COUNTY OF SAN LUIS OBISPO
SANTA MARGARITA LAKE MARINA
CONCESSION CONTRACT

THIS CONTRACT, made and entered into this 27th day of October, 2014, by and between the County of San Luis Obispo, a public entity in the State of California (hereinafter, the "County") or "Director", and, Pyramid Enterprises Inc., doing business as Rocky Mountain Recreation Company, hereinafter called "Concessionaire".

WHEREAS, said County, as Lessee of Santa Margarita Lake Regional Park and Natural Area from the Department of the Army, pursuant to a lease beginning January 1, 2007 and ending December 31, 2032, may grant concession contracts for recreational services on said lake in accordance with approved standards; and

WHEREAS, Concessionaire desires to enter into a contract with the County to provide services of the type and character required by the County to meet the needs of the public at Santa Margarita Lake Regional Park; 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 Santa Margarita Lake Regional Park and Natural Area.

NOW THEREFORE, in consideration of the Premises and of the terms, covenants, and conditions, it is agreed as follows:

1. <u>Grant and Description of Premises</u>: County, for and in consideration of the promises contained herein, grants to Concessionaire the non-exclusive right and privilege to maintain and operate a Marina Concession on the Premises described as a Marina Store with attached, covered work bays and two boat docks, as further designated on Exhibit "A" attached hereto. County grants to Concessionaire the non-exclusive rights and privileges to operate a concession within the Premises consisting of two (2) categories:

A. **WATER RELATED CONCESSION**

a*) Marina operation and rental of mooring slips

b) Boat and motor repair

c) Boat sales and related equipment sales

d*) Bait and tackle shop

e) Boat towing service

f*) Water related equipment rental, including motorized and non-motorized vessels.

h) Shore tie services for 20 spots

i) Other recreational rentals and services as approved by director or their designee.

B. FOOD AND PERSONAL SERVICES CONCESSION

a) Restaurant

b) Coffee Shop

c) Snack Bar

d*) Grocery Store

e) Vending Machines

f) Gift Shop

g) Laundromat

h) Camping and other Recreational Equipment Rentals

i) Wood Sales

g*) Gasoline Pump Fuel Sales

Items asterisked in Paragraphs A & B above are minimum services, which must be provided by Concessionaire. Concessionaire may offer all other services listed in *Paragraphs A & B* above if Concessionaire so elects and approved by the County Parks & Recreation Director or designee (hereinafter, collectively "Director").

The concession rights granted shall be carried on at the Premises solely within the limits and confines of said areas designated on Exhibit A. No concession 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. It is understood that the privileges granted herein are non-exclusive and the County reserves the right to grant other similar or identical concessions in the Santa Margarita Regional Park and Natural Area.

2. **Condition of Premises:** The taking of possession of the Premises by Concessionaire shall, in itself, constitute acknowledgment that the Premises are in good and

tenantable condition. Concessionaire agrees to accept the Premises in its presently existing condition, "as is"; and County shall not be obligated to make any alterations, additions or betterment thereto.

3. **Term:** The term of this Contract shall begin October 27, 2014; provided however, as a condition precedent to this Contract becoming effective, Concessionaire shall submit copies of all insurance policies and a letter of credit in the amount of Ten Thousand Dollars ($10,000.00), as required by *Paragraphs 24 and 25* hereof, to the County. This Contract shall terminate on December 31, 2019 ("Initial Term"), with two 5 year options to extend as described in *Paragraph 4.* Upon the expiration or termination of this Contract as herein provided, Concessionaire shall within thirty (30) days thereafter remove from the Premises or otherwise dispose of in a manner satisfactory to the County all personal property belonging to Concessionaire located on the Premises. Should Concessionaire fail to remove or dispose of Concessionaire's property as herein provided, County may, at its election, consider such property abandoned or may dispose of same at Concessionaire's expense, and Concessionaire shall reimburse County for said expense on demand. Also, at the expiration or termination of this Contract, Concessionaire shall quit and surrender the Premises including all real property improvements in a good state of repair, damage by matters over which Concessionaire has no control excepted, provided that such exculpatory provisions shall not extend to any risk which Concessionaire is required to insure against as herein provided.

