

**COUNTY OF SAN LUIS OBISPO
LOPEZ LAKE ADVENTURE PARK CONCESSION CONTRACT**

THIS CONTRACT, in entered into by and between the County of San Luis Obispo, a public entity in the State of California, hereinafter called the “County,” and EcoLearn., a limited liability corporation, doing business as Vista Lago Adventure Park, hereinafter called “Concessionaire,” and shall supercede all prior agreements, both verbal and written, relative to the Lopez Lake Recreational Area.

WHEREAS, said County, in accordance with the San Luis Obispo County Flood Control and Water Conservation District, may grant concession contracts for recreational services on Lopez Lake in accordance with approved standards; and

WHEREAS, it is appropriate that the following Contract be entered into for the safety and convenience of the general public in the use of and enjoyment of the Lopez Lake Recreational Area.

W I T N E S S E T H:

1. Grant and Description of Premises. County, for and in consideration of the promises contained herein, grants to Concessionaire the non-exclusive right and privilege to maintain and operate a Adventure Park Concession at the Vista Lago area of Lopez Lake Recreational Area, more fully designated on Exhibit “A” attached hereto, hereinafter referred to as “Premises.”

County grants to Concessionaire the non-exclusive rights and privileges to operate an Adventure Park Concession within the Premises consisting of:

- 4 Zip lines
- Recreational Ropes Type Course
- Children’s Recreational Ropes Type Course
- Quick Jump TM free fall belay system
- 1 Viewing Platform
- Related Safety and Operational Equipment

Items listed above are minimum services, which must be provided by Concessionaire. No rights expressed or implied, other than those expressly given in this Contract are granted, and any other concession rights are hereby denied Concessionaire under this Contract.

2. **Condition of Premises.** Concessionaire and County agree to accept said Premises in its presently existing condition, “as is”; and Concessionaire and County shall be responsible for any construction, alterations, additions or betterment thereto at Concessionaire’s sole cost and expense.

3. **Term.** The term of this Contract shall be for ten (10) years, commencing May 25, 2014 and ending June 30, 2024 (“Term”), provided however, as a condition precedent to this Contract becoming effective, Concessionaire shall submit copies of all insurance policies and bond requirements (from California admitted insurers or otherwise acceptable to County Office of Risk Management) to the County, required by *Paragraphs 18 and 19* of this Contract.

4. **Option To Extend.** This Contract may be extended upon mutual agreement for two additional terms of five (5) years each, upon the same terms and conditions as set forth herein, provided that Concessionaire shall give to the General Services Agency Director or his/her designee (hereinafter, “Director”) at least 180 days but no more than 270 days advance written notice of Concessionaire’s desire to exercise an option. The Director has the authority to grant said extensions, which authority will not be unreasonably withheld if the following conditions are met. The ability of Concessionaire to request any extension of this Contract is subject to the satisfaction of the following conditions precedent:

A. The Concession Contract shall be in effect and Concessionaire shall not be in default at the time written notice is given and on the last day of the expiring Term of the Contract;

B. Director shall consider Concessionaire’s previous performance to be satisfactory during the Term (or any extension to the Term) of the Contract;

C. Both parties must accept any option extension in writing prior to any effective extension.

5. **Rental.** County and Concessionaire agree that the rental shall be five percent (5%) of gross receipts during the first year of this Contract. Beginning July 1, 2015 the rental shall be 6% of gross receipts, beginning July 1, 2016 the rental shall be 7%, and beginning July 1, 2017 and for the remainder of the contract term, the rental shall be 8% of gross receipts.

The term “gross receipts” whenever used in this Contract, is intended and shall mean all monies, property or any other thing of value received by Concessionaire through the operation of said Concession, or from any other business carried on or upon said Premises or any portion

thereof, or from any other use of said Premises or any portion thereof by Concessionaire without any deduction or deductions; it being understood, however, that the term “gross receipts” shall not include any sales or excise taxes imposed by any governmental entity and shall not include liquidation of non-inventory business assets, used rental equipment, and/or goodwill.

A. Payment shall be due on or before the 20th day of the second calendar month after the Term of the Concession Contract begins and continuing each and every month by the 20th day of each month including the month following termination of the Contract. Monthly payments shall be made payable to the County of San Luis Obispo, General Services Agency, at the following address: 1087 Santa Rosa, San Luis Obispo, CA 93408, Attn: Accounts Receivable.

