

CONTRACT

Concession Services

Lopez Lake Recreation Area

WHEREAS, the San Luis Obispo County Flood Control and Water Conservation District [hereafter "District"], a public entity in the State of California, has certain real and personal property at the Lopez Lake Recreation Area in San Luis Obispo County which is not currently required for District use.

WHEREAS, on January 23, 1978, the District and Dolezal Company [hereafter "Dolezal"], a California corporation, doing business as Mustang Hot Springs and Waterslide, entered into a contract for concession services with the required use permit to provide concession services at the Lopez Lake Recreation Area.

WHEREAS, the original concession contract between District and Dolezal commenced January 23, 1978 and expired January 22, 1988.

WHEREAS, The original concession contract between District and Dolezal was amended by a written document known as Amendment No. 1 to Lopez Recreational Area Waterslide and Spa Concession Contract, dated October 7, 1986.

WHEREAS, The original concession contract between District and Dolezal contained an option to renew for one additional ten (10) year period from January 23, 1988 to January 22, 1998, which option was exercised by Dolezal by a timely letter to the District, dated December 17, 1987. The original contract now expires on January 22, 1998.

WHEREAS, The original concession contract between District and Dolezal contained an option to assign with District approval. On November 16, 1993, the District approved an assignment of the contract from Dolezal to 4 To Go, Inc., a California corporation, Michael L. Phillips, an individual, and Philip S. O'Carroll, an individual [hereafter "Concessionaire"]. This multi-party assignment was to each of the assignees as a joint and several assignment. As a joint and several assignment, each assignee has a joint obligation with the other named assignees and an individual obligation to perform all terms and conditions of the contract.

WHEREAS, District and Concessionaire now desire to enter into a novation contract to update the terms and conditions of the contract. A novation contract supersedes and replaces all terms and conditions of the previous contract and all amendments with new contractual obligations. The parties agree that as between the parties, all previous terms and conditions of the original contract will be satisfied by this novation contract, except that the parties agree that any outstanding claim by any third person or

liability to a third person shall be governed under the terms of the original contract and its amendment.

WHEREAS, Government Code 25536 allows the San Luis Obispo County Board of Supervisors, sitting as the San Luis Obispo County Flood Control and Water Conservation District to act by a four-fifths vote to enter into a concession contract with a lease incidental thereto for real property held for recreational purposes without compliance with the public notices, requests for proposal and other procedural requirements of Government Code section 25520 et. seq; the code provisions governing sale or lease of real property by County Boards of Supervisors.

NOW THEREFORE, in consideration of each and every one of the terms, covenants and conditions hereinafter contained and of all of them in this integrated agreement, the parties hereto agree to the following novation contract.

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

NOVATION CONTRACT

Concession Services

Lopez Lake Recreation Area

This contract is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, a public entity in the State of California, [hereafter "District"] and 4 To Go, Inc., a California corporation, Michael L. Phillips, an individual, and Philip S. O'Carroll, an individual, all Concessionaires acting jointly and severally, doing business as Mustang Water Slides, [hereafter "Concessionaire"].

Lease of Real Property Necessary to the Concession Contract:

The District has a need for nonexclusive management and concession services at the Lopez Lake Recreation Area. There are and will be other concessionaires operating at different locations. The concession services to be provided pursuant to this contract will be provided on the concession sites or premises commonly known as the Water Slide and Spa Area of Lopez Lake Recreation Area.

1. Grant and Description of Premises: The District grants to Concessionaire an exclusive ground lease for certain premises required as an incident of performing the concession services described herein. The premises are further defined on Exhibit A attached hereto and incorporated at this point by reference. The improvements on said real property are owned by Concessionaire during the ground lease period.

The ground lease period and rights incidental are only those rights that are required and necessary to perform the concession contract including rights of ingress and egress necessary thereto. The lease period shall commence at the same time as and end at the same time as the contract for the concession services contract. The lease of real property shall not be severable from the concession services contract and may not be sublet or assigned without an entire assignment of the concession services.

No Concession rights expressed or implied, other than those expressly given in this agreement are granted, and any other concession rights are hereby denied Concessionaire under this Contract.

2. Condition of Premises: The taking of possession of the subject premises by Concessionaire shall, in itself, constitute acknowledgement that the subject premises are in good and tenantable condition. Concessionaire agrees to accept said premises in their presently existing condition, "as is"; and that the District shall not be obligated to make any alterations,

additions or improvements thereto.

3. District's Operating Agent: It is understood that pursuant to the terms of a Joint Powers Agreement, the County of San Luis Obispo operates and administers the Lopez Recreational Area for the District. It is further understood and agreed that in accordance with the terms of said Joint Powers Agreement, the County of San Luis Obispo, acting by and through its Department of General Services, will administer this contract for and on behalf of the District.

4. Term: The term of this Contract shall commence on the date the Board of Supervisors for San Luis Obispo County signs this Contract, and shall end on January 23, 2008, unless sooner terminated as provided herein.

Concessionaire shall place copies of all insurance policies required by Paragraph 17 hereof, into the possession of the District's Operating Agent, within ten (10) calendar days of commencement of contract, or at such time as is mutually agreed upon by both parties. Concessionaire shall keep insurance in full force and effect at all times during the term of this contract and shall allow no breaks in coverage.

At the expiration or termination of this Contract as herein provided, Concessionaire shall within thirty (30) days thereafter remove from said premises or otherwise dispose of in a manner satisfactory to the District all personal property belonging to Concessionaire located on said premises. Should Concessionaire fail to remove or dispose of personal property as herein provided, the District may, at its election, consider such property abandoned and may dispose of same at Concessionaire's expense.

At the expiration or termination of this Contract, Concessionaire shall quit and surrender the said premises including improvements to real property and fixtures remaining on real property in a good state of repair, damage by matters over which Concessionaire has no control expected, provided that such exculpatory provisions shall not extend to any risk which Concessionaire is required to insure against as herein provided. Ownership of said fixtures and improvements shall vest in District on the day after the termination or expiration date of this Contract.

5. Extension of Term: The Concessionaire may extend the contract term, subject to all the terms and conditions of the Contract stated herein, for two (2) successive and consecutive separate terms of five (5) years each. Concessionaire may only extend the term by delivering to the District a prior written notice of Concessionaire's request to extend term ("Notice of Request to Extend Contract Term") not later than six (6) calendar months prior to the end of the then current term. It is expressly understood by Concessionaire that prior to approval of any

extensions Concessionaire shall place and maintain all facilities and equipment, including water slides in good working order and all such facilities and equipment shall be safe for use by the public. Any equipment or improvement found by District not to be in this condition shall be immediately repaired or replaced by Concessionaire in like fashion or upgraded. District shall reply not later than ninety (90) days after receiving notice. Extension shall be predicated upon the revenue agreements being fully satisfied as specified in Paragraph 7. Rental herein and upon there being no outstanding claims, maintenance of insurance, the continuation of a good working relationship, the continuation of good faith and fair dealing, passing of all audits without significant discrepancy and no outstanding uncorrected conditions on the premises that are hazardous to the public health, welfare and safety.

6. Quitclaim Deed: Upon termination of the rights hereby granted, Concessionaire shall execute and deliver to the District within thirty (30) days after service of written demand, therefore, a good and sufficient quitclaim deed to the premises described therein, including all improvements thereon. Should Concessionaire fail or refuse to deliver to the District a quitclaim deed as aforesaid, a written notice by the District reciting the failure of Concessionaire to execute and deliver said quitclaim deed as herein provided, shall after ten (10) days from the date of recordation of said notice be conclusive evidence against Concessionaire and all persons claiming under Concessionaire of the termination of said concession.

