shall be repaired with due diligence by County at its own cost and expense and a negotiated portion of the fees and charges payable hereunder shall abate from the time of such damage until such time as the Concession Area, or any improvements made thereon, are fully restored and certified by County as again ready for use; provided, however, that if such damage is caused by the negligent acts or omissions of Concessionaire, its agents, officers, or employees, said fees and charges will not abate and Concessionaire shall be responsible for the cost and expenses incurred in making such repairs, plus 15% for administrative overhead.
- 19.3. Complete Destruction. In the event all or a substantial portion of the Concession Area, or any permanent improvements made thereon, are completely destroyed by fire, explosion, the elements, public enemy, or other casualty, or are so damaged that they are uninhabitable and cannot be replaced except after more than 60 days, County shall be under no obligation to repair, replace or reconstruct said Concession Area, or any permanent improvements made thereon, and an appropriate portion of the fees and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the

CONCESSION LEASE AGREEMENT

Concession Area are fully restored. If within four (4) months after the time of such damage or destruction of the Concession Area, or any permanent improvements made thereon, have not been repaired or reconstructed, Concessionaire may terminate this Agreement in its entirety as of the date of such damage or destruction. Notwithstanding the foregoing, if the said Concession Area, or any permanent improvements made thereon, or a substantial portion thereof, are completely destroyed as a result of the negligent acts or omissions of Concessionaire, its agents, officers, or employees, said fees and charges shall not abate and County may, in its discretion, require Concessionaire to repair and reconstruct the same within 12 months of such destruction and Concessionaire shall be responsible for the cost and expenses incurred in making such repairs, plus 15% for administrative overhead. Concessionaire shall timely pay the Concession Fee as determined above during the reconstruction.

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

20. INTERFERENCE DUE TO CONSTRUCTION.

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

21. HAZARDOUS MATERIALS.

- 21.1. Hazardous Materials Laws-Definition. As used in this section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of

CONCESSION LEASE AGREEMENT

1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the soil and ground water conditions or other similar substances or conditions.

21.2. Hazardous Materials - Definition. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that

- A. Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;
- B. Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;
- C. Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or
- D. Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Concessionaire with respect to any third person under any Hazardous Materials Law.

21.3. Concessionaire's Representations and Warranties. Concessionaire represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Concessionaire shall comply with the following provisions unless otherwise specifically approved in writing by the County:

- A. Concessionaire shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Concession Area by Concessionaire, its agents, employees, assigns, contractors or invitees, except as required by Concessionaire's permitted use of the Concession Area.
- B. Any handling, transportation, storage, treatment or usage by Concessionaire of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws.
- C. Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur within the Concession Area following the Commencement Date shall be promptly and thoroughly cleaned and removed by Concessionaire at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities.
- D. No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Concessionaire within the Premises.
- E. No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Concessionaire within the Premises without County's prior written consent.
- F. Concessionaire shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of County.
- G. Activities proposed by Concessionaire that involve disturbing asbestos materials on site shall only be conducted in accordance with all federal, state and local asbestos rules and regulations including, but not limited to, the California Occupational Safety and Health Administration (Cal/OSHA), Environmental Protection Agency (EPA) and Air Pollution Control District (APCD), with prior written consent of the County.
- H. Prior to conducting asbestos-related activities, Concessionaire shall notify County of the proposed work at least one month in advance. The notification shall include the location of work, type of asbestos-containing material (ACM) to be removed and a work plan indicating the work practices and methods of control to be used during the abatement activity to control asbestos fiber release. The County Occupational Health Program shall review the work plan and may modify the plans as necessary.

