

CONCESSION LEASE AGREEMENT
FOR FLEMING MEADOWS RECREATION AREA, DON PEDRO PROJECT
LOCATED IN
TUOLUMNE COUNTY, CALIFORNIA

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LIST OF EXHIBITS

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| Exhibit A | Lake Don Pedro Marina Concession Area Map |
| Exhibit B | Lake Don Pedro Marina Concession Lease Agreement Boundary |
| Exhibit C | Performance Bond |
| Exhibit D | Preliminary Schedule and Estimated Costs for Property |
| Exhibit E | Lake Don Pedro Marina Fixed Fee Schedule |

CONCESSION LEASE AGREEMENT
FOR FLEMING MEADOWS RECREATION AREA, DON PEDRO PROJECT
LOCATED IN
TUOLUMNE COUNTY, CALIFORNIA

THIS AGREEMENT ("Agreement"), entered into in Stanislaus County, California, and made and executed in five originals on March 20, 2001, by and between the TURLOCK IRRIGATION DISTRICT and the MODESTO IRRIGATION DISTRICT, hereinafter referred to collectively as the DON PEDRO RECREATION AGENCY or "Agency" and Lake Don Pedro Marina, L.L.C., a Limited Liability Company, hereinafter referred to as "Concessionaire".

1. LEASE TERMS.

1-1. DESCRIPTION OF CONCESSION AREA.

1-1.01. Grant to Concessionaire. Agency grants to Concessionaire the right to develop, operate, and maintain for the convenience and safety of the public the concession area defined in Exhibits A and B which are attached hereto and incorporated herein by reference ("Concession Area").

- a. Fleming Meadows: The concession shall be located at the Fleming Meadows location so long as the lake level remains at or above a sufficient level for the concession to operate at the standards required by this Agreement.
- b. Lowest Water Level Location: If the lake level should drop below the Fleming Meadows area rendering it unusable, the Concessionaire would be permitted to move the installation to a location approved by the Agency as would be necessary to maintain protective buoyancy, solely to protect the facilities and then only for the duration of such low levels.
- c. Concessionaire acknowledges that the primary purpose of Don Pedro Lake waters are for irrigation and power generation. Agency has no obligation to maintain the water at any particular level nor to consider the interests of the Concessionaire when altering the water level.
- d. Blue Oaks: A boat repair shop/yard and dry storage area.

1-1.02. Ownership of Trading Post Facility and Swimming Lagoon Snack Shack.

- a. Concessionaire recognizes the Agency's ownership of the Trading Post and Snack Shack buildings and the equipment housed in those structures as listed below:

1. Trading Post structure, including all wiring, plumbing, decking, furnace, outside lighting, air conditioning, and inside countertops.
2. Snack Shack structure, including plumbing, wiring, and countertops.

b. The Trading Post and Snack Shack shall be part of the Concession Area and shall be operated and maintained, at Concessionaire's expense, to the standards required in this Agreement. Any Agency owned equipment housed in these structures shall be maintained, at Concessionaire's expense, to the standards required in this Agreement through its useful life, and then replaced, at Concessionaire's expense, with equipment of a grade that is equal to or better than the previous equipment, unless otherwise agreed to by the parties. Agency shall maintain ownership of the new equipment.

1-1.03. Exclusive Concession Rights. Concessionaire shall have the exclusive use of the property within the Concession Area for the authorized concession activities set forth herein.

1-2. TERM.

1-2.01. Term of Agreement. The term of this Agreement shall be for a period of thirty (30) years, commencing on the first day of the month following final Agency approval, and only so long as the Don Pedro Project continues to be licensed to the Districts by the Federal Energy Regulatory Commission. The current Don Pedro Project License is scheduled to terminate in the year 2016.

1-2.02. Option to Extend Term. Concessionaire is given the option to extend the term for a period of ten (10) years, so long as the Don Pedro Project continues to be licensed to the Districts by the Federal Energy Regulatory Commission, upon such conditions as may be mutually agreed upon by the parties, by giving written notice of exercise of the option to Agency at least six (6) months but not more than five (5) years before the expiration of the term.

1-2.03. Concessionaire Unable to Operate. In the event Concessionaire believes it is unable to feasibly operate its business as set forth herein due to government control, restriction, or failure to have use of the necessary ancillary facilities, such as, but not limited to, adequate utilities, waste disposal, ground access, or use of products required for business operations, the Parties agree to negotiate appropriate amendments to this Agreement. If the Parties fail to reach an agreement, the Parties agree to arbitrate under section 1-14 of this Agreement

with the intent to retain the balance of rights and duties set forth in this Agreement.

1-3. CONCESSION FEE.