7a. Rental: Concessionaire shall pay District as rent for the Premises per month, without demand, deduction or offset, the following percentages of annual gross receipts:

- 10% of the first \$100,000 of annual gross receipts
- 12% of all over \$100,000 of annual gross receipts

This stated rental payment schedule shall remain in effect during the remaining term of this Contract. Said compensation will become delinquent if not received by the twenty-fifth day of each month and shall be subject to a late penalty of seven percent (7%), which shall be added to the principle then due and owing. If still unpaid for 30 days after the delinquency date the legal rate of interest shall apply.

b. Upon execution of the first five (5) year option renewal and any additional extensions thereafter, Concessionaire shall pay a rental amount equal to 12% of all annual gross receipts.

c. Beginning with the 20th day of the month following the commencement of operations under this contact, and continuing by the 20th day of each month of the term and any extensions thereof, an upon the 20th day of the month next following the end of the

term, Concessionaire shall furnish to District's Operating Agent, the Parks' Division of the Department of General Services, a verified statement of its cumulative total gross receipts as defined herein through the close of the preceding month, for the then current year. With such monthly statements, Concessionaire shall pay to the District without demand, the rental payment for the preceding calendar month. The rental payment for each preceding month shall be such an amount as will, if added to all previous months payment of that year, equal the prescribed percentage of the accumulated gross sales to the end of that month. Payments to the District shall be made to the order of District's Operating Agent, namely the County of San Luis Obispo, Parks Division, County Government Center, Room 460, San Luis Obispo, CA 93408.

d. Concessionaire shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession in a manner acceptable to the District, and the District 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 District.

e. District further reserves the right to examine all such books and records at any time during the one (1) year period following the termination of this Contract.

f. Concessionaire agrees that as part of its record keeping activity, it shall at its own cost and expense, install and maintain the appropriate cash control equipment necessary to reflect true and accurate records as required by the District.

g. The term "gross receipts", whenever used in this Contract, is intended to 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 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 collected by Concessionaire.

8. Use of Premises: The subject premises shall be used by the Concessionaire for a Waterslide and Spa and Personal Services. The Concessionaire shall have the right and duty to manage, operate and control all of said activities and to do all things necessary in the exercise of such management, operation and control subject to the terms and conditions following:

a. Furnish and install at his own expense all necessary furnishings and equipment required for the proper service to the

general public.

b. Said operation may include the rental of locker space, towels and swimming apparel.

c. Be solely responsible for complete janitorial services and the furnishing of all janitorial supplies, for the proper maintenance of the concession facilities.

d. Be responsible for all activity at the facility, including the enforcement of such rules and regulations relating to the conduct of patrons.

e. Supervise and in all respects direct the maintenance and operation of the facility and all immediately contiguous areas thereto, insuring that the facility is maintained in a standard acceptable to the Director of General Services and comparable with established standards for proper operation and maintenance.

f. Concessionaire may establish limited food service in the form of a refreshment and snack bar wherein soft drinks, hot dogs and pre-packaged snack food items such as candy, chips and the like are provided. Concessionaire agrees that no other food items will be offered for sale and expansion of food service will not occur without prior written approval of the District first had and obtained. The sale or furnishing of alcoholic beverages is prohibited.

g. The Concessionaire, Concessionaire's employees, workmen, and service personnel, as may be required for the construction and operation of the facility, will be permitted to enter the Lopez Lake Recreation Area for the performance of their duties, without payment of the entry fee as charged to the general public at the entrance.

h. The District further grants to Concessionaire the right to construct or reconstruct the facilities upon submission of proper plans and specifications, subject to the approval of the District. Concessionaire shall operate and maintain the premises and facilities together with the non-exclusive right to use access roads.

i. During the term of this Contract, and prior to May 1998, Concessionaire shall, with the written concurrence of the District expand the facilities and activities at the Lopez Recreational Area to include the plan as outlined and specified in that certain letter dated August 3, 1995 with written drawings attached as Exhibit "B" hereto for informational purposes.

j. In the event the District elects to convert a portion of the Mustang Campground into a day use area, written permission will be granted to Concessionaire to further expand their premises with the construction of a building east of the

creek and immediately north of the existing public road. Such permission will be granted upon submission to and approval of building plans and schedules by the Director of General Services and shall only be granted after the County has converted Mustang Campground into a day use facility.

k. Concessionaire shall not use or permit the subject premises to be used in whole or part, during the term of this contract, for any purpose other than as herein set forth, without the prior written consent of the Director of General Services first had and obtained.

l. Concessionaire expressly agrees at all times during the term of this Contract and any extensions thereof, at its own cost and expense, to maintain and operate such premises and areas adjacent, in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstructions of any kind.

m. Concessionaire shall comply with all present and future laws, statues, 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 or the District and said legislative enactment has any impact fiscal or otherwise on Concessionaire, and if Concessionaire does not make a timely objection to County or District 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.

n. This Contract is expressly subject to the provisions and requirements of any existing and future agreements between the District and the United States or State of California relative to the development, operation and maintenance of the Lopez Lake Recreational Area, such as, by way of illustration and not by way of limitation, the Contract between the San Luis Obispo County Flood Control District and the State, Contract No. D-GGR (3 DWR 155103 dated May 9, 1966).

9. Independent Contractor: 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 District or County.

10. Advertising: All advertising matter to be published or circulated by or on behalf of Concessionaire shall be submitted to and approved by the Director of General Services, prior to publication or circulation.

11. Termination: If any of the following occur, District shall have the right to terminate this Contract or any extensions thereof, effective immediately upon giving written notice to the

Concessionaire:

A. Concessionaire fails to fulfill in a timely and professional manner its obligations under this contract; or

B. 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.

12. Ownership of Fixtures, Personal Property & Improvements: Title to fixtures, personal property and improvements on the premises at the commencement of this contract is vested in the District. The ownership of all future improvements that constitute fixtures constructed by the Concessionaire shall remain in Concessionaire until expiration of the term of this contract or sooner termination and at that time shall vest in District, whether voluntary or involuntary termination.

All fixtures, improvements or personal property present on the premises at the expiration of the term or sooner termination of this contract shall, without compensation to Concessionaire, become District property free and clear of all claims to or against them by Concessionaire or any third person, and Concessionaire shall defend and indemnify the District against all liability and loss arising from such claims or from the District's exercise of the rights conferred by this paragraph. The fiberglass slide structures, including pumps and filters shall be trade fixtures and may be removed by Concessionaire at termination of this contract.

14. Capital Improvements: Any capital improvements to be undertaken hereunder shall be administered as follows:

Concessionaire agrees to submit to District for review and approval, all plans including specifications, working drawings, and other information required by District covering the projects to be accomplished by Concessionaire. Said plans shall be submitted to the District for District approval at least thirty days in advance of the initiation of any such projects. If the District objects to all or any portion of such plans, District shall state the objections specifically, and the Concessionaire shall make the changes specified and resubmit the plans as revised for the District'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 County's Director of General Services or his designee. Approval and authorization by the County shall not be unreasonably withheld.] Nothing contained herein shall be construed by Concessionaire to be a waiver by County of San Luis Obispo of Concessionaire's need to acquire building and construction permits to include, but not be limited to, required permits from the Planning and Health Department and other applicable licenses through normal governmental procedures. Upon completion of each

new improvement, Concessionaire shall file with the District a notice of completion and will submit cost statements of labor, material or other construction costs for the District appraisal of improvements to which the notice of completion relates. County makes no commitment to expend County funds on any capital improvement as contained herein.

15. Maintenance and Use of Improvements: a. Concessionaire agrees to maintain any and all concession facilities on the subject premises in good order and repair, at his own expense and cost, during the entire term of this Contract. Concessionaire shall perform at his own cost and expense, any required maintenance and repairs, including structural maintenance; and should Concessionaire fail, neglect or refuse to do so, the County shall have the right to perform such maintenance or repairs for the Concessionaire's account; and the Concessionaire agrees to promptly reimburse the District for the cost thereof, provided however, that the County shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs for the Concessionaire's account for the purpose of enabling Concessionaire to proceed with such maintenance or repairs at his own expense. The District shall not be obligated to make any repairs to or maintain any improvements on the subject premises. Concessionaire hereby expressly waives the right to make repairs at the expense of the District.

Concessionaire may employ, pay and supervise maintenance personnel. Maintenance personnel shall be responsible to Concessionaire and shall cooperate with County personnel. All of Concessionaire's personnel shall be physically able to handle their duties and must be promptly replace when derelict in their duties.

There shall be no drinking of liquor, or other alcoholic beverages in or around the area by Concessionaire's employees while on duty.

Concessionaire shall clean the areas under his supervision and shall maintain all areas under his control in a clean and neat condition.

Concessionaire, at his own cost and expense, shall maintain in a manner and standard that adequately protects the public health, safety and welfare, that portion of the water system located within the concession area.

Concessionaire shall, at all times and at his own expense, do all things reasonably necessary to protect the facilities used by Concessionaire and does hereby volunteer the services of his employees in that behalf.