CONCESSION LEASE AGREEMENT

- I. Any asbestos-related activities shall be performed by a contractor that is registered with Cal/OSHA and certified by the California Contractors State Licensing Board to perform asbestos work. Any asbestos-related activities shall be overseen by a California Certified Asbestos Consultant (CAC), or a Certified Site Surveillance Technician under the direction of a CAC.
 - J. Replacement products used in Concessionaire improvements or other construction activities shall not contain asbestos. Any replacement products used by Concessionaire shall be verified as non-asbestos products by using Material Safety Data Sheets (MSDS) and/or having the architect or project engineer verify that ACMs were not used.
 - K. Concessionaire shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Concessionaire to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws.
 - L. Concessionaire shall promptly notify County of any liens threatened or attached against the Concession Area pursuant to any Hazardous Materials' Law. If such a lien is filed, then within 20 days following such filing or before any governmental authority commences proceedings to sell the Concession Area pursuant to the lien, whichever occurs first, Concessionaire shall either: (a) pay the claim and remove the lien from the Concession Area; or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises. At the end of this Agreement, Concessionaire shall surrender the Concession Area to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Concession Area.
- 21.4. Hazardous Materials Indemnification by Concessionaire. Concessionaire (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by County), reimburse and hold County and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water or soil vapor on or under the Concession Area. Without limiting the generality of the foregoing, the indemnification provided by this section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Concession Area, and the release or discharge of Hazardous Materials by Concessionaire during the course of Concessionaire's alteration or improvement of the Concession Area.
- 21.5. Remedies Cumulative. The provisions of this section shall be in addition to any and all common law obligations and liabilities Concessionaire may have to County, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Agreement and/or any transfer of all or any portion of the Concession Area, or of any interest in this Agreement, and shall be governed by the laws of the State of California.
- 21.6. Inspection. County and County's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County,

CONCESSION LEASE AGREEMENT

may (but without the obligation or duty so to do), at any time and from time to time, on not less than 10 business days' notice to Concessionaire (except in the event of an emergency in which case no notice shall be required), inspect the Concession Area to determine whether Concessionaire is complying with Concessionaire's obligations set forth in this section, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as County and Concessionaire may agree. If the County determines Concessionaire is not in compliance, County shall have the right, in addition to County's other remedies available at law and in equity, to enter upon the Concession Area immediately and take such action as County in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Concessionaire's failure to comply. County will use reasonable efforts to minimize interference with Concessionaire's use of Concession Area but shall not be liable for any interference caused by County's entry and remediation efforts. Upon completion of any sampling or testing County will (at Concessionaire's expense if County's actions are a result of Concessionaire's default under this section) repair any damage to the affected area of the Concession Area caused by County's sampling and testing.

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

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

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

22. DEFENSE AND INDEMNIFICATION.

- 22.1. Except for the active negligence or willful misconduct of County, Concessionaire undertakes and agrees to defend, indemnify and hold harmless County and any and all of their Officers, Agents, Employees and Volunteers from and against all suits and causes of action, claims, losses, judgement, demands and expenses and other costs, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including Concessionaire's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of, or incident to, the performance of this agreement on the part of Concessionaire, its officers, agents, employees, or sub-contractor of any tier.
- 22.2. Concessionaire, in consideration of the granting of this concession Agreement, agrees to hold the County harmless for any and all claims or rights of action for damages which may or might arise or accrue to said concessionaire or licensee, his officers, agents, servants, employees, or others who may be on the leased Concession Area at his invitation or the invitation of any one of them, by reason of injury to the property, or the persons of any of them resulting from the entry upon or the use of the leased Concession Area, by County, or any of them, at any time, for any purpose necessary or convenient in connection with the Premises.

CONCESSION LEASE AGREEMENT

- 22.3. Notwithstanding the foregoing, Concessionaire's obligation to indemnify County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Concessionaire in contributing to such claim, damage, loss and expense.
- 22.4. Concessionaire's obligation to defend, indemnify and hold County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Concessionaire to procure and maintain a policy of insurance.
- 22.5. Subject to the limitations in 42 United States Code Section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:
- A. Concessionaire shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Concessionaire or its subcontractors;
 - B. No provision of this Agreement shall be interpreted to permit or obligate Concessionaire to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and
 - C. At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Concessionaire.

23. INSURANCE CONDITIONS

- 23.1. Without limiting Concessionaire's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Concessionaire shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Agreement (Required Insurance.) These minimum insurance coverage terms, types and limits also are in addition to and separate from any other contractual obligation imposed upon Concessionaire pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Concessionaire for liabilities which may arise from or relate to this Agreement.
- 23.2. County Review and Approval of Insurance Requirements. The County reserves the right to review and adjust the Required Insurance provisions upon County's determination of changes in risk exposures. The County may increase or decrease the amounts of insurance coverage required herein by giving thirty (30) days prior written notice to Concessionaire.
- 23.3. Evidence of Coverage and Notice to County.
- A. Prior to commencing services under this Agreement, Concessionaire shall deliver to the County a Certificate(s) of insurance coverage (Certificate) satisfactory to County, and copies of endorsements.
 - B. Renewal Certificates shall be provided to County not less than ten (10) days prior to Concessionaire's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Concessionaire and/or Sub-Contractor insurance policies at any time.
 - C. Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Concessionaire identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial

CONCESSION LEASE AGREEMENT

rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars.