B. Concessionaire shall deliver a verified statement of its cumulative total gross receipts through the close of the preceding month with each rent payment. Gross receipts shall be itemized by category of sale.

C. DELINQUENCY. Said compensation will become delinquent if not received by the 25th day of each month and shall be subject to a late penalty charge of 7% of the payment due and unpaid, plus Fifty Dollars (\$50.00) but in no event shall the total of such compensation be more than \$250.00 per month, which shall be added to the rent then due and owing. If still unpaid for 30 days after delinquency date, the legal rate of interest shall apply.

Concessionaire and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Concessionaire’s late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Concessionaire’s default with respect to such overdue payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

D. Concessionaire shall be responsible and liable for all fees collected until actual delivery of compensation to County.

E. VERIFIED ANNUAL ACCOUNTING STATEMENT. Concessionaire shall deliver a detailed accounting statement verified by a certified public accountant, or other accounting professional as approved by the Director to the County for each calendar year during the term of this Contract. Said verified accounting statement shall include a detailed annual profit and loss statement for the concession with categorized receipts and expenditures.

Concessionaire shall deliver said verified detailed accounting statement to the County at County of San Luis Obispo, 1087 Santa Rosa, San Luis Obispo, California 93408, Attn: Property Manager. Concessionaire may mark these documents "Confidential" and request in writing that they be returned to Concessionaire upon completion of the review and not remain a part of County's records.

F. AUDITS. Concessionaire shall maintain records and accounts, as the County Auditor-Controller shall require. In the event Concessionaire does not cooperate with a County request for an audit, County may require Concessionaire, at Concessionaire's own sole expense, to have its records and accounts audited annually by an accountant licensed by the State of California and approved by the County Auditor-Controller, and to present said audit to the County Auditor-Controller within one hundred and twenty (120) days after written request by the Auditor-Controller for the audit. County may make its own regularly-scheduled audit of Concessionaire's records and accounts during the months of October through March, which is the off-peak season for Concessionaire. If Concessionaire has failed to make a County required audit, or said audit is shown by a County audit to be incorrect by a deviation of more than five percent (5%) of revenues owed to the County, then Concessionaire shall pay the cost of the County's audit. The County shall have the right, through its representative, and at all reasonable times, to inspect such books and records, including State of California Sales Tax Records; and Concessionaire hereby agrees that all such records and instruments are available to the County. All federal tax returns of Concessionaire insofar as this concession is concerned shall also be made available to the County for accounting examination purposes. Concessionaire agrees that as part of its record keeping activity, it shall at its own cost and expense install and maintain such cash accounting equipment as may be deemed reasonably necessary by the County Auditor-Controller to facilitate any required audits.

6. Use of Premises.

A. The Concessionaire acknowledges that the Premises is a public recreation facility located in a multi-use public park, and agrees to operate said Premises open to the public without discrimination or exclusivity and on an equal basis open to all and to the extent allowable.

B. Concessionaire shall have the right and duty to manage, operate and control the Premises, and to do all things necessary in the exercise of such management, operation and

control, and in accordance with the terms and conditions set forth in this Contract. County shall not interfere with Concessionaire's quiet enjoyment of the Premises.

C. Concessionaire shall not grant, with respect to said Premises, easements, right-of-ways, licenses and permits. County reserves the right to grant, with respect to the Premises, easements, rights-of-way, licenses and permits including, but not limited to, those involving the production of still and motion pictures and related activities.

D. Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as herein set forth without prior consent of the Director.

E. Concessionaire expressly agrees at all times during the term of this Contract, at its own cost and expense to maintain and operate such Premises in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, keeping in mind the health, safety and welfare of the general public. Concessionaire shall remedy without delay any defective, dangerous or unsanitary conditions in or about the Premises.

F. All permits, licenses, inspection compliance, citations, fees, and other authorizations shall be the sole responsibility of Concessionaire, including, without limitation, any citations by CAL/OSHA and associated abatement costs.

G. Concessionaire shall be solely responsible for providing of all services, equipment, supplies, and personnel for the administration, staffing, operation and maintenance of the Premises as required by this Contract. Concessionaire shall comply with all labor laws, INS laws, tax laws, CAL/OSHA, stormwater pollution prevention laws, and all other applicable laws.

H. County does not guarantee nor shall County be responsible for the lake levels or the quality of water at Lopez Lake and related impacts to Concessionaire's revenues.