It is understood and agreed that Concessionaire's services shall be provided during hours and days to meet the needs of the

public. The Director reserves the right to approve the hours and days of operation.

16. Utilities and Services: Concessionaire shall be responsible for the payment of all utility charges. District shall pay all water charges not to exceed 120% of past District costs, in connection with Concessionaire's use of the Premises. The year of 1996 shall be used as a baseline. In the event construction or expansion significantly alters the Concessionaire's water usage, District and Concessionaire may amend this paragraph to reflect such changes. District shall pay sewage service charges.

Concessionaire shall furnish all necessary refuse and garbage containers. Additionally, the removal and disposal of all rubbish, refuse, and garbage resulting from concessions operations will be accomplished by Concessionaire. All such rubbish, refuse and garbage removal shall be performed to the satisfaction of the Director of General Services, and disposal of such rubbish, refuse and garbage shall be off District's property and in accordance with applicable law.

17. Equipment: Concessionaire, at its own expense, shall completely equip the concession improvements described herein and shall keep the same equipped in a first-class manner throughout the term of this Contract.

18. Signs and Approval of Name: No signs, names or placards shall be inscribed, painted or affixed upon said premises without notification and/or written consent of Director of General Services.

19. Quality of Service and Control of Rates and Charges: Concessionaire agrees that he will operate and manage the services and facilities offered in a manner equal to or exceeding the standard ascribed to by comparable operations 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 District.

The District shall have access to, and the right to inspect the schedule of prices and rates for services rendered or performed upon the subject premises. If the District determines that any price or prices are unreasonable or inappropriate for the services rendered, the same shall be modified as directed by the District; provided that Concessionaire prior to such modification shall be given a reasonable opportunity to confer with District and justify such prices:

The District reserves the right to prohibit the sale or rental of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. A competent employee shall be on the premises at all times while the

concession is in operation. Concessionaire agrees that he shall and will furnish and maintain a high standard of service. Concessionaire shall post rates and prices for all rentals and services in such places as may be designated by the Director of General Services.

20. Closure: At any time should an occurrence necessitate the closing of the Lopez Recreational Area to the general public, the Concessionaire shall have no recourse by law to the District for losses incurred.

21. Hold Harmless Agreement: The Concessionaire shall defend, indemnify and save harmless the County, District and the State of California, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgements, attorney fees or any liability arising out of this contract or attempted performance the provisions hereof, including, but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability, liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Services or the State Franchise Tax Board with respect to Concessionaire's "independent contractor" or "Concessionaire" status that would establish a liability for failure to make social security and income tax withholding payments, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Concessionaire or its agents, employees or other independent Consultants directly responsible to Concessionaire; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or permissions to employees or other independent contractors and County, District, State, its agents, employees or independent professional contractors involved in this project. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses, judgements, attorney fees resulting solely from the negligence or willful misconduct of the County, District or State. Nothing contained in the foregoing indemnity provisions shall be construed to require Concessionaire to indemnify County, District or State, against any responsibility or liability in contravention of Section 2782 of the Civil Code.

22. 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 he has obtained insurance complying with the provisions of this paragraph, or as specified in writing by the County Risk Manager, delivered a certified copy of each insurance policy to the County, and obtained County approval of all such policies. Said policies shall be

issued by companies authorized to do business in the State of California. Concessionaire shall maintain said insurance in force at all times. Concessionaire is currently covered under the County's blanket policy for fire insurance. The following coverage with the following features shall be provided:

A. Comprehensive Liability Insurance: Concessionaire shall maintain in full force and effect for the period covered by this Contract, comprehensive general liability insurance with the following coverage.

1. Personal Injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage which shall include owned and non-owned vehicles.

The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be provided in 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.

(4) The comprehensive general liability policies shall name the County of San Luis Obispo, the San Luis Obispo County Flood Control and Water Conservation District, the State of California, its officers, employees, and agents as additional insured. The policy shall provide that no other insurance maintained by the County, State, or additional insured will be called upon to contribute to a loss hereunder.

(5) Self-insurance can be substituted for a commercial policy, the same provisions shall apply.

B. Workers' Compensation Insurance: In accordance with the provisions of sections 3700 of the California Labor Code, et seq., 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. 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 copy of the Concessionaires's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, the Concessionaire shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(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 agreement.

D. 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 (C) above, County shall have the right, at it's option, to forthwith terminate the Contract for cause.

E. Compliance as Consideration: The parties expressly agree that the indemnification and insurance clauses in this contract are an integral part of the performance exchanged in this contract. The compensation stated in this contract includes compensation for the risks transferred to Concessionaire by the indemnification and insurance clauses.

23. Bond: The Concessionaire agrees to furnish a faithful performance bond in the sum of \$20,000 (or a cashier check or certificate of deposit in name of County, 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 cancelled, 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, 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 Concessionaire.

24. 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 may be created by this agreement and that the party to whom the possessory interest is vested (Concessionaire) may be subject to payment of property taxes levied on such interest and must pay such taxes.

25. 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 applicable existing or future laws, ordinance, regulations, orders and decrees of all public authorities having jurisdiction over any operations under this Contract.

26. 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: Mustang Water Slides
P.O. Box 2098
Orcutt, CA 93457
Attn: Philip S. O'Carroll

To the District at: Department of General Services
County Government Center, Room 460
San Luis Obispo, CA 93408
Attn: Parks 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.

27. 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.

28. Breach: This Contract is granted by County upon the express condition that in the event the County deems objectionable or improper any conduct on the part of the Concessionaire, its employees or agents, which shall not have been remedied or corrected within a period of ten days after written notice thereof by County to Concessionaire; or if default or breach of Contract be made by Concessionaire in any of the covenants herein contained and Concessionaire shall continue in such default or breach; or should any attachment, garnishment or execution be levied against the Concessionaire or County's property and not be removed within ten days after written notice from County; or if Concessionaire shall cease its operations under this Contract for causes other than destruction of the premises, either with or without legal process, on giving 10 days notice of intention to do so, and upon expiration of said notice, County, or its officers, agents or employees, shall be entitled to the immediate possession of the concession 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.

29. Assignments and Subleases: a) Concessionaire shall neither assign, sublease or otherwise convey any interest of any sort granted by this Contract to any person or persons, entity or entities whatsoever without prior written consent and approval of the District. Any document by which an interest is granted, subject to the approval of the District shall indicate that the person acquiring that interest has been advised of the terms of this Contract and takes his interest subject to the terms and conditions in this Contract, and recognizes that upon termination of the interest of Concessionaire granted by this Contract, his interest shall also be terminated. However, in the event of termination of this Contract, the District at its sole option, may elect to treat any assignee, sub-tenant, or holder of an interest conveyed by Concessionaire as the District's tenant, subject to the terms and conditions of the Contract and that entered into between the assignee, sub-tenant or holder of an interest conveyed by Concessionaire.

b) Concessionaire consists of multiple parties. A withdrawal or change, voluntary, involuntary, by operation of law, or otherwise, of any of the multiple parties hereto, or a purported

assignment or transfer, voluntary or involuntary, by operation of law, or otherwise, from one thereof unto the other or others thereof, or as to the Concessionaire that is a corporation, a change in the ownership (voluntary, 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 an assignment prohibited hereby, unless the written consent of the District be obtained thereto.

The District shall have the right upon a showing that any bankruptcy proceedings are initiated on the part of the Concessionaire, his agents, trustee, assigns, or any other party on his behalf, to terminate this Contract. The District shall further, have the right upon a reasonable showing of the insolvency of the Concessionaire to terminate this Contract.

c) In the event of the death of any corporate shareholder resulting in a change in the ownership of fifty-one (51%) percent or more of the capital stock of said corporation or in the event of the death of any individual real person, Concessionaire, the Executor, Estate, Heirs or devisee 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 District that the person, persons, or entity is competent and qualified to operate said concession pursuant to the provision of this Contract.

2. That said person, persons or entity first agree to assume all the obligations of the said deceased person, as set forth in this Contract, and agree to be bound by all the provisions hereof and the activities and transactions of the deceased person with respect thereto.

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

30. Duration of Public Facilities: By entering into this Contract, the District makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the Lopez Lake Recreational Area.

31. 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 a 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 compensations and damages awarded for such total taking shall belong to and be the sole property of

Concessionaire, provided, however, that District shall be entitled to receive any award for the taking of or damage to District's equipment, fixtures, or any improvements made by District to the leased premises which District 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 District'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 District shall be entitled to receive any award made by District to the leased premises which District 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 District.