- D. Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Concessionaire, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions. Certificates and copies of any required endorsements shall be sent to:

Stanislaus County Purchasing Agent
1010 10th Street, Suite 5400
Modesto, CA 95354

- E. Concessionaire shall promptly report to County any injury or property damage accident or incident, including any injury to concessionaire employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Concessionaire. Concessionaire also shall promptly notify County of any third-party claim or suit filed against Concessionaire or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Concessionaire and/or County.

- 23.4. Additional Insured Status and Scope of Coverage. The County of Stanislaus, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Concessionaire's General Liability policy with respect to liability arising out of Concessionaire's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Concessionaire's acts or omissions, whether such liability is attributable to the Concessionaire or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.
- 23.5. Failure to Maintain Insurance. Concessionaire's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of this Agreement, upon which County immediately may suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from Concessionaire resulting from said breach.
- 23.6. Insurer Financial Ratings. Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A- VII unless otherwise approved by County.
- 23.7. Concessionaire's Insurance Shall Be Primary. Concessionaire's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Concessionaire. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Concessionaire coverage.
- 23.8. Waivers of Subrogation. To the fullest extent permitted by law, the Concessionaire hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Concessionaire shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.
- 23.9. Sub-Contractor Insurance Coverage Requirements. Concessionaire shall include all Sub-Contractors as insureds under Concessionaire's own policies, or shall provide County with

CONCESSION LEASE AGREEMENT

each Sub-Contractor's separate evidence of insurance coverage. Concessionaire shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Concessionaire as additional insureds on the subcontractor's General Liability policy. Concessionaire shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

- 23.10. Deductibles and Self-Insured Retentions (SIRs). Concessionaire's policies shall not obligate the County to pay any portion of any Concessionaire deductible or SIR. The County retains the right to require Concessionaire to reduce or eliminate policy deductibles and SIRs with respect to the County, or to provide a bond guaranteeing Concessionaire's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- 23.11. Claims Made Coverage. If any part of the Required Insurance is written on a "claims made" basis, any policy retroactive date shall precede the effective date of this Agreement. Concessionaire agrees to maintain such coverage for a period of not less than three years following Agreement expiration, termination or cancellation.
- 23.12. Application of Excess Liability Coverage. Concessionaire may use a combination of primary and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.
- 23.13. Separation of Insureds. All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.
- 23.14. Alternative Risk Financing Programs. The County reserves the right to review, and then approve, Concessionaire use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

24. INSURANCE COVERAGE REQUIREMENTS.

- 24.1. Commercial General Liability (CGL): (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:
- General Liability per Occurrence - \$1,000,000
 - General Aggregate – \$2,000,000
 - Products/Completed Operations Aggregate -- \$1,000,000
 - Personal and Advertising Injury-- \$1,000,000
- 24.2. Automobile Liability: (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1,000,000 for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Concessionaire's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.
- 24.3. Workers Compensation. Workers' Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1,000,000 per accident. If Concessionaire will provide

CONCESSION LEASE AGREEMENT

leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Concessionaire's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

- 24.4. Fire Legal Liability limit of \$1,000,000 for damage to premises rented to Concessionaire.
- 24.5. Water Legal Liability limit of \$1,000,000 for damage to premises rented to Concessionaire.
- 24.6. Liquor Liability. If Concessionaire sells or dispenses alcoholic beverages, standard liquor liability insurance with an umbrella policy of not less than \$5,000,000 per occurrence.
- 24.7. Sexual Misconduct. Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2,000,000 per claim and \$2,000,000 aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.
- 24.8. Property Coverage. Concessionaire shall carry property coverage at least as broad as that provided by the ISO special causes of loss (ISO policy form CP10 30) form. The County and its Agents shall be named as an Additional Insured and Loss Payee on Concessionaire's insurance as its interests may appear. Automobiles and mobile equipment shall be insured for their actual cash value. Real property and all other personal property shall be insured for their full replacement value.
- 24.9. Periods of Construction. During the period(s) of any new construction as required or authorized herein, and in addition to the aforementioned insurance coverage, at the discretion of the County, the Concessionaire shall provide the following forms and amounts of insurance:
 - A. Builder's All-Risk Insurance, including flood coverage, covering the entire work, against loss or damage until completion and acceptance by the County. Insurance shall be in an amount for the replacement value of the improvements and endorsed for broad form property damage, breach of warranty, explosion, collapse, and underground hazards. Deductibles shall not exceed 5% of the construction costs