4. **Option to Extend:** Concessionaire understands that the County's Master Lease with the Department of the Army shall terminate on December 31, 2032. Concessionaire, if agreed upon in advance by both the Concessionaire and the County, has the option to extend this Contract for two consecutive periods of five years each, one five year period beginning January 1, 2020 extending to December 31, 2024 and the second, if agreed upon in advance by both Concessionaire and the County, beginning January 1, 2025, not to exceed beyond December 31, 2029, provided that this date does not exceed the expiration date of the Master Lease, as may be amended from time to time. Concessionaire shall exercise these options by notifying the County, in writing, of its desire to exercise the option at least 6 months prior to the termination of the existing contract period. Said options will be on the same terms and conditions.

The right of Concessionaire and County to negotiate any extension of this Contract pursuant to this paragraph is subject to the satisfaction of the following conditions precedent:

(A) The 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 (including any extended term);

(B) Concessionaire shall not have incurred nor received more than one written notice of default under the Contract during the then current Contract Term;

(C) Both parties must accept the terms and conditions of the option extension in writing prior to any effective extension.

5. Rental:

(A) Rental payment shall be $1,200 per month, payable in advance on the first of each month beginning October 1, 2015 provided all equipment and improvements are made by Concessionaire, as set forth in Section 7, Use of Premises, Paragraph F. Beginning October 1, 2016, and every subsequent annual anniversary date thereafter, the preceding period's rent shall be adjusted upward according to any percentage rise in the Consumer Price Index (CPI). The adjustment shall be by a percentage equal to the percentage increase of the Consumer Price Index between the July published CPI and the corresponding CPI for the same period twelve months previous. If there is a decrease or no change in the CPI, then the preceding year's rent will not be adjusted. County will provide written notice to Lessee of each adjusted rental amount on an annual basis. Failure by County to notice Lessee may delay payment of rent, but shall not preclude retroactive application of adjusted rent due.

The term "Consumer Price Index" refers to the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles –Riverside-Orange County Statistical Area, California, based on the period of 1982-84 = 100 as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

The index for the adjustment date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base other than the base period (1982-84=100), the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

If the described index is no longer published, another generally recognized as authoritative shall be substituted by agreement of County and Lessee. If County and Lessee are unable to agree within 30 days after demand by either party, on application of either party the substitute index shall be selected by the chief officer of the San Francisco regional office of the Bureau of Labor Statistics or it successor.

(B) Concessionaire hereby acknowledges that the late payment of rent or any other sums due hereunder will cause County to incur costs not contemplated by this Lease. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increase accounting costs, etc.

Accordingly, if any payment of rent as specified in the clause entitled Rent or any other sum due County is not received by County by the tenth day of the month, a late charge of Seven percent (7%) of the payment due and unpaid plus Fifty Dollars ($50) shall be added to the payment, and the total sum shall become immediately due and payable to County. If still unpaid for 30 days after the 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.

(C) Payment to the County shall be made to the order of County of San Luis Obispo; Department of General Services, 1087 Santa Rosa Street, San Luis Obispo, California 93408, Attn: Director of Parks. Concessionaire shall be responsible and liable for all rental payments due (and fees collected if applicable) until actual delivery of compensation to County.

(D) Where possible County to provide Concessionaire with the names and addresses of the mooring and shore tie customers and a detailed accounting of the rent received.

6. **Audits:** Concessionaire shall maintain records and accounts, as the County Auditor-Controller shall require. In the event Concessionaire does not cooperate with County request for audit, County may require Concessionaire, at Concessionaire's expense, to have Concessionaire's records and accounts audited annually by an accountant licensed by the State

of California and approved in advance 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 audit of Concessionaire's records and accounts at any time, if it so desires. 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. County further reserves the right to examine all such books and records at any time during a five (5) year period following the termination of this Contract. 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 necessary by the County Auditor-Controller to facilitate any required audits.

7. **Use of Premises:**

A. The Concessionaire acknowledges that the Marina facility at Santa Margarita Lake Regional Park and Natural Area is a public recreation facility located in a multi-use public park, constructed with public funds, and agrees to operate said Marina open to the public without discrimination or exclusivity and on an equal basis open to all and to the extent allowable, keeping in mind the health, safety and welfare of the general public. Concessionaire's commercial interests shall at all times be in compliance with all laws, including but not limited to federal and state Constitutions, statutes, implementing regulations, ordinances and agency rulings whether or not these laws are enacted or promulgated as urgency measures under police powers or for health and safety reasons whether currently existing, amended or new enactments.