1-3.01. Concession Fee Rate.

a. Concessionaire shall pay to Agency a sum equal to five percent (5%) of Concessionaire's annual Gross Receipts as defined in section 1-3.03, made from or upon the Concession Area during each concession year, except that Concessionaire shall pay Agency two percent (2%) for all sales of merchandise having a single value in excess of \$4,000.00.

b. The concession fee shall be computed each concession fee period. On or before the last day of the calendar month immediately following the close of each monthly concession fee period, Concessionaire shall pay to Agency the amount computed as the concession fee percentage of Concessionaire's Gross Receipts during the concession fee period.

c. Within sixty (60) days after the end of each concession year, Agency shall determine the amount of concession fees based on the Gross Receipts of Concessionaire during the concession year and the sums paid to Agency as concession fees for the concession year. If Concessionaire has paid to Agency an amount of concession fees greater than the concession fees it is in fact obligated to pay for the concession year as determined in this paragraph, the excess so determined shall be applied against the next concession fees due to Agency, except that if any unused excess exists at the expiration or termination of the term, as such term may be extended, the sum of the unused excess shall be paid by Agency to Concessionaire. If Concessionaire has paid to Agency an amount of concession fees less than Concessionaire is required to pay, Concessionaire shall immediately pay the difference to Agency.

d. Payments to Agency shall be made to the order of the Turlock Irrigation District, P. O. Box 949, Turlock, California 95381, or its designated successor.

1-3.02. Concession Fee Period; Accounting Periods Defined.

a. The concession fee period shall be monthly. The last concession fee period shall end on the date the term, as such term may be extended, expires or terminates.

b. A "concession year" is a calendar year, except that the first concession year shall commence on the date the term commences and last concession year shall end on the date the term, as such term may be extended, expires or this Agreement is terminated.

c. "Monthly" concession periods are calendar months within each concession year, except that the first monthly rent period shall commence on the date the term commences and the last monthly concession period shall end on the date the term, as such term may be extended, expires or this Agreement is terminated.

1-3.03. Gross Receipts Defined.

a. "Gross Receipts" of Concessionaire means the gross selling price of all merchandise or services sold, leased, licensed, or delivered in or from the Concession Area or within the Don Pedro Project boundaries by Concessionaire whether for cash, property, or any other thing of value, or on credit (whether collected or not), including the gross amount received by reason of orders taken within the Concession Area although filled elsewhere, other than houseboats that are to be moored off Don Pedro Lake, and whether made by Concessionaire personnel or vending machines. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at time of transaction, irrespective of the time of payment or when title passes. Gross Receipts also shall include any sums that Concessionaire receives from pay telephones, stamp machines, music machines, amusement machines, or the like, permitted by Agency.

b. Gross Receipts shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:

(1) The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise or rentals, and any amounts attributable to no shows, non-collectibles, bad debts, and food and lodging provided to employees of the Concessionaire.

(2) Sales and use taxes, so-called luxury taxes, consumers' excise taxes, Gross Receipts taxes, state gasoline taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price of merchandise or services, and collected from customers.

(3) Any sum paid to the State of California representing proceeds from the sale of hunting and fishing licenses. Any commissions or fees received by Concessionaire for selling such licenses are included in Gross Receipts.

(4) Any revenue that is received from the Agency for goods and services sold to the Agency at Concessionaire's cost.

1-3.04. Statement of Gross Receipts.

a. Concessionaire shall furnish to Agency a statement of Concessionaire's Gross Receipts in the format specified by the Agency within thirty (30) days after the end of each monthly concession fee period, and an annual statement of Gross Receipts within sixty (60) days after the end of each concession year. Each statement shall be signed and certified to be correct by Concessionaire or its authorized representative, and if Concessionaire is a corporation the statement shall be signed and certified to be correct by an officer of Concessionaire.

b. Concessionaire shall keep at the Concessionaire's home office full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Receipts. Concessionaire shall install and maintain at its own expense accurate receipt-printing cash registers as may be deemed necessary by Agency. Such cash registers shall use and contain continuous registering tape. Such books of account, records, cash receipts, and other pertinent data shall be kept for the most recent seven years up until one year after the expiration or termination of this Agreement. The receipt by Agency of any statement, or any payment of concession fees for any period, shall not bind Agency as to the correctness of the statement or the payment.

c. Agency shall be entitled during the term and within one (1) year after expiration or termination of this Agreement to inspect and examine all Concessionaire's books of account, records, cash receipts, and other pertinent data. Concessionaire shall cooperate fully with Agency in making any such inspection. Agency shall also be entitled, once during each concession year and once after expiration or termination of this Agreement, to an independent audit of Concessionaire's books of account, records, cash receipts, and other pertinent data by a certified public accountant to be designated by Agency. The audit shall be conducted during usual business hours at Concessionaire's home office. If the audit shows that there is a deficiency in the payment of any concession fee, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by Agency unless the audit shows that Concessionaire understated Gross Receipts by more than three and one half percent (3.5%) in any concession year, in which case Concessionaire shall pay all Agency's costs of the audit.