7. **Utilities.** Concessionaire will be responsible for construction and establishment of all utility services to the Premises. County shall pay the monthly metered electric service charges. County's obligation to pay metered electric service charges may be renegotiated between Concessionaire and Director in the event that Concessionaire expands operations requiring increased utility use. It is understood that the concessionaire will not be using other utilities such as water, telephone or natural gas. However any other costs associated with utility usage by the concessionaire, other than electrical charges, will be the responsibility of the concessionaire to pay during the term of this contract.

8. **Garbage.** County shall furnish and pay for the disposal of one trash receptacle and one recycle receptacle for refuse disposal in the Vista Lago parking lot area of the Premises. Concessionaire will be responsible for any refuse containers and disposal of containers that may be necessary at their expense beyond what the County provides. All such rubbish, refuse and garbage removal shall be in accordance with applicable law. Concessionaire shall be responsible for transporting all garbage, refuse and rubbish generated by Concessionaire's operations to County receptacles.

9. **Maintenance/Repairs.**

A. Concessionaire agrees to maintain the Premises in good order and repair, at Concessionaire's own cost and expense, during the entire term of this Contract.

B. County, and its agents, shall have access to and the right to enter upon the Premises, after having given at least 48 hours notice to Concessionaire, at any time to examine the condition thereof, and to direct Concessionaire to make such repairs as may be necessary. In the event of an emergency, County may take action therein as may be required for the protection of persons or property, and Concessionaire will reimburse County, or County may authorize Concessionaire in writing to proceed with repairs.

C. Concessionaire shall be responsible for all maintenance, repairs and operations, solely at the Concessionaire's expense and shall complete all required safety checks and upgrades.

(1) County shall inspect the Premises and issue a Quarterly Inspection Report. Said report shall identify maintenance and repair items to be completed by Concessionaire.

(2) Should Concessionaire fail or neglect to make repairs as specified in the Quarterly Inspection Reports performed by County staff within 10 days of receipt of said report, then County shall make said repairs and Concessionaire shall reimburse the County within 60 days of receipt of invoice and paid receipts.

(3) Should Concessionaire fail or neglect to make immediate maintenance or repairs as deemed *in writing to be* hazardous, of imminent danger, or a safety concern by the Director to protect the health, safety or welfare of individuals using the Premises, Director may, at County's option, either shut down the Concessionaire's operation until repairs are made or make said repairs and charge Concessionaire for the full cost of said repair, which shall be reimbursed to the County within 60 days of receipt of invoice and paid receipts.

D. Concessionaire may employ, pay and supervise personnel to perform required

repair and maintenance services.

E. The Director also reserves the right to do any and all work on the Premises necessary for the preservation, maintenance and operation of the Premises. Concessionaire shall be given notice when such work may become necessary and will adjust Premises' operations in such a manner that the County may proceed expeditiously. All repairs and maintenance performed pursuant to this paragraph shall be at the County's sole cost.

10. Janitorial. Concessionaire shall be solely responsible for complete janitorial services to the Premises, as well as to the rest room facilities that serve their Premises and are located in the Vista Lago parking area. Concessionaire shall also be responsible for the complete furnishing of janitorial supplies to the Premises and to the restrooms that they will be constructing, excluding the County's existing restroom facility in the Vista Lago parking area.

11. Signs and Approval of Name. Concessionaire shall display signs acceptable to Director indicating the available services provided at locations within the Premises. No signs, names or placards shall be inscribed, painted or affixed upon said Premises without the consent of the Director, which consent shall not be unreasonably withheld. All signs shall be in compliance with all applicable regulations contained in the sign ordinance of the County.

12. Advertising, Publicity and Promotion. Concessionaire shall pursue, at Concessionaire's sole expense, a program of advertising, publicity, and promotion designed to increase the use of the Adventure Park. Prior to commencing with advertising, publicity, and promotion Concessionaire will submit said planned program to Director for approval . The Director has ultimate, sole discretion over all program matters. Program approval shall not be unreasonably withheld.

13. Construction Projects. Any construction project to be undertaken hereunder shall be subject to prior written approval by the Director, and administered as follows:

Concessionaire may, at Concessionaire's sole cost and expense, perform additions or improvements to said Premises. Concessionaire agrees to submit to the Director, for review and approval, all plans including specifications, working drawings, and other information required by Director covering the projects to be accomplished by Concessionaire. Said plans shall be submitted to the Director for County approval at least thirty (30) days in advance of the initiation of any such projects. If the Director objects to all or any portion of such plans, the Director shall state the objections specifically, and the Concessionaire shall make the changes specified and resubmit the plans as revised for the Director's approval as herein provided. No improvement or

alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by the Director. Approval and authorization by the County shall not be unreasonably withheld.