B. During the term of this Contract, Concessionaire may, with the written concurrence of County, expand the facilities and activities at Santa Margarita Regional Park and Natural Area. Concessionaire shall operate the concession facilities in accordance with Santa

Margarita Lake Regional Park and Natural Area regulations and policies as determined by the Director, and in accordance with the terms and conditions set forth in this Contract.

C. Concessionaire agrees not to use the Marina store and tackle shop as a residence. Concessionaire shall be provided a camp site similar to a camp host located within the Santa Margarita Lake Regional Park and Natural Area for the duration of this Contract.

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 set forth without prior written consent of the County.

E. Concessionaire shall operate well-stocked water-related concessions including bait and tackle supplies, food and personal services concessions including snacks and grocery items for sale, as offered at other similar lake marina stores within the State of California. All these services shall be offered to the extent allowable by governing agencies. All permits, licenses, inspection compliance, citations, fees, and other authorizations shall be the sole responsibility of Concessionaire.

F. Concessionaire shall provide and maintain a fleet of rental boats. During the initial term of the contract through December 31, 2019, Concessionaire shall offer no less than 2 motorized and 2 non-motorized vessels. If Concessionaire and Director agree to Option to Extend per *Paragraph 4*, Concessionaire agrees to maintain the size of rental fleet to no less than 2 motorized vessels and 2 non-motorized vessels.

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. Concessionaire shall comply with all labor laws, INS laws, and tax laws.

H. Concessionaire may use the existing wood shed located on the dock for non-fuel or non-combustible materials storage purposes. If Concessionaire wishes to store fuel on docks, Concessionaire shall install an approved containment cabinet pursuant to fire codes in a location as determined by the Director and Concessionaire shall store said fuel in approved containers within said containment cabinet pursuant to fire codes.

I. Concessionaire enters into this Contract solely and exclusively as an independent contractor and only in that capacity and not as a partner, employee or other agent of the County. All services performed by Concessionaire relating to operation and management of

the Premises in addition to the rent paid per *Paragraph 5* are intended as considerations supporting this Contract.

J. Concessionaire shall pursue, at Concessionaire's sole expense, a comprehensive program of multi-media advertising, publicity, and promotion designed to increase the use of the Marina facilities. All advertising matter to be published or circulated by or on behalf of the Concessionaire shall be submitted to and approved by the Park Superintendent, prior to publication or circulation. Each year in January, the Concessionaire shall submit for approval to the Park Superintendent, a comprehensive marketing plan.

K. Concessionaire shall have the right to sell on and off-sale alcoholic beverages including beer, wine and distilled spirits to the public after first having procured the necessary permits in accordance with applicable regulations and laws and with the written concurrence of County. In accordance with state and local laws and regulations and with the written approval of the County, Concessionaire may sell, dispense or store, or permit the sale, dispensing or storage of beer, malt beverages, light wines or other intoxicating beverages on the Premises in those facilities where such service is customarily found, for individual consumption only. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of any alcoholic beverages outside of any buildings is not permitted. Carry out package sales of hard liquor is prohibited unless Concessionaire has the appropriate license issued by the Alcoholic Beverage Control and approved by the Director.

L. Concessionaire acknowledges that County is the Lessee of Santa Margarita Lake Regional Park and Natural Area from the Department of the Army per Lease Agreement dated January 29, 1997 and amended April 9, 2002 and attached as Exhibit "B". Concessionaire shall abide by and agree to the terms of this Master Lease.

M. The Concessionaire shall not grant, with respect to the Premises, easement, rights-of-way, licenses or permits.

N. Concessionaire shall enforce the requirement that all boats stored at the docks or at the shore ties shall have current registration and a current annual Santa Margarita Lake pass.

O. Concessionaire shall have the right to place a food service vehicle on the Premises, subject to future determination of the location by County, providing said vehicle is

fully licensed in accordance with County Public Health standards and all other applicable laws. The sale of alcoholic beverages from the food service vehicle is prohibited. If the vehicle is not open for food services on a regular schedule approved by the Director, it shall be removed from the Premises.

8. **Lost Revenue:** If Santa Margarita Lake Regional Park is closed for any reason, including, but not limited to, war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, drought, 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 disclosed that the premises are prone to and have a history of flooding and flood damage. Concessionaire assumes all risks and liabilities.

If the Concession business is interrupted, such as construction activities being undertaken by the City of San Luis Obispo or the Department of the Army, 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.