25. PROHIBITED ACTS.

25.1. Concessionaire shall not:

- A. Do or allow to be done anything which may interfere with free access and passage in the Concession Area or the public areas adjacent thereto, or in the streets or sidewalks adjoining the Concession Area, or hinder police, fire fighting or other emergency personnel in the discharge of their duties;
- B. Interfere with the public's enjoyment and use of the Premises or use the Concession Area for any purpose which is not essential to the Concession operations;
- C. Rent, sell, lease or offer any space for storing of any articles whatsoever within or on the Concession Area other than specified herein, without the prior written approval of the County;
- D. Place any additional lock of any kind upon any window or interior or exterior door in the Concession Area, or make any change in any existing door or window lock or the

CONCESSION LEASE AGREEMENT

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

- E. Do or permit to be done any act or thing upon the Concession Area which will invalidate, suspend or increase the rate of any insurance policy required under this Agreement, or carried by County, covering the Concession Area, or the buildings in which the same are located or which, in the opinion of the County, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement, provided, however, that nothing contained herein shall preclude Concessionaire from bringing, keeping or using on or about the Concession Area such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on said business in all respects as is customary;
- F. Allow any sale by auction upon the Concession Area;
- G. Permit undue loitering on or about the Concession Area;
- H. Use the Concession Area, or any part thereof, for lodging or sleeping purposes or in any manner that will constitute waste;
- I. Use or allow the Concession Area to be used for, in the opinion of County, any gambling or games of chance, or for the installation and operation of any devices or concessions which are contrary to good morals or are otherwise objectionable; or
- J. Concessionaire shall not use the name of the Concession in conjunction with any other business venture during or after the term of this Agreement.

26. REGULATIONS, INSPECTION, AND DIRECTIVES.

- 26.1. Laws. The operations conducted by Concessionaire pursuant to this Agreement shall be subject to: Any and all applicable rules, regulations, orders, and restrictions which are now in force or which may be hereafter adopted by County with respect to the operation of the Concession; Any and all orders, directions or conditions issued, given, or imposed by County with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas, or public areas adjacent to the Concession Area; Any and all applicable laws, ordinances, statutes, rules, regulations or orders, including of any governmental authority, federal, state or municipal, lawfully exercising authority over the Concessionaire's operations; and, Any and all applicable local, state and federal laws and regulations relative to the design and installation of facilities to accommodate disabled persons.
- 26.2. Permissions. Any permission required by this Agreement shall be secured in writing by Concessionaire from County and any errors or omissions made by county in issuing such permission shall not relieve Concessionaire of its obligations to faithfully perform the conditions set forth in this Agreement. Concessionaire shall immediately comply with any written request or order submitted to it by County
- 26.3. Right of Inspection. County, their authorized representatives, agents and employees shall have the right to enter upon the Concession Area at any and all reasonable times for the purpose of inspection, evaluation, and observation of Concessionaire's operation. During these inspections, County shall have the right to photograph, film, or otherwise record conditions and events taking place upon the Concession Area. The inspections may be made by persons identified to Concessionaire as County employees, or may be made by independent contractors engaged by County. Inspections may be made for the purposes set forth below, and for any other lawful purpose for which the County or another governmental

CONCESSION LEASE AGREEMENT

entity with jurisdiction is authorized to perform inspections of the Concession Area for any purpose.