32. Non-Discrimination: a. Prohibit. There shall be no discrimination against any person employed pursuant to this contract in any manner forbidden by Government Code section 12940 et seq or any other law. Warranty gender harassment is included in this prohibition as a form of discrimination.

b. Gender Harassment Warranty and Liability. ALL Concessionaires have a contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law as gender harassment and at all times to comply with and ensure that all persons performing this contract comply with an appropriate standard of conduct. Every Concessionaire who violates gender harassment laws shall be liable to the County, District and State for all claims, demands, damages, costs, expenses, and attorney's fees incurred by the County, District and State as a result of behavior of any of Concessionaire's personnel performing this contract.

33. Americans With Disabilities Act: The Concessionaire shall be responsible for Alterations necessary to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. sect.

34. Inspection of Premises: District, State, 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 water slide or water slide operations which shall serve to protect the health, safety, and welfare of the public and to protect the Premises as a physical asset.

35. 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, 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, District's or State's sole negligence, indemnify, defend, protect, and hold County, District and State and each of County's, District's and State'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, to, in, on, under, about or from the Premises, or (b) Concessionaire's or County'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 Lease. For purposes of the release and indemnity provisions hereof, any acts or omissions 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.

36. Separability: This Contract is an integrated agreement. However, the invalidity of any provision of this contract shall not affect the validity, enforceability of any other provision of this contract.

37. Remedies Not Exclusive: The use by either party of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of or

limit the application of, any other remedy provided by law.

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. Entire Agreement 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.

41. Corporate Authority: Any individual executing this agreement 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.

42. Waiver of Claims: Concessionaire hereby waives any claim against the District, its officers, agents or employees for damage or loss caused by any suit or proceeding declaring this Contract null, void or voidable, or delaying the same or any part thereof from being carried out.

43. Right of Entry as Agent: In any case in which provision is made herein for the termination of this Contract by the District or in the case of abandonment or vacating of the premises by Concessionaire, the District in lieu of declaring a forfeiture may enter upon the premises. To such end, Concessionaire hereby irrevocably appoint the District its 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, the District 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 the District harmless from any loss or damage or claim arising out of the action of the District in pursuance of this paragraph.

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

45. Time of Essence: Time shall be of the essence in the performance of this Contract.

47. Photography: The District reserves the right to grant permits to persons or corporations engaged in the production of still and motion pictures and related activities, for the use of said premises for such purposes when such permission shall not interfere with the primary business of Concessionaire.

Concessionaire will be given an opportunity to respond to any such request that involves the placement and use of equipment within the said Contract area.

48. Conflict of Interest: Concessionaire warrants and covenants that no official or employee of County nor any business entity in which an official or employee of County is interested; (1) has been employed or retained to solicit or aid in the procuring of this Contract; (2) will be employed in the performance of this Contract without the immediate divulgence of such fact to County. In the event County determines that the employment of any such official, employee or business entity is not compatible with such official's or employees's duties as an official or employee of the County of San Luis Obispo, Concessionaire, upon request of County shall terminate such employment immediately. For breaches or violation of this paragraph, County shall have the right both to annul this Contract without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee or business entity.

49. Performance of Contract and the District--Buy-Out Provision: If Concessionaire is in breach of this contract, the District may terminate with no obligation to compensate Concessionaire for improvements. Provided that Concessionaire is not in breach of this contract, this paragraph shall apply. Should District so elect, then all rights of Concessionaire thereunder terminate upon giving three (3) months written notice to Concessionaire; provided that the District shall pay to Concessionaire the fair market value of the improvements erected or placed upon the premises by Concessionaire, and the value of the business as a going concern.

Determination of the amount to be so paid shall be ascertained in the following manner:

a) District shall prepare and present a list of three certified appraisers to Concessionaire.

b) Concessionaire shall choose one of the three and notify District of his choice within one week of the notice as indicated in paragraph (a).

c) District and Concessionaire shall, upon the written estimate prepared by the appraiser so selected, accept that appraisal as the fair market value identified above. Both parties do further waive any right to challenge such appraisal and agree that said appraisal shall be final and binding in any controversy, including litigation where the amount of such appraisal may be an issue.

50. 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 term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the District 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, 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 the District of any default. No option, right, powers, remedy or privilege of the District shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the District by this Contract shall be deemed cumulative.

52. Inspection and Maintenance: The District reserves the right of ingress and egress to inspect, investigate and survey said premises as deemed necessary by the District, and the right to do any and all work of any nature for the preservation, maintenance and operation of Lopez Recreational Area in any areas within the confines of said Recreational Area. Concessionaire shall be given reasonable notice when such work may become necessary and will adjust concession operations in such a manner that the District may proceed expeditiously.

53. Paragraph Titles: The paragraph titles in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Contract or in any way affect this Contract.

54. Contract in Counterparts: This Contract is executed in counterparts, each of which shall be deemed an original.

55. Tuberculosis: Concessionaire shall file with the Parks Manager a certificate showing that every person employed in the concession activity has been examined within the last two (2) years and has been found to be free of communicable tuberculosis.

56. Contract Documents: The complete Contract between the parties hereto shall consist of the following identified documents:

This agreement titled "Novation Contract, Concession Services", Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by reference.

57. Drug Free Workplace: Concessionaire and Concessionaire's employees shall comply with District'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 District's facilities or worksites. If any employee of Concessionaire is found to be under the influence of or in possession of any illegal substance at District's premises, that employee may not return to any of District'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 District's worksite. Violation of this notification provision shall constitute a breach of this Agreement.

////////NOTHING FURTHER PAST THIS POINT EXCEPT SIGNATURES////////

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

BY: Kathy Bouchard
DATE: May 23, 1996

San Luis Obispo Board of Supervisors Acting in the Capacity of the Board of the San Luis Obispo County Flood Control and Water Conservation District.

BY: LAURENCE L. LAURENT
Chairman of the Board of Supervisors

Approved by the Board of Supervisors on 6.4, 1996

ATTEST:
JULIE L. RODEWALD

Clerk of the Board of Supervisors, San Luis Obispo County Flood Control and Water Conservation District, State of California

By: VICKI M. SHELBY
Deputy Clerk

CONCESSIONAIRE:
4 TO GO, INC., a California Corporation

BY: Philip S. O'Carroll
Philip S. O'Carroll
President

DATE: MAY 21, 1996

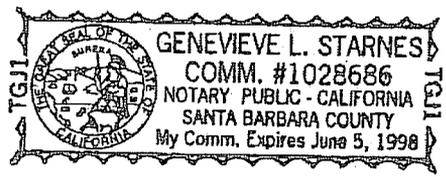
[CORPORATE SEAL]

State of California
County of Santa Barbara

On May 21, 1996 before me, Genevieve L. Starnes personally appeared Philip S. O'Carroll personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that (he) she/they executed the same in (his) her/their authorized capacity(ies), and that by (his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

Signature Genevieve L. Starnes
[SEAL]



CONCESSIONAIRE:

BY: Philip S. O'Carroll
Philip S. O'Carroll
an Individual

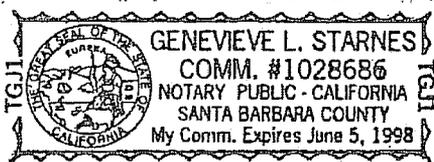
DATE: MAY 21, 1996

State of California
County of Santa Barbara

On May 21, 1996 before me, Genevieve L. Starnes personally appeared Philip S. O'Carroll personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

Signature Genevieve L. Starnes
[SEAL]



CONCESSIONAIRE:

BY: Michael L. Phillips
Michael L. Phillips
an Individual

DATE: May 21, 1996

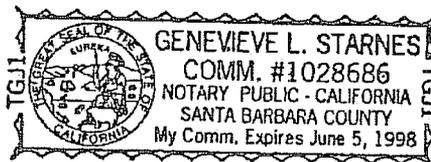
State of California
County of Santa Barbara

On May 21, 1996 before me, Genevieve L. Starnes personally appeared Michael L. Phillips personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.