9. **Signs and Approval of Name**: Concessionaire shall display signs indicating the appropriate services provided at locations mutually acceptable to Concessionaire and County. No signs, names or placards shall be inscribed, painted or affixed upon said premises without notification and written consent of Director.

10. **Transition to County:** Upon expiration of the Initial Term, Extended Term or upon earlier termination as provided in this Contract, Lessee shall transfer to County all agreements and deposits or pre-payments received for storage, docking, or any other services or events dated after the ending of this Contract, along with a related accounting detail.

11. **Janitorial:** Concessionaire shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies to the Premises as defined on Exhibit "A" attached hereto in addition to the docks and gangways.

12. **Capital Improvements:** Any and all Capital Improvements to be undertaken hereunder shall be administered as follows:

Concessionaire agrees to submit to the Director for review and approval, all plans including specifications, working drawings, and other information required by the Director

covering the projects to be accomplished by Concessionaire. Said plans shall be submitted to the Director for the Director's approval at least thirty (30) days in advance of the initiation of any such projects. Additionally, if any of the proposed improvements require a licensed contractor, Concessionaire shall submit verification of the appropriate licensure and verification of sufficient insurance and bonding of the licensed Contractor. If the Director objects to all or any portion of proposed 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 Director. Approval and authorization by the Director shall not be unreasonably withheld. Nothing contained herein shall be construed by Concessionaire to be a waiver by the Director of Concessionaire's need to acquire building and construction permits to include, but not be limited to, required permits from the Planning and Building Department of the County of San Luis Obispo and the County Environmental Health Department and other applicable licenses through governmental processes.

County Planning Department shall perform a final inspection of the capital improvements. If County determines capital improvements are in compliance with aforementioned terms and conditions, then Director shall issue a written statement of compliance acknowledging completion of that portion of capital improvement obligations. Concessionaire shall protect the Premises from any lien or charges whatsoever, by reason of said capital improvements.

13. <u>Ownership of Improvements</u>: Title to improvements on the Premises at the commencement of this Contract is retained by the County. This Contract is subject to any rights of ownership in the improvements. The ownership of all approved improvements constructed by the Concessionaire, if any, shall remain in Concessionaire until expiration, or sooner termination, of the term of this Contract.

Upon termination of this Contract, all alterations, additions and improvements made in, to or on the Premises (including without limitation all electrical, lighting, plumbing, heating, air conditioning, and communications equipment and systems, alarms, doors, windows, partitions, drapery, carpeting, shelving, counters, and physically attached fixtures unless excluded in a

written agreement signed by Concessionaire and Director), shall, without compensation to Concessionaire, become County property free and clear of all claims to or against them by Concessionaire or any third person, and 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. Such improvements shall remain upon and be surrendered as a part of the Premises; provided however, upon County's request, Concessionaire shall remove those additions, alterations, signs or improvements as may be specified by County, and repair and restore the Premises to its original condition at Concessionaire's sole cost and expense prior to expiration of the Term.

14. **Personal Property:** Title to all personal property, movable furniture, and movable equipment provided by the Concessionaire shall remain the Concessionaire's. Furniture and equipment affixed to the real property in any way shall be considered a capital improvement and shall be subject to the terms of *Paragraph 13.* Upon the removal of personal property by Concessionaire, whether such removal be upon termination of this agreement or at any time prior thereto, Concessionaire shall repair all damage to the Premises caused by the addition or removal of such property. County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense regarding personal property of Concessionaire. If Concessionaire elects to attach an item of personal property to the Premises that Concessionaire does not wish to be considered a capital improvement, a written request to exclude this item from capital improvements shall be submitted to Director for Director's written approval prior to installation of the item.

15. **Equipment and Fixtures:** County shall not be obligated to repair, restore, refurbish, or otherwise incur any expense in improving and/or changing the condition of the equipment, fixtures, furnishings, inventory, or other personal property of Concessionaire.

16. **Title:** Concessionaire hereby acknowledges that fee title to all real property in the Santa Margarita Lake Regional Park and Natural Area is vested jointly in the United States of America, the Department of the Army, Bureau of Land Management, and the County of San Luis Obispo and hereby covenants and agrees never to challenge, contest or resist said title. Concessionaire may not acquire any right to the Premises by adverse possession or otherwise.

17. **Personal Property:** County shall retain title to all of County's personal property, i.e. docks, fuel tank and fuel pumping system, during the term of this Contract. Any

improvements added by the County during the Initial Term and any Extended Term shall remain County property.