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

27. TERMINATION BY COUNTY:

- 27.1. Termination for Convenience: County may terminate this Agreement without cause and for convenience with respect to all or part of the Concession Area upon thirty (30) days prior written notice to Concessionaire.
- 27.2. Termination for Default: Should Concessionaire default in the performance of its obligations under this Agreement or materially breach any of provisions hereof, County may, at its option, terminate this Agreement by giving written notification to Concessionaire. County shall have the right, with 30-days prior written notice to Concessionaire, to terminate this Agreement in its entirety and all rights ensuing from this Agreement as provided by applicable law if any one or more of the following events occur:
- A. Concessionaire fails to keep, perform and observe any promise, covenant or condition set forth in this Agreement required on its part to be kept, performed or observed after receipt of written notice of default from the County, except where fulfillment of Concessionaire's obligation requires activity over a period of time and Concessionaire has commenced to perform whatever may be required within 10 days after receipt of such notice and continues such performance diligently and without interruption except for causes beyond its control; or
 - B. The interest of Concessionaire under this Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm or corporation without the written consent of the County; or

CONCESSION LEASE AGREEMENT

- C. Concessionaire becomes, without the prior, written approval of County a successor or merged corporation in a merger, a constituent corporation in a consolidation or a corporation in dissolution; or
- D. The levy of any attachment or execution, or the appointment of any receiver, or the execution of any other process of any court of competent jurisdiction which is not vacated, dismissed or set aside within a period of 10 days and which does, or as a direct consequence of such process will, interfere with Concessionaire's use of the Concession Area or with its operations under this Agreement; or
- E. Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or of any state law, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property or its property located within the Concession Area; or
- F. By order or decree of court, Concessionaire is adjudged bankrupt, or an order is made approving a petition filed by any of the creditors or stockholders of Concessionaire seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws, or under any law or statute of the United States, or any state thereof; or
- G. A petition under any part of the federal bankruptcy laws, or an action under any present or future solvency law or statute is filed against Concessionaire and is not dismissed within 120 days; or
- H. By or pursuant to, or under authority of, any legislative act, resolution or rule, order or decree of any court, governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of Concessionaire; cessation or deterioration of service for any period which, in the opinion of the County, materially and adversely affects the operation or service required to be performed by Concessionaire under this Agreement; or
- I. Any lien is filed against the Concession Area because of any act or omission of Concessionaire and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within 10 days; or Concessionaire voluntarily abandons, deserts, vacates or discontinues its operation of the business herein authorized. No acceptance by County of a Concession Fee payment or other payments specified herein, in whole or in part, and for any period, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Concessionaire, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of County including the right to terminate this Agreement on account of such default.
- J. All covenants and agreements contained in this Agreement are declared to be conditions to this Agreement. Should Concessionaire default in the performance of any condition or agreement contained in this Agreement, County may terminate this Agreement as set forth herein; re-enter and regain possession of the Concession Area in accordance with the laws of the State of California then in effect.
- K. Breach of Law: Concessionaire's willful violation of any law or regulation as described herein shall constitute grounds for termination of the Agreement without compensation upon fifteen (15) days prior written notice.

27.3. County's Right of Reentry. County shall, as an additional remedy, upon the giving of written notice of termination as above provided, have the right to reenter the Concession Area and every part thereof on the effective date of termination without further notice of any kind, remove any and all persons and may regain and resume possession either with or without the institution of summary or legal proceedings or otherwise. Such reentry, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under this Agreement.

CONCESSION LEASE AGREEMENT

- 27.4. Additional Rights of County. County, upon termination of this Agreement, or upon reentry, regaining, or resumption of possession of the Concession Area, may occupy said Concession Area and shall have the right to permit any person, firm or corporation to enter upon the Concession Area and use the same. Such occupancy by others may be of only a part of the Concession Area, or the whole thereof or a part thereof together with other space, and for a period of time the same as or different from the balance of the term remaining hereunder, and on terms and conditions the same as or different from those set forth in this Agreement.
- 27.5. Survival of Concessionaire's Obligations. In the event this Agreement is terminated by County, or in the event County reenters, regains, or resumes possession of the Concession Area, all of the obligations of Concessionaire hereunder shall survive and shall remain in full force and effect for the full term of this Agreement. Subject to County's obligation to mitigate damages, the total amount of the minimum Concession Fee shall become due and payable to County to the same extent, at the same time and in the same manner as if no termination, reentry, regaining or resumption of possession had taken place. County may maintain separate actions to recover any monies then due, or at its option and at any time, may sue to recover the full deficiency. The amount of damages for the period of time subsequent to termination, reentry, regaining or resumption of possession, subject to an offset for any Concession Fee payment received by County from a succeeding Concessionaire, shall be the amount of the minimum Concession Fee otherwise due until the end of the term of this Agreement. The damages specified above shall not affect or be construed to affect County's right to such damages in the event of termination, reentry, regaining or resumption of possession where Concessionaire has not received any actual gross receipts under this Agreement.
- 27.6. Waiver of Redemption and Damages. Concessionaire hereby waives any and all rights of redemption granted by or under any present or future law or statute in the event it is dispossessed for any cause, or in the event County obtains or retains possession of the Concession Area in any lawful manner. Concessionaire further agrees that in the event the manner or method employed by County in reentering or regaining possession of the Concession Area gives rise to a cause of action in Concessionaire in forcible entry under the laws of the State of California, the total amount of damages to which Concessionaire shall be entitled in any such action shall be the sum of One Dollar (\$1), and Concessionaire agrees that this provision may be filed in any such action as the Concessionaire's stipulation fixing the amount of damages to which it is entitled.