Nothing contained herein shall be construed by Concessionaire to be a waiver by the County of Concessionaire's need to comply with County land use requirements, acquire any permits from the State, and obtain building and construction permits to include, but not be limited to, required permits from the County Planning and Building Department and Health Agency, and other applicable licenses through normal governmental procedures, in order to construct, operate and maintain the Adventure Park. For any and all improvements, alterations and additions, Concessionaire shall comply with the Americans With Disabilities Act of 1990, Title II, and in accordance with all other laws and regulations that may apply.

14. Ownership of Improvements. Title to improvements on the Premises at the commencement of this Contract is retained by the County. The ownership of all approved improvements constructed by the Concessionaire, if any, shall remain in Concessionaire until expiration of the term of this Contract.

All improvements affixed on the Premises, shall at the expiration of the Term, including any extended Term (or sooner termination of this Contract), without compensation to Concessionaire, become County property free and clear of all claims to or against them by Concessionaire or any third person, unless otherwise agreed to by County. If Director otherwise elects, which election shall be made by giving a notice in writing not less than fifteen (15) working days prior to the expiration or other termination of this Contract, Concessionaire shall be responsible for the removal of said improvements that are not fixed, at Concessionaire's sole cost and expense, no later than thirty (30) days from the expiration or earlier termination of this Contract or at such further time as Director may agree to in writing, and Concessionaire shall promptly repair any damage caused by such removal in a first class manner. In the event Concessionaire fails to remove any or all of the alterations, additions, or improvements required by Director, then Director may cause the removal of same and charge Concessionaire for the cost of such removals and Concessionaire hereby agrees to pay any and all such costs upon demand. Concessionaire shall defend and indemnify the County against all liability and loss arising from such claims or from the County's exercise of the rights conferred by this paragraph.

15. Quality of Service and Control of Hours, Procedures, and Prices.

A. Concessionaire agrees to operate and manage the services and facilities in a manner equal to or exceeding the standard met by comparable concessions providing similar facilities and services during the entire term of this Contract. The standards required shall be subject to the review and approval of the Director.

Concessionaire shall employ personnel of good moral character and who are physically able to handle their duties. Concessionaire shall promptly replace any employee who is derelict in their duties. A competent employee of Concessionaire shall be on the Premises at all times while the concession is in operation. Such personnel shall be responsible to Concessionaire, and County staff shall contact Concessionaire directly with any concerns related to employee activities. If the Director receives a bona fide complaint the County shall report the incidents to Concessionaire. Concessionaire shall investigate the matter and, if appropriate, shall take corrective action, and shall keep the County apprised of the investigation and action taken.

B. The Director shall have access to, and the right to inspect the schedule of prices and rates for goods sold or services rendered or performed upon the subject Premises. If the Director determines that any price or prices are unreasonable or inappropriate for the services rendered, or the item sold, the same shall be modified as directed by the Director; provided that Concessionaire prior to such modification shall be given a reasonable opportunity to confer with Director, and justify such prices. Concessionaire may justify said prices by providing written evidence from at least three (3) similar type concessions showing that said price is consistent with industry standards. The Director reserves the right to prohibit the sale of any item that he deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. If the Director determines that any item is unreasonable or inappropriate for the services rendered, the sale of the item shall be discontinued, as directed by the Director; provided that Concessionaire prior to such discontinuance shall be given a reasonable opportunity to confer with Director, and justify the sale of such item. Concessionaire may justify the sale of said item by providing written evidence from at least three (3) similar type concessions showing that said item is consistent with industry standards.

C. It is understood and agreed that Concessionaire's services shall be provided during hours and days to meet the needs of the public. Minimum operating hours will be 10:00 A.M. to 5:00 P.M. during the summer seasons, which starts on April 1 and ends the Monday of

Labor Day weekend. Concessionaire shall post said hours of operation at the Premises for the public's reference. The Director and the Concessionaire shall mutually agree upon any modifications to the hours of operation.

D. Inclement weather and clean-up time following inclement weather shall be acceptable grounds for closure of the Premises for the day. Concessionaire will inform Supervising Ranger of any such closure. Closure due to inclement weather more than five times per year will require the approval of the Director.