18. **Utilities:** Concessionaire shall be responsible for payment of electricity used on the Premises. Electricity is sub-metered, and the invoice for the main meter will be prorated based on the sub-meter reading, with the County invoicing Concessionaire monthly. Payment to County for electricity is due with within 30 days of date of invoice. Water is paid by the County. The marina store is served by a propane tank for gas service, which is paid by Concessionaire. If desired by the Concessionaire, the County will pump the grey water tank for the marina store sink (approximately 150 gallon tank) for a charge to the Concessionaire of $80 per request. County is responsible for pumping the chemical toilet on the Premises.

Concessionaire shall not waste electricity or water and agrees to cooperate fully with County to assure the most effective and economical use of utility services provided to the Premises by County.

19. **Garbage:** Concessionaire shall furnish all necessary refuse and garbage containers on the Premises. Additionally, the removal and disposal of all rubbish, refuse, and garbage resulting from concession operations will be accomplished by Concessionaire. All such rubbish, refuse and garbage removal shall be performed to the satisfaction of the Director, and disposal of such rubbish, refuse and garbage shall be in accordance with all applicable law. Concessionaire shall be responsible for transporting all garbage, refuse and rubbish to County receptacles identified by the Parks Superintendent. County shall pay for receptacle fees. Any costs for garbage collection above and beyond the receptacle provided by the County, shall be paid for by Concessionaire.

20. **Maintenance/Repairs:** Concessionaire shall be responsible for all costs of maintenance and repair up to the Maintenance/Repair Limit. The Maintenance/Repair Limit shall be the first Two Thousand Dollars ($2,000.00) in each instance of maintenance and repair costs to the Premises. County shall be responsible for amounts exceeding Two Thousand Dollars ($2,000.00) in each instance of maintenance and repairs costs to the Premises. Concessionaire's responsibility for maintenance and repair shall include all concession facilities and including docks, gangways, and Concessionaire's portion of the fueling system. "Each instance" shall mean the entire repair effort made to restore proper function to a repaired item,

whether the attempt is singular and successful or a series of repair efforts or cumulative instances of repair. Concessionaire shall submit any maintenance or repair cost estimates in excess of the Maintenance/Repair Limit in each instance to the Director or his/her designee for review and written approval prior to any repair or maintenance work being performed.

If within 15 days of written notification by County, Concessionaire fails or neglects to commence maintenance and/or repair obligations as requested by County, County may, at its option, perform such necessary maintenance and/or repairs and bill Concessionaire for actual cost of said maintenance and/or repairs, not to exceed $2,000. Concessionaire shall promptly reimburse County upon demand. Should concessionaire fail or neglect to make maintenance or repairs in a timely manner, and such delay results in maintenance or repair costs greater than Two Thousand Dollars ($2,000) in "each instance," Concessionaire shall be responsible for the **full cost** of the maintenance or repair.

In the event of an emergency, County may take action 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. The responsibility for costs will be subject to the $2,000 Maintenance/Repair Limit. Concessionaire may employ, pay and supervise maintenance personnel to perform required services. Maintenance personnel shall be responsible to Concessionaire and cooperate with County personnel.

Concessionaire shall, at all times and at his own expense do all things reasonably necessary to protect the Premises used by Concessionaire. County also reserves the right to do any and all work of any nature necessary for preservation, maintenance and operation of the Santa Margarita Lake Regional Park and Natural Area in any areas within the confines of said area. Concessionaire shall be given reasonable notice when such work may become necessary and will adjust concession operations in such a manner that County may proceed expeditiously.

Concessionaire expressly agrees at all times during the term of this Contract, at Concessionaire's own cost and expense to maintain and operate the Premises and areas adjacent, in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or at any time during the term of this Contract in force, relating to sanitation or public health, safety or welfare; and Concessionaire shall at all times faithfully obey

and comply with all laws, rules and regulations of Federal, State, County or other governmental bodies or department of officers thereof, and this Contract is expressly subject to the provisions and requirements of any existing or future agreements between the County and the United States of America or the State of California relative to the development, operation or maintenance of the Santa Margarita Recreational Area. Concessionaire shall remedy without delay any defective, dangerous or unsanitary conditions in or about the premises.