28. TERMINATION BY CONCESSIONAIRE.

- 28.1. This Agreement may be terminated by Concessionaire, upon 30 days prior written notice to the County, conditioned upon the happening of one or more of the following events:
- A. The permanent abandonment by the County of the Premises or the permanent removal of all County services from the Premises;
 - B. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Premises or any substantial part thereof, in such manner as to materially restrict Concessionaire from operating thereon;
 - C. The complete destruction of all or a substantial portion of the Concession Area from a cause other than the negligence or omission to act of Concessionaire, its agents, officers, or employees, and the failure of County to repair or reconstruct said Concession Area;
 - D. Any exercise of authority under this Agreement which so interferes with Concessionaire's use and enjoyment of the Concession Area as to constitute a

CONCESSION LEASE AGREEMENT

termination, in whole or in part, of this Agreement by operation of law in accordance with the laws of the State of California; or

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

29. SURRENDER OF POSSESSION.

- 29.1. Concessionaire agrees to yield and deliver possession of the Concession Area to County on the date of the expiration or earlier termination of this Agreement promptly, peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Concessionaire or County, normal use and wear and tear thereof excepted.
- 29.2. No agreement of surrender or agreement to accept a surrender shall be valid unless and until the same is in writing and signed by the duly authorized representatives of County and Concessionaire. Neither the doing nor omission of any act or thing by any of the officers, agents or employees of County shall be deemed an acceptance of a surrender of the Concession Area utilized by Concessionaire under this Agreement.
- 29.3. Concessionaire shall have the right to remove its equipment, supplies, furnishings, inventories, removable fixtures and personal property from the Concession Area within 30 days of the expiration or earlier termination of this Agreement.

30. GENERAL PROVISIONS.

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

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

30.2. Compliance with Laws and Regulations:

- A. Concessionaire shall not use or allow the Concession Area to be used, in whole or in part, for any use in violation of any present or future laws, ordinances, rules, and regulations at any time applicable thereto of any public or governmental authority or agencies, departments or officers thereof, including County. These ordinances, rules, and regulations include those which relate to sanitation, public health, and safety. Concessionaire shall at its own expense obtain all licenses and permits necessary for the operation of the Concession Area.
- B. Concessionaire shall, at its own expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including but not limited to any requirements of the Department of Environmental Resources in addition to Local, State or Federal Food Handling Guidelines in effect during the term of this Agreement regulating the use of the Concession Area by Concessionaire. Concessionaire shall pay all fines and penalties assessed by any local agency, district, or state agency arising from a violation of any

CONCESSION LEASE AGREEMENT

statute, ordinance, rule, regulation, order, covenant or restriction of record relating to the use of the Concession Area by Concessionaire, its employees, officers, agents or contractors. Concessionaire's willful violation of any law or regulation shall constitute grounds for termination as set forth in Section 27 above.