Signature Genevieve L. Starnes
[SEAL]

cas/a:\Loperrec.KCB



Water Slide and Spa Area

LOPEZ DAM

AREA SHOWN ON PLATE

LOPEZ RESERVOIR
30000 ACRE-DEEP CAPACITY
700 ACRES WATER SURFACE AREA
22 MILES OF SHORELINE

HIGH WATER LINE
ELEV 310

ELEV 435

AUXILIARY BOAT RAMP

LEGEND

- LOPEZ RESERVOIR
- TENT CAMP UNIT
- FAMILY PICNIC UNIT
- TRAILER CAMP UNIT
- GROUP PICNIC UNIT
- PERMANENT RESTROOM
- PORTABLE CHEMICAL TOILET
- PIT TOILET
- RECREATION ACCESS ROAD
- CIRCULATION ROAD
- SERVICE ROAD
- CONCESSION
- PARKING

ATTACHED TO CONTRACT AMENDMENT
NUMBER 0-66913-A1

STATE OF CALIFORNIA
THE RESOURCE AGENCY
DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT

SAN LUIS OBISPO COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
LOPEZ DAM AND RESERVOIR PROJECT

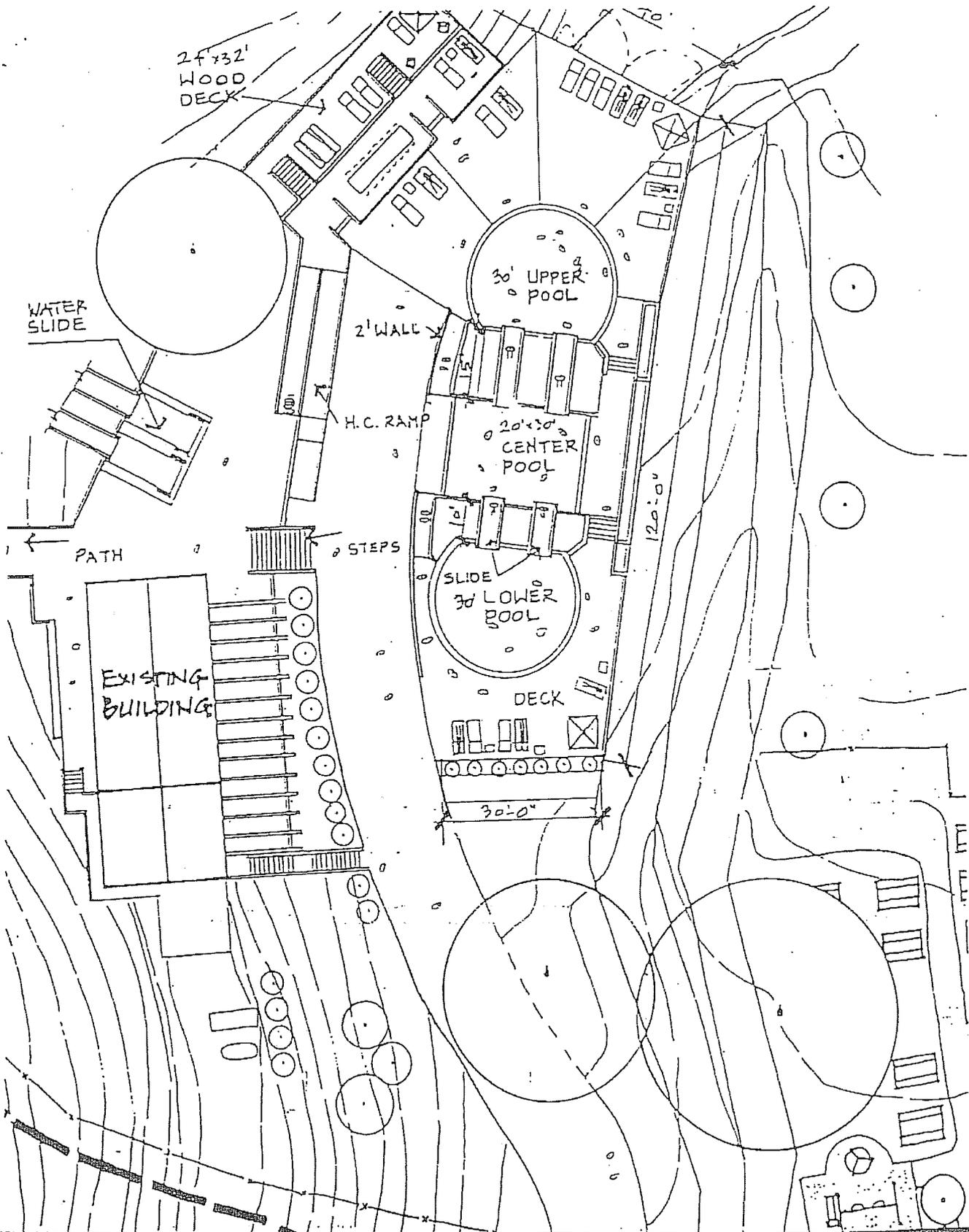
PROPOSED RECREATION FACILITIES

SCALE OF FEET
0 200 400 600 800

1967

Exhibit "A"

For Informational Purposes Only



MUSTANG WATER SLIDES 

For Informational Purposes Only

Exhibit "B"

AMENDMENT NO. 1

**ASSIGNMENT OF CONCESSION SERVICES CONTRACT
Lopez Lake Recreation Area**

This Amendment No. 1 is to that Contract for Concession Services ("Contract") dated June 4, 1996, entered into by and between the San Luis Obispo County Flood Control and Water Conservation District ("District" or "County") and 4 To Go, Inc., a California corporation, Michael L. Phillips, an individual, and Philip S. O'Carroll, an individual, all Concessionaires acting jointly and severally, doing business as Mustang Water Slides ("Concessionaire").

WHEREAS, on June 4, 1996, the County entered into a Contract with Concessionaire, for the purpose of providing non-exclusive management and concession services at the Lopez Lake Recreation Area; and

WHEREAS, Michael L. Phillips, an individual ("Assignor") has proposed an assignment of his interest in the Contract as an individual to Philip S. O'Carroll, an individual; and

WHEREAS, paragraph 29. of the Contract prohibits an assignment except with a prior written consent of the District.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County, Assignor and Assignee mutually covenant and agree as follows:

1. Assignor hereby assigns all his interest in the Contract as an individual to Assignee.
2. Assignor warrants that no previous assignments of the Contract have been made.
3. Assignor shall remain liable for any act, or failure to act, or any wrongdoing of Assignor, Assignor's officers, employees or agents, occurring prior to the date this Amendment No. 1 is executed by the County Board of Supervisors.
4. Assignor has disclosed all prior obligations and liabilities known to Assignor arising under prior performance of the Contract, and agrees to defend and hold Assignee and County harmless from any and all obligations and liabilities incurred prior to the execution of this Amendment No. 1, whether known or unknown, disclosed or undisclosed.
5. Assignee has reviewed the Contract, has had the opportunity to review the Contract with independent legal counsel and hereby assumes all the terms, covenants, and conditions of the Contract and agrees to fully and faithfully perform all of the obligations of Concessionaire (as defined in the Contract) under the Contract.

6. Assignor hereby agrees that Assignee and County may change, modify or further amend the Contract in any way including the compensation to be paid thereunder, and that further assignments may be made without notice to or consent of Assignor. It is the intention of the undersigned parties that, with the exception of obligations and rights prior to execution of this Amendment No. 1 by the County for which Assignor shall be considered the Concessionaire, Assignee shall in all respects be treated as the Concessionaire on and after execution of this Amendment No. 1. It is the express understanding of the undersigned parties that Assignee shall not be obligated for any liabilities of or nonperformance of Assignor prior to execution of this Amendment No. 1. However, County shall retain all rights and remedies with respect to Assignor.

7. County acknowledges and approves this assignment and agrees to be bound hereby.

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

IN WITNESS WHEREOF, County, Assignor and Assignee have executed this Amendment No. 1 to the Contract on the day and year set forth.

COUNTY OF SAN LUIS OBISPO

By: [Signature]
Chairman of the Board of Supervisors

Approved by the Board of Supervisors on
6-5, 2001

ATTEST:

[Signature]
Clerk of the Board of Supervisors, San Luis Obispo
County Flood Control and Water Conservation
District, State of California

APPROVED AS TO FORM AND LEGAL
EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

BY: [Signature]
DATE: 5/17/01

Assignor:

[Signature]
Michael L. Phillips, an individual

Date: 5/14/01

Assignee:

[Signature]
Philip S. O'Carroll, an individual

Date: 5/14/01

By: [Signature]
Deputy Clerk

AMENDMENT NO. 2

**ASSIGNMENT OF CONCESSION SERVICES CONTRACT
Lopez Lake Recreation Area**

This Amendment No. 2 is to that Contract for Concession Services ("Contract") dated June 4, 1996 and amended June 5, 2001, entered into by and between the San Luis Obispo County Flood Control and Water Conservation District ("District"); and 4 To Go, Inc., a California corporation, and Philip S. O'Carroll, an individual, doing business as Mustang Water Slides ("Assignor").