21. <u>Quality of Service and Control of Hours, Procedures, and Prices</u>: Concessionaire's services shall be provided during hours and days to meet the needs of the public. Concessionaire shall be open to the public from 6 A.M. to no earlier than one hour before sunset during the months of April through October, 5 days per week including all weekends; and from 7 A.M. to no earlier than one hour before sunset during the months of November through March, 5 days a week including weekends but excluding Thanksgiving Day, Christmas Day and New Years Day, on a schedule submitted to and approved by the Parks Superintendent. Concessionaire must post the hours of operations in a location visible to the public, and must be open for business during the hours posted. Inclement weather shall be acceptable grounds for closure of the Marina concession for the day with approval of Director or designee.

Concessionaire agrees that Concessionaire will operate and manage the services and facilities offered 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.

The County 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 Premises. If the County 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 County; provided that Concessionaire prior to such modification shall be given a reasonable opportunity to confer with County and justify such prices.

The County reserves the right to prohibit the sale of any item that it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. A competent employee of Concessionaire shall be on the Premises at all times while the concession

is in operation. Concessionaire agrees that Concessionaire shall and will furnish and maintain a high standard of service.

Concessionaire shall employ personnel of good moral character and who are physically able to handle their duties and must be promptly replaced when derelict in their duties. There shall be no drinking of liquor or other alcoholic beverages or illegal or unlawful use of, possession of, or sale of any controlled substance or paraphernalia in or around the premises by Concessionaire or Concessionaire's employees while on duty

22. **Closure:** County does not guarantee and shall not be responsible for the quantity of water at Santa Margarita Lake. At any time should an occurrence necessitate the closing of the Santa Margarita Lake Regional Park and Natural Area to the general public, Concessionaire shall have no recourse by law or equity to County for losses incurred

23. **Hold Harmless Agreement:** To the fullest extent permitted by law, Concessionaire shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with Concessionaire's performance or attempted performance of any obligation or duty provided for or relating to this Contract and/or the Premises, except such loss or damage which was caused by sole negligence or willful misconduct of the County.

24. **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 Exhibit C, attached hereto.

25. **Letter of Credit Requirements:** The Concessionaire agrees to furnish a letter of credit in the sum of **$10,000** (or a cashier's check, bond, or certificate of deposit in name of County with interest payable to Concessionaire, in lieu thereof), it being understood and agreed that such letter of credit 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 letter of credit or this Contract shall be terminated effective immediately. This security shall guarantee faithful performance of this Contract including all Concessionaire's obligations and responsibilities under this Contract. Said letter of credit 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, fees and charges. The institution issuing letter of credit shall give County notice in writing at least thirty (30) days prior to any expiration of the letter of credit of Concessionaire.

26. **Taxes:** During the term of this Contract, Concessionaire hereby agrees to pay, prior to delinquency, 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.**

27. **Concessionaire's Responsibility for Compliance:** Concessionaire shall at all times observe and comply with, and shall cause all his agents, employees and sub-contractors to observe and comply with all 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. 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 County during course of 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.

28. **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: Rocky Mountain Recreation Company
28368 Constellation Rd #380

Valencia, CA 91355
Chet Roberts, President
Email : chet@rockymountainrec.com
661-702-0314

To the County at: Department of General Services
1087 Santa Rosa Street
San Luis Obispo, CA 93408
Attn: Director of Parks

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.

29. **Modification:** This Contract constitutes the entire understanding of the parties hereto and no changes, amendments, or alterations shall be effective unless in writing and signed by both parties.

30. **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

At the discretion of the Director, 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. The exercise of the remedies provided for in this section shall be cumulative and in no way affect or replace other remedies available to County.

31. **Assignment of Contract:** Concessionaire shall not assign, transfer, or delegate this Agreement or any interest therein without the prior written consent of Director, and any such assignment, transfer, or delegation without the Director's written approval shall be considered

null and void. 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, if 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 Director be obtained hereto.

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 Agreement 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 their obligations to such lending institution or individual.

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:

a) 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 Agreement.

b) 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 Agreement,

and agree to be bound by all the provisions hereof and the activities and transactions of the deceased Concessionaire with respect thereto.

c) That all of the matters referred to in a) and b) 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 Director 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.

Director's consent to such assignment or subletting shall not constitute a waiver of any provision of this Agreement and no further assignment or subletting shall be made without Director's prior written consent. The assignee shall not further assign the Premises without Director's prior written consent, and then only in compliance with all of the provisions contained in this paragraph. In the event Director consents to an assignment, Concessionaire shall provide copies to Director of any Agreement between Concessionaire and assignee, whether it be written or oral.