16. Title. Concessionaire hereby acknowledges that fee title to all real property in the Lopez Lake Recreational Area is vested in the County of San Luis Obispo Flood Control District, and Concessionaire hereby covenants and agrees never to challenge, contest or resist said title. Concessionaire may not acquire any right to Premises by adverse possession or otherwise.

17. Hold Harmless Agreement. Concessionaire shall defend, indemnify and hold harmless the County, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Contract, the tenancy created under this Contract, or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Concessionaire, or its agents, employees or other independent contractors directly responsible to Concessionaire, including, but not limited to, the following:

- A. Violation of statute, ordinance, or regulation.
- B. Professional malpractice.
- C. Willful, intentional or other wrongful acts, or failures to act.

- D. Negligence or recklessness.
- E. Furnishing of defective or dangerous products.
- F. Premises liability.
- G. Strict liability.
- H. Inverse Condemnation.
- I. Violation of civil rights.
- J. Violation of any federal or state statute, regulation, or ruling resulting in a

determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting sales or payroll taxes, when the Concessionaire is not an independent contractor.

It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

18. Insurance. Concessionaire shall obtain and maintain for the entire term of the Contract and Concessionaire shall not perform any work under this Contract until after Concessionaire has obtained insurance complying with the provisions of this paragraph. Said policies shall be issued by companies authorized to do business in the State of California or otherwise acceptable to the County Office of Risk Management. Concessionaire shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. Commercial Liability Insurance. Concessionaire shall maintain commercial liability insurance in full force and effect for the period covered by this Contract. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Concessionaire's operations in the performance of this Contract, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of Two Million Dollars (\$2,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an “accident” basis, it must be changed to “occurrence.”

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. Workers’ Compensation Insurance. In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Concessionaire has any employees, Concessionaire is required to be insured against liability for workers’ compensation or to undertake self-insurance. Concessionaire agrees to comply with such provisions before commencing the performance of this Contract.

C. Additional Insureds to be Covered. The commercial general liability policies shall name “County of San Luis Obispo, its officers, employees, and agents” and “San Luis Obispo County Flood Control and Water Conservation District” as additional insureds. The policy shall provide that the Concessionaire’s insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insured’s will be called upon to contribute to a loss hereunder.

D. Certification of Coverage. Prior to commencing work under this Contract, Concessionaire shall furnish County with the following for each insurance policy required to be maintained by this Contract:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(2) A Workers’ Compensation certificate of insurance must be provided.

(3) Upon written request by the County, the Concessionaire shall provide a copy of the complete insurance policy.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Concessionaire may be held responsible for payment of damages resulting from Concessionaire’s services or operations pursuant to this Contract. Further, County’s act of acceptance of an insurance policy does not waive or relieve Concessionaire’s obligations to provide the insurance coverage required by the specific written provisions of this Contract.

E. Effect of Failure or Refusal. If Concessionaire fails or refuses to procure or maintain the insurance required by this Contract, or fails or refuses to furnish County with the certifications required by *Subparagraph D* above, County shall have the right, at its option, to forthwith terminate the Contract for cause.

F. Flood Insurance. The County shall not be liable or responsible in any way for damages sustained due to flooding.

19. Bond. The Concessionaire agrees to furnish a faithful performance bond, through a California admitted surety insurer, in the sum of Ten Thousand Dollars (\$10,000) (or a cashier's check, bank letter of credit, or certificate of deposit in name of County with interest payable to Concessionaire, in lieu thereof), it being understood and agreed that such bond shall be in force at all times during the term of this Contract; and, if canceled, the Concessionaire shall immediately seek and obtain a similar replacement bond or this Contract shall be terminated. This security shall guarantee faithful performance of this Contract including all Concessionaire's obligations and responsibilities under this Contract. Said bond shall be kept by Concessionaire in full force and effect during the entire term of this Contract to insure faithful performance by Concessionaire of all the covenants, terms and conditions of this Contract, inclusive of, but not restricted to, the payment of all rentals and charges. The surety company issuing said bond or bonds shall be licensed to transact business in the State of California, and shall give County notice in writing at least thirty (30) days prior to any expiration of the bond or bonds of Concessionaire.