WHEREAS, on June 4, 1996, the County entered into a Contract with Assignor, for the purpose of providing non-exclusive management and concession services at the Lopez Lake Recreation Area on premises located at 6840 Lopez Drive, Arroyo Grande, CA 93420, and;

WHEREAS, Paragraph 29 of the Contract prohibits an assignment of the Contract without prior written consent of the District; and

WHEREAS, Assignor wishes to assign his interest in the Contract to Christopher P. Simpson, an individual doing business as Mustang Water Slides ("Assignee");

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County, Assignor and Assignee mutually covenant and agree as follows:

1. Assignor hereby assigns all his interest in the Contract to Assignee.
2. Assignor warrants that no previous assignments of the Contract have been made aside from the assignment agreed upon in Amendment No. 1.
3. The approval of this assignment by the District is subject to close of escrow between Assignor and Assignee. If escrow fails to close, this amendment shall be null and void.
4. District and Assignee agree that second extension of the term of this contract as described in Paragraph 5 of the Contract is hereby executed, and the term of the Contract is hereby extended from January 23, 2013 to January 23, 2018.
5. Assignor shall remain liable for any act, or failure to act, or any wrongdoing of Assignor, Assignor's officers, employees or agents, occurring prior to the date this Amendment No. 2 is executed by the District.
6. Assignor has disclosed all prior obligations and liabilities known to Assignor arising under prior performance of the Contract, and agrees to defend and hold Assignee and County harmless from any and all obligations and liabilities incurred prior to the execution of this Amendment No. 2, whether known or unknown, disclosed or undisclosed.

7. Assignee has reviewed the Contract, Amendment No. 1, and Memorandum of Understanding dated June 18, 2004, has had the opportunity to review the Contract with independent legal counsel, and hereby assumes all the terms, covenants, and conditions of the Contract and agrees to fully and faithfully perform all of the obligations of Concessionaire (as defined in the Contract) under the Contract.

8. Assignor hereby agrees that Assignee and District may change, modify or further amend the Contract in any way including the compensation to be paid thereunder, and that further assignments may be made without notice to or consent of Assignor. It is the intention of the undersigned parties that, with the exception of obligations and rights prior to execution of this Amendment No. 2 by the District for which Assignor shall be considered the Concessionaire, Assignee shall in all respects be treated as the Concessionaire on and after execution of this Amendment No. 2. It is the express understanding of the undersigned parties that Assignee shall not be obligated for any liabilities of or nonperformance of Assignor prior to execution of this Amendment No. 2. District, however, shall retain all rights and remedies with respect to Assignor.

9. District acknowledges and approves this assignment and agrees to be bound hereby.

/////////////////////////////////NOTHING FURTHER EXCEPT SIGNATURES PAST THIS POINT////////////////////////////////

IN WITNESS WHEREOF, District, Assignor and Assignee have executed this Amendment No. 2 to the Contract on the day and year set forth.

DISTRICT:
SAN LUIS OBISPO COUNTY BOARD
OF SUPERVISORS, ACTING IN THE
CAPACITY OF THE BOARD OF THE
SAN LUIS OBISPO COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

By: Russ S. Gilman
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors on
April 7, 2009

ATTEST:
JULIE L. RODEWALD

Clerk of the Board of Supervisors, San Luis
Obispo County Flood Control and Water
Conservation District, State of California

By: Sandy Cummings
Deputy Clerk

APPROVED AS TO FORM AND LEGAL
EFFECT:

WARREN R. JENSEN
County Counsel

BY: Rita Neal
Assistant County Counsel

DATE: 3/19/09

ASSIGNOR: PHILIP S. O'CARROLL,
AN INDIVIDUAL

By: Philip S. O'Carroll
Philip S. O'Carroll

Date: 3/24/09

ASSIGNOR: 4 TO GO, INC.

By: Philip S. O'Carroll
Philip S. O'Carroll, President

Date: 3/24/09

Corporate Certificate

I, Jean R. O'Carroll, certify that I am the Secretary of the Corporation named in the foregoing Amendment No.2; that Philip S. O'Carroll, who signed Amendment No. 2 on behalf of the corporation, was then **President** of said Corporation; and said Amendment No. 2 was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

By: Jean R. O'Carroll
Jean R. O'Carroll, Secretary
(Corporate Seal)

ASSIGNEE: CHRISTOPHER P. SIMPSON,
AN INDIVIDUAL

By: Christopher P. Simpson
Christopher P. Simpson

Date: 3/25/2009

AMENDMENT NO. 3

ASSIGNMENT OF CONCESSION SERVICES CONTRACT
Lopez Lake Recreation Area

This Amendment No. 3 is to that Contract for Concession Services ("Contract") dated June 4, 1996 and amended June 5, 2001 and April 7, 2009, entered into by and between the San Luis Obispo County Flood Control and Water Conservation District ("District") and Christopher P. Simpson, an individual doing business as Mustang Water Slides ("Assignor").

WHEREAS, on April 7, 2009, the County entered into a Contract with Assignor, for the purpose of providing non-exclusive management and concession services at the Lopez Lake Recreation Area on premises located at 6840 Lopez Drive, Arroyo Grande, CA 93420, and;

WHEREAS, Paragraph 29 of the Contract prohibits an assignment of the Contract without prior written consent of the District; and

WHEREAS, Assignor wishes to assign his interest in the Contract to CPS Amusements, Inc., a California Corporation, and Christopher P. Simpson, an individual doing business as Mustang Water Slides ("Assignee");

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County, Assignor and Assignee mutually covenant and agree as follows:

1. Assignor hereby assigns all his interest in the Contract to CPS Amusements, Inc., a California Corporation, and Christopher P. Simpson, an individual doing business as Mustang Water Slides ("Assignee"), jointly and severally.
2. Assignor warrants that no previous assignments of the Contract have been made aside from the assignments agreed upon in Amendments No.1 and 2.
3. Assignee has reviewed the Contract, Amendments No. 1 and 2, and Memorandum of Understanding dated June 18, 2004, has had the opportunity to review the Contract with independent legal counsel, and hereby assumes all the terms, covenants, and conditions of the Contract and agrees to fully and faithfully perform all of the obligations of Concessionaire (as defined in the Contract) under the Contract.
4. District acknowledges and approves this assignment and agrees to be bound hereby.

/////////////////////////////////NOTHING FURTHER EXCEPT SIGNATURES PAST THIS POINT////////////////////////////////

IN WITNESS WHEREOF, District, Assignor and Assignee have executed this Amendment No. 3 to the Contract on the day and year set forth.

DISTRICT:
SAN LUIS OBISPO COUNTY BOARD
OF SUPERVISORS, ACTING IN THE
CAPACITY OF THE BOARD OF THE
SAN LUIS OBISPO COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

By: BRUCE S. GIBSON
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors on
August 18, 2009

ATTEST:
JULIE L. RODEWALD
Clerk of the Board of Supervisors, San Luis
Obispo County Flood Control and Water
Conservation District, State of California

By: Wandy Curran
Deputy Clerk

APPROVED AS TO FORM AND LEGAL
EFFECT:

WARREN R. JENSEN
County Counsel

BY: Rita Neal
Assistant County Counsel

DATE: 8/6/09

ASSIGNOR: CHRISTOPHER P. SIMPSON,
AN INDIVIDUAL

By: [Signature]
Christopher P. Simpson

Date: 8/1/2009

ASSIGNED: CPS AMUSEMENTS, INC.

By: [Signature]
Christopher P. Simpson, President

Date: 8/1/2009

Corporate Certificate

I, Charles Simpson,
certify that I am the Secretary of the Corporation
named in the foregoing Amendment No.3; that
Christopher P. Simpson, who signed Amendment
No. 3 on behalf of the corporation, was then
President of said Corporation; and said Amendment
No. 3 was duly signed for and in behalf of said
Corporation by authority of its governing body and is
within the scope of its corporate powers.