In the event Director consents to such assignment of this Agreement, County shall reserve the right to change, modify or further amend the Agreement in any way including the rental to be paid thereunder. Any changes, modifications or further amendments to the Agreement shall be negotiated prior to Director's approval of the assignment.

Upon Director's consent to such assignment, Assignee shall furnish a letter of credit (or a cashier's check, bond, or certificate of deposit in name of County with interest payable to Concessionaire, in lieu thereof) in the sum of Ten Thousand Dollars ($10,000.00), it being understood and agreed that such letter of credit shall be in force at all times during the remaining term of this Agreement; and, if canceled, the Assignee shall immediately seek and obtain a similar replacement letter of credit or this Agreement shall be terminated. This security shall guarantee faithful performance of this Agreement including all Assignee's obligations and responsibilities under this Agreement. Said letter of credit shall be kept by Assignee in full force

and effect during the entire term of this Agreement to insure faithful performance by Assignee of all the covenants, terms and conditions of this Agreement, inclusive of, but not restricted to, the payment of all rentals, fees and charges. The institution issuing said letter of credit shall give County notice in writing at least thirty (30) days prior to any expiration of the letter of credit of Assignee.

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 Agreement.

32. **Waiver of Claim:** Concessionaire hereby unconditionally waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit during the term of this Contract or in the future. Any action, proceeding or claim, directly or indirectly, attacking the validity of this Contract, or any part thereof shall be the sole responsibility and liability of Concessionaire.

33. **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 Santa Margarita Regional Lake Park and Natural Area.

34. **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.

35. **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 leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the leased premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of Concessionaire, provided, however, that County shall be entitled to receive any award for the taking of or damage to County's equipment, fixtures, or any improvements made by County to

the leased premises which County 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 leased premises during the Contract term under the power of eminent domain, this Contract shall terminate as to the portion of the leased premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Contract shall at County's option, continue in force and effect. The compensation and damages for such partial taking shall belong to and be sole property of Concessionaire, provided, however, that County shall be entitled to receive any award made by County to the leased premises which County 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 leased 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 leased premises not taken in a suitable condition shall belong to County.

36. **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.

37. **Harassment:** Concessionaire has 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 and its employees or agents who violate 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 said persons performing this Contract.

38. **Americans With Disabilities Act:** The County shall be responsible for physical premises alterations necessary to comply with the Americans With Disabilities Act. Concessionaire shall be responsible for all compliance required of an employer.

39. **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. Further return shall be a breach of Contract. If Concessionaire becomes aware that any of Concessionaire's employees has been convicted or pleads nolo contendere to a criminal substance abuse statute Concessionaire shall notify the County's Mental Health Director within five (5) days and Concessionaire shall be responsible for making sure that employee does not return to County's work site. Violation of this notification provision shall constitute a breach of this Concession Contract.

40. **Inspection of Premises:** County, its agents and employees, shall have access to and the right to enter upon the premises at any time to examine the condition thereof, and to direct Concessionaire to make such repairs as may be necessary and, in the event of an emergency, to take such action therein as may be required for the protection of persons or property, at the expense of Concessionaire.

To this end, County may make such reasonable rules and regulations pertaining to the Santa Margarita Lake Regional Park and Natural Area which shall serve to protect the health, safety, and welfare of the public and to protect the facilities as a physical asset.

41. **Hazardous Waste:** Concessionaire and County 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, fuels, gasoline, 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 or County'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 County 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.

42. **Stormwater:** 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) attached as Exhibit "D", or to future BMPs required by the RWQCB. Lessee 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.

43. **Separability:** The invalidity of any provision of this Contract shall not affect the validity, enforceability of any other provision of this Contract.

44. **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.

45. **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.

46. **Entire Contract and Modifications:** This Contract supersedes all previous Contracts and constitutes the entire understanding of the parties hereto. Concessionaire shall be entitled to no other benefits than those specified herein. No changes, amendments, or

modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Concessionaire specifically acknowledges that in entering into the executing this Contract, Concessionaire relies solely upon the provisions contained in the Contract and no other Contracts or oral discussions prior to entering this Contract.

47. **Corporate Authority:** Any individual executing this Contract on behalf of Concessionaire represents and warrants that he is duly authorized to execute and deliver this Contract on behalf of said Concessionaire, and that this Contract is binding upon said Concessionaire in accordance with its terms.