- 30.3. Quiet Enjoyment. County agrees that Concessionaire, upon payment of the fees and charges specified herein, and all other charges and payments to be paid by Concessionaire under the terms of this Agreement, and upon observing and keeping the required terms, conditions and covenants of this Agreement, shall lawfully and quietly hold, use and enjoy the Concession Area during the term of this Agreement. In the case of disputes, during the life of this Agreement, over any conditions which may impede upon the Concessionaire's quiet enjoyment of the Concession Area, the County shall have final determination of any solution to such dispute; the County's final determination shall be binding upon all parties in such dispute.
- 30.4. Responsibility for Payment of Taxes and Assessments. Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the rights of Concessionaire to use the Concession Area, or upon Concessionaire's improvements, fixtures, equipment, or other property thereon or upon Concessionaire's operations hereunder, or any other charges levied or made as a result of Concessionaire's possession or use of the Concession Area without contribution by County. In addition, by executing this Agreement and accepting the benefits thereof, a property interest may be created known as "Possessory Interest" and such property interest will be subject to property taxation. Concessionaire, as the party to whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.
- 30.5. Brokers. Concessionaire warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Agreement. In the event any broker other than the brokers acknowledged in writing by County make claim for monies owed, Concessionaire shall indemnify, defend and hold County harmless.
- 30.6. Captions. The captions, headings and index appearing in this Agreement are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.
- 30.7. County Approval. Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean approval of County or County's authorized representative in writing.
- 30.8. Cumulative Remedies. In the event of a default under this Agreement, each party's remedies shall be limited to those remedies set forth in this Agreement. Any such remedies are cumulative and not exclusive of any other remedies under this Agreement to which the non-defaulting party may be entitled.
- 30.9. NOTICES: All notices required or permitted by this Agreement or by any law now in effect, or later enacted, to be served on or given to either party hereto by the other party, shall be in writing and personally delivered to the party to whom it is directed, or in lieu of personal service when deposited in the United States mail addressed as follows:

To County: Stanislaus County Purchasing Agent
General Services Agency
1010 10th Street, Suite 5400
Modesto, CA 95354

With a copy to: Stanislaus County Community Services Agency

CONCESSION LEASE AGREEMENT

Attn: Facilities Manager
251 E. Hackett Road
Modesto, CA 95358

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

30.10. REPRESENTATIVES. The parties hereby appoint these representatives to serve as points of contact during the term of this Agreement:

For County:

Keith D. Boggs, Assistant Executive Officer,
GSA Director/Purchasing Agent
Stanislaus County Chief Executive Office
1010 10th Street, Suite 6800
Modesto, CA 95354

For Concessionaire:

Erik Pak
Chief Executive Officer
PFD Management Inc.
8 Mariposa
Irvine CA 92604

30.11. Entire Agreement. This Agreement, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

30.12. Number of Originals. The number of original texts of this Agreement shall be equal to the number of parties hereto, one text being retained by each party.

30.13. Duplicate Counterparts: This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.

30.14. Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

30.15. Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Concessionaire, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Agreement or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Concessionaire's negligent operation or maintenance of the Concession Area ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

30.16. Governing Law. This Agreement shall be governed, construed and enforced in accordance

CONCESSION LEASE AGREEMENT

with the laws of the State of California.

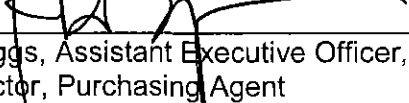
- 30.17. Interpretation. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either party.
- 30.18. Survival. The following provisions of this Agreement shall survive the termination or expiration of this Agreement:
- A. Section 12.2, "Business Records";
 - B. Section 22, "DEFENSE AND INDEMNIFICATION";
 - C. Section 23, "INSURANCE CONDITIONS";
 - D. Section 24, "INSURANCE COVERAGE REQUIREMENTS";
 - E. Section 27.5, "Survival of Concessionaire's Obligations"; and
 - F. Any payments activity that occurs after termination or expiration.
- 30.19. Unenforceable Provision. In the event that any provision of this contract is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this contract have force and effect and shall not be effected thereby.
- 30.20. Joint and Several Liability. If more than one person or entity executes this Agreement as Concessionaire, each of them is jointly and severally liable for all of the obligations of Concessionaire hereunder.
- 30.21. Liquidated Damages. Any payments by Concessionaire to County under this Agreement described as liquidated damages represent the parties' reasonable estimate of County's actual damages under the described circumstances, such actual damages being uncertain and difficult to ascertain in light of the impossibility of foreseeing the state of the leasing market at the time of the various deadlines set forth herein. County may, at its election, take any of the liquidated damages assessed in any portion of this Agreement as direct monetary payments from Concessionaire and/or as an increase of rent due from Concessionaire under this Agreement.
- 30.22. Modification. The provisions of this Agreement may not be modified, except by a written instrument signed by both parties.
- 30.23. Partial Invalidity. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.
- 30.24. Payments. Except as may otherwise be expressly stated, each payment required to be made by Concessionaire shall be in addition to, and not a substitute for, other payments to be made by Concessionaire.
- 30.25. Successors & Assigns. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided herein.
- 30.26. Time of Essence. Time is of the essence of each and every provision of this Agreement.
- 30.27. Waiver of Condition. No provision of this Agreement or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this

CONCESSION LEASE AGREEMENT


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

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


**COUNTY
COUNTY OF STANISLAUS**

By: 
Keith D. Boggs, Assistant Executive Officer,
GSA Director, Purchasing Agent


**CONCESSIONAIRE
PFD MANAGEMENT INC.**

By: 
Erik Pak, Chief Executive Officer
PFD Management Inc.