By: [Signature]
Charles Simpson, Secretary
(Corporate Seal)

ASSIGNEE: CHRISTOPHER P. SIMPSON,
AN INDIVIDUAL

By: [Signature]
Christopher P. Simpson

Date: 8/1/2009

AMENDMENT NO. 4

**TO CONCESSION SERVICES CONTRACT
Lopez Lake Recreation Area**

This Amendment No. 4 is to that Novation Contract for Concession Services (“Contract”) dated June 4, 1996 and amended June 5, 2001, April 7, 2009, and August 18, 2009, entered into by and between the San Luis Obispo County Flood Control and Water Conservation District (“District”) and CPS Amusements, Inc., a California Corporation and Christopher P. Simpson, an individual doing business as Mustang Water Slides (“Concessionaire”).

WHEREAS, Concessionaire operates a water slide facility at the Lopez Lake Recreation Area (“Premises”); and

WHEREAS, Concessionaire and District agree that the current rental rate does not provide sufficient net income for the Concessionaire to improve the water slide facility and to improve marketing strategies to promote it; and

WHEREAS, the Contract currently terminates on January 23, 2018; and

WHEREAS, an extension of the termination date of the Contract will improve the likelihood that Concessionaire will be able to obtain business and capital improvement loans from commercial lenders; and

WHEREAS, it is in the best interest of the Concessionaire, District and the public to amend the terms of this Contract;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, District and Concessionaire mutually covenant and agree as follows:

1. Paragraph 5. Extension of Term. The following sentence is inserted after the first sentence of this paragraph:
“The Concessionaire may extend this contract for a third successive and consecutive separate term of approximately five years from January 23, 2018 to December 31, 2022.”

2. Paragraph 7a. Rental. The following language is deleted:
“10% of the first \$100,000 of annual gross receipts
12% of all over \$100,000 of annual gross receipts”

and replaced with the following:

“5% of annual gross receipts for calendar year 2013, retroactively to January 1, 2013.

6% of annual gross receipts for calendar year 2014.

7% of annual gross receipts for calendar year 2015.

8% of annual gross receipts for calendar year 2016 and thereafter.”

3. Paragraph 7b. Rental is deleted in its entirety.
4. Paragraph 8 (m). Use of Premises. The following paragraph is added at the end of the paragraph:

“Concessionaire shall comply with any County of San Luis Obispo smoking ordinance, including that which may apply to County-owned lands and parks, and may request approval of a designated smoking area by the County Public Health Director, if permitted by law.”

5. Paragraph 15. Maintenance and Use of Improvements. The following language is added at the end of the paragraph:

“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, and which is in effect during the term of this Lease. District will provide Concessionaire with a copy of the permit, upon request. Activities performed on the Premises shall conform to the permit, and Concessionaire shall adhere to Best Management Practices (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.”

6. Paragraph 16. Utilities and Services, the following language is added to the end of the first subparagraph:

“Water Usage is further clarified and agreed upon between District and Concessionaire as defined in Memorandum of Understanding dated June 18, 2004, a true and correct copy which is attached to this Contract as Exhibit C.”

7. Paragraph 21. Hold Harmless Agreement. This paragraph is deleted in its entirety and replaced with the following:

“Concessionaire shall defend, indemnify and hold harmless the County of San Luis Obispo, the District, the State of California, 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, District, State or 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, District, State or 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 Permittee is not an independent contractor.

It is the intent of the parties to provide the District, the County of San Luis Obispo, and the State of California 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.”

8. Paragraph 22. Insurance is deleted in full and replaced with the following:

“Concessionaire shall obtain and maintain insurance for the entire term of the Contract and Concessionaire shall have no access to the property under this Contract until after it has obtained insurance complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the District, and obtained District approval of all such policies. Said policies shall be issued by companies authorized to do business in the State of California, or otherwise approved by the County of San Luis Obispo Risk Manager. 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 in full force and effect for the period covered by this Contract, commercial liability insurance. 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 be in the form of Insurance Services Office (ISO) Form CG 00 01 covering commercial general liability on an "occurrence" basis for bodily injury and property damage, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 general aggregate limit, with a separate \$2,000,000 excess policy. 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 of the California Labor Code, et seq., if Concessionaire has any employees, Concessionaire is required to be insured against liability for workers' compensation or to undertake self insurance for the entire term of this Contract.

C. Additional Insureds to be Covered: The professional liability and comprehensive liability policies shall name the "County of San Luis Obispo, the San Luis Obispo County Flood Control and Water Conservation District, and the State of California, its officers and employees" 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 District, or additional insureds will be called upon to contribute to a loss hereunder.

D. Certification of Coverage: At Contract Commencement, Concessionaire shall furnish District 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 copy of the Concessionaire's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.
- (3) Upon further written request, the Concessionaire shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by the District 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, the District'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 the District with the certifications required by subparagraph (D) above, the District shall have the right, at its option, to forthwith terminate the Contract for cause.

Concessionaire shall not do, bring, or keep anything in or about the Premises that will cause a cancellation of any insurance covering the Premises, as set forth above.”

/////////////////////////////////NOTHING FURTHER EXCEPT SIGNATURES PAST THIS POINT/////////////////////////////////

IN WITNESS WHEREOF, District and Concessionaire have executed this Amendment No. 4 to the Contract as of the date last signed below.

DISTRICT:
SAN LUIS OBISPO COUNTY BOARD
OF SUPERVISORS, ACTING IN THE
CAPACITY OF THE BOARD OF THE
SAN LUIS OBISPO COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

By: Bruce S. Gilson

Acting Chairperson of the Board of Supervisors

Approved by the Board of Supervisors on

July 9, 2013

ATTEST:

JULIE L. RODEWALD

Clerk of the Board of Supervisors, San Luis Obispo County Flood Control and Water Conservation District, State of California

By: Sandy Curran
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL,
County Counsel

BY: Sham All
Deputy County Counsel

DATE: 9/30/13

CONCESSIONAIRE : CHRISTOPHER P. SIMPSON, AN INDIVIDUAL

By: [Signature]
Christopher P. Simpson

Date: 6/18/2013

CONCESSIONAIRE: CPS AMUSEMENTS, INC.

By: [Signature]
Christopher P. Simpson, President

Date: 6/19/2013

Corporate Certificate

I, CHRIS SIMPSON,
certify that I am the Secretary of the Corporation named in the foregoing Amendment No.4; that Christopher P. Simpson, who signed Amendment No. 4 on behalf of the corporation, was then **President** of said Corporation; and said Amendment No. 4 was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

By: [Signature], Secretary
(Corporate Seal)

Exhibit "C"

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is entered into this 18th day of June, 2004, by and between the SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ("District" or "County") and 4 TO GO, INC., a California corporation ("Concessionaire").

RECITALS

WHEREAS, the County and Concessionaire entered into a Contract dated May 21, 1996 and amended June 5, 2001 for the purpose of providing non-exclusive management and concession services at the Lopez Lake Recreation Area; and

WHEREAS, Paragraph 16 of the Contract states "District shall pay all water charges not to exceed 120% of past District costs, in connection with Concessionaire's use of the Premises. The year of 1996 shall be used as a baseline. In the event construction or expansion significantly alters the Concessionaire's water usage, District and Concessionaire may amend this paragraph to reflect such changes"; and

WHEREAS, the water meter for the Premises was inadvertently not read during 1996, thus losing the data to establish the baseline; and

WHEREAS, the meter had been read 1983 through 1994, with an average usage of 4.6 acre feet per year; and

WHEREAS, the meter had been read 1997 through 2003, with an average usage of 8.4 acre feet following Concessionaire's expansion of the facilities; and

WHEREAS, Concessionaire acknowledges that charges for water exceeding 120% of the baseline would have been payable to the District, but such charges are unable to be calculated; and

WHEREAS, District's cost of supplying water to the Lopez Lake Recreation Area was \$1,960 per acre foot during Fiscal Year 2002-03; and

WHEREAS, the District's cost of supplying water to the Lopez Lake Recreation Area is difficult to forecast; and

WHEREAS, the purpose of the Memorandum is to clarify a baseline for water usage and to establish how future water usage will be calculated;

NOW, THEREFORE, the DISTRICT and CONCESSIONAIRE memorialize their understandings as follows:

AGREEMENT

1. Baseline: The 1996 baseline for the purposes of this Contract shall be 4.6 acre feet.
2. Water Usage: Concessionaire shall be entitled to use 5.5 acre feet (120% of 4.6 acre feet) before incurring water charges for District's cost of water.
3. Water Measurement: Water usage will be determined by reading the water meter on or about January 1st each year. Water usage exceeding 5.5 acre feet shall be paid by Concessionaire to County within 30 days of receipt of notice.
4. Water Cost 2004: Water cost for 2004 shall be based on District's costs for Fiscal Year 2003-04, which is \$1,960 per acre foot.
5. Future Water Cost: At District's option, District's actual water cost *may* be calculated following the end of each fiscal year for the period of July 1st through June 30th and may be used to determine cost of water usage over baseline for the following calendar year. In lieu of calculating the District's actual cost to provide water each year, however, District may elect to determine water cost per acre-foot based on a CPI increase from the prior year's rate. Beginning January 1, 2005, and every subsequent annual anniversary date thereafter, the preceding year's water cost shall be adjusted upward according to either the percentage rise in the Consumer Price Index (CPI) or the District's actual cost of water. 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 water cost per acre-foot will not be adjusted.