48. **Waiver of Contract Terms:** No waiver by either party at any time of any of the terms, conditions or covenants of this Contract shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of County to re-enter the premises or to exercise any right, power or privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power or privilege or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence therein. No notice to Concessionaire shall be required to restore or revive time as of the essence after the waiver by County of any default. No option, right, power, remedy or privilege of County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given to County by this Contract shall be deemed cumulative.

49. **Agent for Service of Process:** It is expressly agreed and understood that Concessionaire is a natural person and a resident of the State of California. If Concessionaire moves and is no longer domiciled in and a resident of the State of California, then Concessionaire shall file with County a designation of a natural person residing in the State of California, giving the name, residence and business address for the purpose of service of process in any court action arising out of or based upon this Contract. The delivery to such person of a copy of any process in any such action shall constitute valid service upon Concessionaire; and it is further expressly agreed, coveted and stipulated that if for any reason service of such process upon such person is not possible, then in such event Concessionaire may be personally served

with such process out of said State, including by publication in the County of San Luis Obispo, and that such service shall constitute valid service upon such Concessionaire; and it is further expressly agreed that Concessionaire is amenable to the process so served, submits to the jurisdiction of the court (said court being the Superior and/or Municipal Court in and for the County of San Luis Obispo) as acquired, and waives any and all objections and protests thereto.

50. **Right of Entry as Agent:** In any case in which provision is made herein for the termination of this Contract by County or in the case of abandonment or vacating of the premises by Concessionaire, the County, in lieu of declaring forfeiture, may enter upon the premises. To such end, Concessionaire hereby irrevocably appoints County as agent to remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire. In such case, County may re-let the premises upon such terms as it may deem proper, and if a sufficient sum shall not be realized thereby, after paying expenses of such re-letting, to satisfy the rent and other sums herein agreed to be paid by Concessionaire, Concessionaire agrees to save County harmless from any loss or damage or claim arising out of the action of County in pursuance of this article.

51. **Terms Binding on Successors:** All the terms, covenants and conditions of this Contract shall inure to the benefit of, and be binding upon, the successor and assigns of the parties hereto. The provisions of this article shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

52. **Destruction of Premises**: Should any matter or condition beyond the control of the parties hereto, such as war, public emergency, or calamity, fire, earthquake, flood, act of God, strike, or any other labor disturbance prevent performance of this Contract in accordance with the rights and privileges granted herein, this Contract shall immediately be terminated and the County shall be under no legal obligation to the Concessionaire by reason of said matter or condition. Should any aforementioned matter or condition create eligibility for Federal, State, or any other governmental jurisdictional relief assistance and/or aid, both parties agree to take all reasonable steps necessary to procure such assistance and/or aid, in their respective capacities at the time of such application.

53. **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 Lease. 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.

54. **Termination for Unsatisfactory Service:** If County determines, in good faith, that the service rendered to County, its employees and the general public patronizing Concessionaire's facility is unsatisfactory and does not compare favorably to the service offered to the public in operations of like kind in the same community, County may give Notice of Termination for Unsatisfactory Service specifying with particularity the manner in which Concessionaire's services have been unsatisfactory and do not compare favorably. Concessionaire shall be allowed thirty (30) days within which to remedy the conditions described in the notice. In the event that County determines in good faith that Concessionaire has not remedied the conditions, Concessionaire may petition for and be granted a hearing before the County Board of Supervisors to determine if said unsatisfactory service is sufficient to terminate this Contract. Unless concessionaire quits said premises and/or ceases operation therein, this Contract shall continue until receipt of notice from County that the County Board of Supervisors determined, after the hearing, to deny petition and to terminate this Contract.

55. **CAL/OSHA Inspections:** If the Premises is cited by CAL/OSHA, Concessionaire shall be required to abate said citations at Concessionaires sole cost.

////////////////////////////NOTHING FURTHER PAST THIS POINT//////////////////////////////

IN WITNESS WHEREOF, the parties hereto have executed this Concession Contract this _____ day of _____, 2014.

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal
County Counsel

By: Shannon Martin
Deputy County Counsel

Date: 10/3/14

COUNTY OF SAN LUIS OBISPO

By:

_____
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this _____ day of _____, 2014.

ATTEST:

_____
Clerk of the Board of Supervisors

CONCESSIONAIRE:
NAME:

By: Peter D. Robinson

Date: Oct 1, 2014

State of California
County of San Luis Obispo

On _____before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and Acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature
(Seal)

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