20. Hazardous Materials. Concessionaire shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials"). Concessionaire shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or

expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

A. The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Concessionaire's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or

B. Concessionaire's failure to comply with any Hazardous Materials Law. Concessionaire's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Concessionaire and shall survive the expiration or earlier termination of the term of the Contract. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or Subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

21. Taxes. During the term of this Contract, Concessionaire hereby agrees to pay, prior to delinquency, all licenses, fees, and any and all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Concessionaire's operation thereof, including without limitation, taxes on Concessionaire's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. Concessionaire is hereby informed that a possessory interest subject to property taxation shall be created by this Contract and that the party to whom the possessory interest is vested (Concessionaire) shall be subject to the payment of property taxes levied on such interest and must pay such taxes prior to delinquency.

22. Assignment of Contract.

A. Inasmuch as this Contract is intended to secure the specialized services of the Concessionaire, Concessionaire shall not assign, transfer, or delegate this Contract or any interest therein without the prior written consent of County, and any such assignment, transfer, or

delegation without the County's written approval shall be considered null and void. The Director shall have the authority to approve any such assignment.

B. If Concessionaire be a partnership, a withdrawal or change, voluntary or involuntary, or by operation of law, or otherwise, of any of the partners thereof; or if Concessionaire be composed of more than one person, a purported assignment or transfer, voluntary or involuntary, or by operation of law, or otherwise, of any of the partners thereof; or if Concessionaire be composed of more than one person, a purported assignment or transfer, voluntary or involuntary, or by operation of law, or otherwise, from one thereof unto the other or others thereof; or if Concessionaire be a corporation, a change in the ownership, voluntary or involuntary, or by operation of law, or otherwise, of fifty-one percent (51%) or more of the capital stock as owned as of the date of execution hereof, shall be deemed as assignment prohibited hereby, unless the written consent of County be obtained hereto.

C. Anything herein to the contrary notwithstanding, however, and subject to the covenants and conditions otherwise herein contained, Concessionaire shall have the right to assign or sell this Contract if required for the purposes of financing any additional improvement upon the Premises, as security therefor, provided the same be to a duly qualified and licensed institutional financing agency or duly qualified individual which shall entitle any such lending institution or individual to become the successor to Concessionaire's rights hereunder, in the event Concessionaire should default in the performance of its obligations to such lending institution or individual.

D. Anything herein to the contrary notwithstanding, it is further agreed that, in the event of the death of any partner, should Concessionaire be a partnership, or in the event of the death of any corporate shareholder resulting in a change in the ownership of fifty percent (50%) or more of the capital stock of said corporation, if Concessionaire be a corporation, the Executor, Estate, Heirs or Devisees of such deceased person shall be entitled to succeed to the interest herein of such deceased person, subject to the following qualifications:

(1) That said designated person, persons or entity demonstrate to the satisfaction of the Director that the person, persons or entity is competent and qualified to operate said Premises pursuant to the provisions of this Contract.

(2) That said person, persons or entity first agree in writing to assume all obligations and duties of the said deceased Concessionaire as set forth in the Contract, and agree to be bound

by all the provisions hereof and the activities and transactions of the deceased Concessionaire with respect thereto.

(3) That all of the matters referred to in (1) and (2) above, be complied with within thirty (30) days after death of Concessionaire provided that said time limit may be extended by express written permission of the Director if good cause is shown therefor.

Any proposed assignee shall have at least three (3) years of experience in the management and/or operation of a facility substantially the same as the business operated by the Concessionaire in the Premises. In lieu of such actual experience, the proposed assignee shall provide satisfactory evidence to the County that the proposed assignee will hire, as employees or independent contractors, personnel competent to inventory, merchandise, market and operate the business being conducted in the Premises.

E. County's consent to such assignment or subletting shall not constitute a waiver of any provision of this Contract and no further assignment or subletting shall be made without County's prior written consent. The assignee shall not further assign the Premises without County's prior written consent, and then only in compliance with all of the provisions contained in this paragraph.

F. *In the event County consents to an assignment, Concessionaire shall provide copies to County of any and all Agreements between Concessionaire and assignee, whether it be written or oral.*

G. Upon County's consent to such assignment, Assignee shall furnish a faithful performance bond in the sum of Ten Thousand Dollars (\$10,000.00), or a cashier's check or certificate of deposit in name of County with interest payable to Assignee, in lieu thereof, it being understood and agreed that such bond shall be in force at all times during the remaining term of this Contract; and, if canceled, the Assignee shall immediately seek and obtain a similar replacement bond or this Contract shall be terminated. This security shall guarantee faithful performance of this Contract including all Assignee's obligations and responsibilities under this Contract. Said bond shall be kept by Assignee in full force and effect during the entire term of this Contract to insure faithful performance by Assignee of all the covenants, terms and conditions of this Contract, inclusive of, but not restricted to, the payment of all rentals, fees and charges. The surety company issuing said bond or bonds shall give County notice in writing at least thirty (30) days prior to any expiration of the bond or bonds of Assignee.