County will provide written notice to Concessionaire of adjusted water cost on an annual basis. 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 Concessionaire. If County and Concessionaire 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 its successor.
6. Concessionaire agrees to resurface with Guard Top and to re-stripe the parking lot across from the Mustang Waterslides as identified in Exhibit A" to specifications acceptable to County.

7. In consideration of the terms of this Memorandum of Understanding, District agrees to waive the collection of water overage fees due from Concessionaire through December 31, 2003.
8. Notices. Any notices to be delivered on matters pertaining to this Memorandum shall be addressed as follows:

If to County of San Luis Obispo:

Department of General Services
1087 Santa Rosa Street
San Luis Obispo, CA 93408
Attn: Caryn Maddalena, Property Manager

If to Concessionaire:

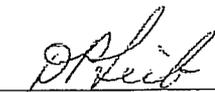
Mustang Waterslides
P. O. Box 7109
Los Osos, CA 93412
Attn: Philip O'Carroll

9. Entire Agreement. This Memorandum contains all representations and the entire understanding and agreement between the parties on this matter. In no event shall this Memorandum be altered or modified except by writing, signed by all parties hereto, specifically stating that it is intended to alter or modify the terms and conditions of this Memorandum.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first referenced above.

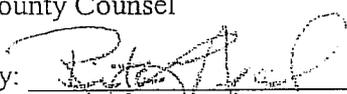
COUNTY OF SAN LUIS OBISPO,
ON BEHALF OF THE SAN LUIS OBISPO
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT

4 TO GO, INC., A CALIFORNIA
CORPORATION

BY: 
Duane Leib
General Services Director

BY: 
Philip S. O'Carroll

APPROVED AS TO FORM AND LEGAL EFFECT:
JAMES B. LINDHOLM, JR.
County Counsel

By: 
Deputy County Counsel

Date: 6/10/04

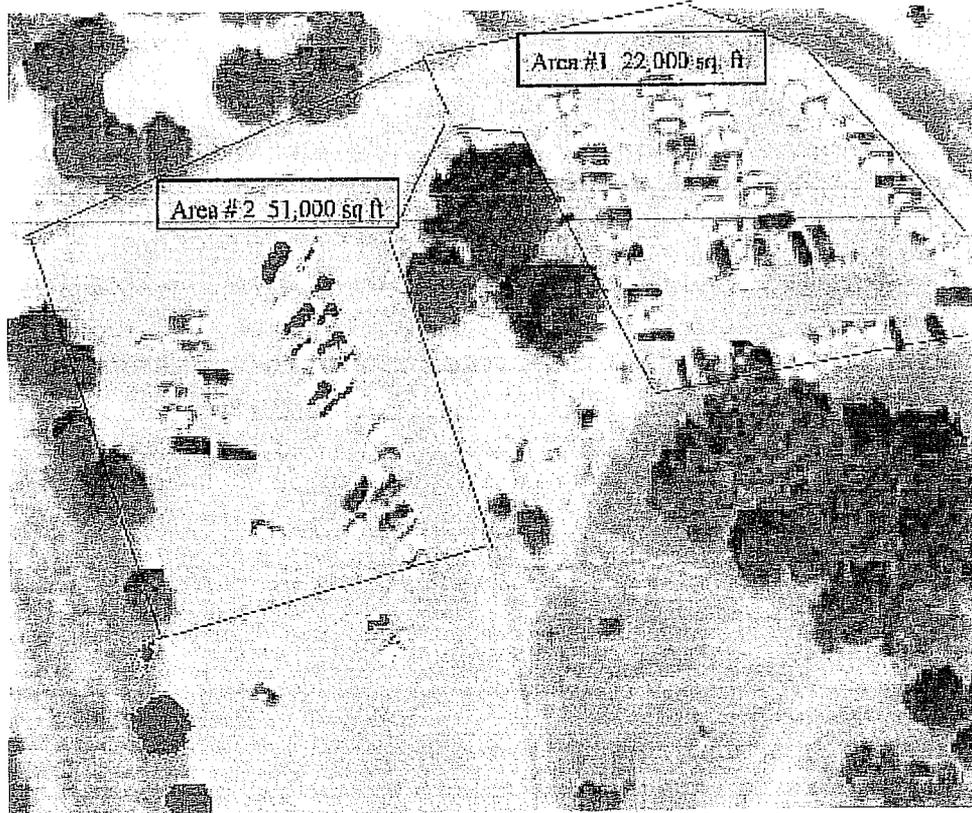


Figure 1 Outlined indicates area of proposed Guard Top resurfacing, and parking lot striping.

Exhibit "A"

10/17/2018 10:00 AM

CONDITIONAL ASSIGNMENT
OF CONCESSION SERVICES CONTRACT

This Conditional Assignment of Concession Services Contract (“Contract”) is made between the San Luis Obispo County Flood Control and Water Conservation District (“District”); Christopher P. Simpson (“Assignee”), and 4 To Go, Inc., a California corporation, and Philip S. O’Carroll, an individual, doing business as Mustang Water Slides (“Assignor”), who agree as follows:

1. Recitals. This Conditional Assignment of Concession Services Contract is made with reference to the following facts and objectives: Assignee has purchased from Assignor the business known as the Mustang Water Slides, located at 6840 Lopez Drive, Arroyo Grande, California 93420, which real property is owned by the District. It is the desire and intent of the parties to provide Assignor with additional security for a promissory note executed in favor of Assignor by Assignee as part of the purchase price of the business.

2. Default of Assignee's Obligations to Assignor. The parties acknowledge that part of the consideration given by Assignee to Assignor for the purchase of the business assets referred to hereinabove is a promissory note from Assignee payable to Assignor. Further, said note is secured by a security agreement covering the assets of that certain business presently known as MUSTANG WATER SLIDES, which is operated on the Concession premises.

By this agreement Assignee agrees to immediately reassign the Assignee's interest in the Contract to Assignor in the event of a default of the Assignee's obligations under the promissory note or the security agreement, or in the event that Assignee files for bankruptcy. County hereby recognizes and consents to Assignor's right to retake the premises upon the Assignee's default, and County will allow Assignor to take over the concession contract and resume control of the

premises as if this assignment had not taken place. In taking any action under the paragraph, Assignee agrees that County shall be indemnified and held harmless from all costs and damages resulting from any such action.

3. Miscellaneous.

a. Attorney's Fees. If Assignor or Assignee commences an action against each other arising out of or in connection with this Assignment of Contract, the prevailing party or parties shall be entitled to recover from the losing party or parties reasonable attorney's fees and costs of suit.

b. Notice. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below:

District : San Luis Obispo County Flood Control and Water Conservation District

c/o County Real Property Manager, General Services Agency,

County of San Luis Obispo, 1087 Santa Rosa Street, San Luis Obispo, CA 93408

Assignee: Christopher P. Simpson, 542 Sombrillo, Arroyo Grande, CA 93420

Assignor: Philip S. O'Carroll and 4 To Go, Inc, PO Box 7109, Los Osos, CA 93412.

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 96 hours from the time of mailing if mailed as provided in this paragraph.

c. Successors. This assignment shall be binding on and inure to the benefit of the parties and their successor.

/////////////////////////////////NOTHING FURTHER EXCEPT SIGNATURES PAST THIS POINT////////////////////////////////