**APPROVED AS TO CONTENT:
COUNTY OF STANISLAUS
COMMUNITY SERVICES AGENCY**

By: 
Kathryn M. Harwell, Director

**APPROVED AS TO FORM
John P. Doering, County Counsel**

By: 
Amanda DeHart, Deputy County Counsel

AMENDMENT No. 1 TO LEASE AGREEMENT No. P32438

This Amendment is made and entered into as of this 27th day of February 2017, by and between the County of Stanislaus, a political subdivision of the State of California ("County"), and PFD Management Inc., a California limited partnership, ("Concessionaire").

WHEREAS, the County and Concessionaire entered into a Concession Lease Agreement dated February 2, 2016; and

WHEREAS, Paragraph 8.2 Option to Renew allow the Parties to renew the Agreement in the form of a written Amendment to the Agreement, for four (4) additional on-year terms (each a "Renewal Term"); and

WHEREAS, the Parties desire to amend Paragraph 9 of the Lease to allow Concessionaire to remit monthly base rent and commission payments; and

WHEREAS, this Amendment is for the mutual benefit of County and Concessionaire;

NOW THEREFORE, the County and the Concessionaire agree as follows:

1. Paragraph 8 Term is amended as follows:

"8.1 Term. The maximum term for this Agreement shall be limited to (5) years. The initial term of this Agreement shall be for a period of one (1) year, commencing on March 1, 2016, at 12:01 a.m., and terminating on February 28, 2017, at 11:59 p.m. The first of the four (4) one-year renewal terms shall commence on March 1, 2017, at 12.01 a.m. and terminate on February 28, 2018, at 11:59 p.m. Except as otherwise specifically stated in this Agreement or in any subsequent amendments hereof, the terms and conditions of this Agreement shall remain in effect following any extension, renewal or holdover of the original Term."

2. Paragraph 9.1 Minimum Base Rent is amended as follows:

"9.1 Minimum Base Rent:

- A. Minimum Base Rent is \$6,480.00 (US Dollars) per year, payable monthly and due on the first day of each month."

3. Paragraph 9.2 Concession Fees is amended as follows:

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

- A. Additional Rent of three percent (3%) commission based on Concessionaire's monthly gross sales over \$18,000.00 for cafeteria, internal catering, and other sales and service sales, payable monthly and due on the first day of each month; and
- B. Additional Rent of three percent (3%) commission on Concessionaire's monthly sales over \$2,000.00 for vending machine sales, payable monthly and due on the first day of each month;

C. Additional Rent of \$500 commission based on Concessionaire's monthly outside catering sales payable monthly and due on the first day of each month."

4. Paragraph 9.3 Concession Fees Payment Schedule is deleted and replaced with the following:

"9.3 Concurrently with the payment of the Base Rent, Concessionaire shall submit to the County, a written report of all gross income derived from Concessioner's operations at the Premises for that month. In addition, Concessionaire shall submit, within thirty (30) days of the end of the fiscal year for each and every year of the term, including any extension thereof, an annual financial report that includes gross receipts and an accounting of all transactions, prepared by Concessionaire's regularly employed accountant or bookkeeper and certified to be correct by an officer of Concessionaire."

5. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Amendment 1 as of the day and year first written above.

COUNTY
COUNTY OF STANISLAUS

By: _____

Keith D. Boggs, Assistant Executive Officer,
GSA Director/Purchasing Agent

CONCESSIONAIRE
PFD MANAGEMENT INC.

By: _____

Erik Pak, Chief Executive Officer

APPROVED AS TO CONTENT:

Stanislaus County Community Services Agency

By: _____

Kathryn M. Harwell, Director

APPROVED AS TO FORM

John P. Doering, County Counsel

By: _____

Thomas E. Boze, Assisant County Counsel