H. County may at its option sell, assign, transfer to or delegate the Premises to another governmental agency provided that such sale, assignment transfer or delegation shall not terminate this Contract.

23. Terms Binding on Successors. All the terms, covenants and conditions of this Contract shall inure to the benefit of, and be binding upon, the successors of the parties hereto.

24. Concessionaire's Responsibility for Compliance. In the Use and occupancy of the Premises, Concessionaire shall at all times observe and comply with, and shall cause all its agents, employees and sub-contractors to observe and comply with all applicable present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this Contract and any extensions thereof. Concessionaire acknowledges the Sewer System Management Plan and shall be responsible for compliance with those portions, if any, (and any future revisions) pertaining to Concessionaire's operations. Concessionaire shall adhere to the requirements of the permit issued to the County of San Luis Obispo by the Regional Water Quality Control Board (RWQCB) that governs stormwater and non-stormwater discharges. Activities performed on the Premises shall conform to the permit, and Concessionaire shall adhere to Best Management Practices (BMPs) or to future BMPs required by the RWQCB. Concessionaire shall allow County to inspect the Premises to verify compliance with BMPs and will cooperate with County to fulfill the reporting requirements of the RWQCB. If any future laws, rules, regulations or ordinances are passed by the County of San Luis Obispo and said legislative enactment has any impact, fiscal or otherwise on Concessionaire, and if Concessionaire does not make a timely objection to Director, during course of the legislative process, Concessionaire will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom. Concessionaire shall and does hereby assume responsibility for payment of any and all licenses applicable to Concessionaire's operation on the Premises. Director may make such reasonable rules and regulations pertaining to the Premises which shall serve to protect the health, safety, and welfare of the public and to protect the Premises as a physical asset.

25. **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail as follows:

To the Concessionaire at:

EcoLearn LLC., dba Vista Lago Adventure Park
P.O. Box 667
Pismo Beach, CA 93448

Scott Schirmer: (805) 270-8042
Bill Thoming: (805) 431-8562

To the County at:

County of San Luis Obispo
General Services Agency
1087 Santa Rosa Street
San Luis Obispo, CA 93408
Attn: Real Property Manager

The address to which the notices may be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein before provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

26. **Eminent Domain.** If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi public use or purpose, then the contractual obligations hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemner. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Concessionaire shall be entitled to receive any award for the taking of or damage to Concessionaire's equipment, fixtures, or any improvements made by Concessionaire to the Premises which Concessionaire would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract.

In the event that there shall be partial taking of the Premises during the Contract term under the power of eminent domain, this Contract shall terminate as to the portion of the Premises so taken on the date when actual physical possession of said portion is taken by the condemner, but this Contract shall at County's option, continue in force and effect. If the parties agree to continue the contract, the compensation and damages for such partial taking shall belong to and

be sole property of County, provided, however, that Concessionaire shall be entitled to receive any award for the taking of or damage to Concessionaire's equipment, fixtures, or any improvements made by Concessionaire to the premises which Concessionaire would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Contract, and, in the event that this Contract is continued as to the portion of the Premises not condemned, any award made for alterations, modifications or repairs which may be reasonably required in order to place the remaining portion of the Premises not taken in a suitable condition shall belong to County.

27. Lost Revenue. If the Premises is closed for any reason such as war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, act of God, strike, or similar act which shall prevent performance of this Contract in accordance with the rights and privileges granted herein, the County shall not be liable to Concessionaire for any lost revenues. Concessionaire expressly acknowledges that County has warned that the Premises is prone to and has a history of flooding and flood damage. Concessionaire assumes all risks and liabilities.

If the Concession business is interrupted due to construction activities being undertaken for projects related to the Lopez Lake Dam or the recreation facility, the County shall not be liable to Concessionaire for any lost revenues or claims against Concessionaire from third parties including but not limited to Concessionaire's employees.

28. Immediate Suspension. If Concessionaire or Concessionaire's agents, employees, or any party responsible to Concessionaire but not including any vendor or vendor's employees cause an occurrence on the Premises which seriously threatens or damages the health, safety and or welfare of the public, the Director may, upon written notice to Concessionaire, immediately suspend any and/or all activities on the Premises and this Contract may be terminated in accordance with *Paragraph 29*, provided Concessionaire fails to take necessary steps to rectify the situation and dispel the threat or alleviate the damage within 48 hours of its receipt of such notice. Concessionaire shall have no recourse against County of said action and Concessionaire shall defend, and indemnify the County against all liability and loss arising from the occurrence.

29. Termination and Breach. If any of the following occur, the Director shall have the right to terminate this Contract effective immediately for cause upon giving written notice to the Concessionaire:

A. Concessionaire fails to perform its duties to the satisfaction of the Director, including the accumulation of multiple less-significant instances of failure to perform in

accordance with this Contract; or

B. Concessionaire fails to fulfill in a timely and professional manner its legal and contractual obligations under this Contract; or

C. Concessionaire, or its agents or employees, fail to exercise good behavior during working hours that is of such a nature as to bring discredit upon the County.

Concessionaire may be allowed ten (10) days after receiving written notice to correct any breach hereunder. Failure to correct the breach will result in immediate termination of the Contract and County shall have the right to immediate possession of the Premises.

30. Employment Status. The Concessionaire enters into this Contract solely and exclusively as an independent contractor. Neither Concessionaire nor any of Concessionaire's agents, contractors, or employees are or shall be considered to be employees or agents of County in connection with the performance of Concessionaire's rights and obligations under this Contract.

31. Waiver of Claim. Concessionaire hereby waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Contract, or any part thereof or by any judgment or award in any suit or proceeding declaring this Contract null, void or voidable, or delaying the same or any part thereof from being carried out.

32. Duration of Public Facilities. By entering into this Contract, the County makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the Premises.

33. Limitation on Actions. Concessionaire shall have no other legal or equitable rights, entitlement or interests other than those expressly stated in this Contract. This shall apply regardless of any information exchanged or representations made by County staff or others during negotiations, prior to execution, or after execution. No representation by County staff shall be binding unless said provision is in writing and signed by the Board of Supervisors prior to the effective date.

34. Non-Discrimination. Concessionaire shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

35. Harassment. Concessionaire and all contractors have a contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law as harassment,

including but not limited to sexual or gender harassment, and at all times to comply with and ensure that all persons performing this Contract comply with an appropriate standard of conduct. Concessionaire or any contractor who violates harassment laws shall be liable to the County for all claims, demands, damages, costs, expenses, and attorney's fees incurred by the County as a result of behavior of any of Concessionaire's and/or contractor's personnel performing this Contract.

36. Drug Free Workplace. Concessionaire and Concessionaire's employees shall comply with County's policy of a drug free workplace. Neither Concessionaire nor Concessionaire's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Concessionaire's facilities or County facilities or work sites. If any employee of Concessionaire is found to be under the influence of or in possession of any illegal substance at or on County's premises, that employee may not return to any of County's premises.

37. Holding Over. In the event Concessionaire shall continue in possession of the Premises after the term of this Contract, such possession shall not be considered a renewal of this Contract but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Contract. Any holding over shall not constitute a lawful possession except for purposes of continuing the duties and obligations of Concessionaire and County's right to enforce the same.

38. Law. This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California.

39. Venue. San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

40. Severability. The invalidity of any provision of this Contract shall not affect the validity, enforceability of any other provision of this Contract.

41. Termination by Concessionaire. Concessionaire may terminate this Contract upon mutual agreement between the Concessionaire and the General Services Director.

42. Entire Agreement and Modifications. This Contract embodies the whole Contract between the parties hereto as it pertains to the subject real property and there are no promised

terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Contract must be in writing and executed by both Concessionaire and County.

IN WITNESS WHEREOF, County and Concessionaire have executed this Contract on the day and year as signed by the Chairman of the Board of Supervisors.

COUNTY OF SAN LUIS OBISPO

CONCESSIONAIRE:
EcoLearn, a limited liability corporation

By: _____
Chairperson of the Board of Supervisors

We, Bill Thomas, and Scott Shermer certify that we are authorized to sign as Members of EcoLearn, a limited liability corporation, the within instrument in our stated capacity and that said execution of the same shall be binding.

Approved by the Board of Supervisors on _____, 2014.

Attest:

EcoLearn, LLC
By: DBA Vista Lago Adventure Park
[Signature], Member
EcoLearn, LLC
By: DBA Vista Lago Adventure Park
[Signature], Member

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA NEAL
County Counsel

By: Shannon Mcatusper
Deputy County Counsel

Date: 5/9/14