1-4. TAXES. Concessionaire agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, Tuolumne County or any other tax or assessment levying body upon any interest in this Agreement or any possessory right which Concessionaire may have in or to the Concession Area covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the Concession Area.

1-5. INDEMNITY; INSURANCE; WAIVER OF CLAIMS.

1-5.01. Indemnification and Hold Harmless.

Concessionaire agrees to indemnify, defend and hold harmless Agency, its governing board and its members, their directors, officers, employees, agents and representatives, and each of them, from and against any and all liabilities [actual or threatened], claims, actions, judgments, orders, damages [including, without limitation, foreseeable and unforeseeable consequential damages], costs, expenses, fines, penalties, and losses [including, without limitation, court costs, attorneys fees and sums paid in settlement of claims], and all consultants, experts, and legal fees and expenses [including, without limitation, all investigative costs] and all other losses or damages of any kind [including, without limitation, liability resulting from any injury or death of persons or damage to property of Concessionaire or any other person or to natural resources] to the extent such liabilities, claims, actions, judgments, orders, damages, costs, expenses, fines, penalties, and losses are attributable to Concessionaire's actions or failure to act.

Upon identifying any matter or incident to which this indemnity may apply or receiving a notice or claim from any third party of such matter or incident, Concessionaire shall notify Agency in writing of such matter or incident within twenty days.

Concessionaire's obligation to indemnify shall survive the expiration or termination of this Agreement. Concessionaire's covenants to indemnify Agency are not intended to and shall not be interpreted in any manner that limits Concessionaire's insurance obligations nor the obligations of any insurance carrier under the policies required to be carried by this Agreement.

1-5.02. Insurance.

Concessionaire shall at Concessionaire's sole cost and expense, without limiting any of its other obligations or liabilities, maintain in effect at all times

after the execution of this Agreement not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to Agency.

A. Workers' Compensation

Workers Compensation Insurance as required by the State of California including Employers Liability limits of not less than one million dollars (\$1,000,000) per occurrence.

B. Commercial General Liability or Comprehensive General Liability

Commercial General Liability or Comprehensive General Liability Insurance which shall include, but not necessarily be limited to, coverage for premises and operations, contractual liability, personal injury liability, products/completed operations for the term of the Agreement, broad form property damage and independent contractors, in an amount not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage, two million dollars (\$2,000,000) aggregate. Such insurance shall specifically insure the performance by Concessionaire of the indemnity agreement set forth herein.

C. Business Automobile

Business Automobile or Comprehensive Automobile Insurance including, as applicable, owned, non-owned, and hired motor vehicles, in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit of bodily injury and property damage. If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.

D. Umbrella or Excess Liability

Umbrella or Excess Liability Insurance in an amount not less than five million dollars (\$5,000,000) over and above the underlying limits with the Umbrella or Excess exclusions and conditions substantially similar to the underlying policies.

E. Fire Insurance

Fire insurance with extended coverage endorsements on all Concessionaire improvements in an amount equal to ninety percent (90%) of the full

replacement cost and/or value thereof. The policy shall contain a replacement cost endorsement naming Concessionaire as the insured, provided, however, that if there is a lender on the security of the improvements so insured, the proceeds of any such policy or policies may be made payable to such lender. In either case, whether proceeds are paid to Concessionaire or to lender, the policy shall contain a special endorsement that such proceeds shall be used to repair or rebuild any Concessionaire improvements so damaged or destroyed.

F. Environmental Impairment Liability Insurance

Environmental Impairment Liability Insurance which shall include, but not necessarily be limited to, coverage for bodily injury, property damage, cost of defense, and on-site and off-site cleanup of Hazardous Materials and Substances, in an amount not less than two million dollars (\$2,000,000).

1-5.03. Insurance Policy Form.

All policies of insurance provided for herein shall be issued by insurance companies with a general policy holder rating of not less than A and a financial rating of not less than Class VIII as rated in the most current available "Best's Key Rating Guide," and shall be acceptable to the Agency. All such policies shall be issued in the name of Concessionaire with Agency named as an additional insured. All policies shall be for the mutual and joint benefit and protection of Agency and Concessionaire. All policies of insurance shall contain the following special endorsements:

1. "The Turlock Irrigation District and Modesto Irrigation District, the City and County of San Francisco, and Don Pedro Recreation Agency, their governing boards, directors, officers, employees, agents and representatives are hereby declared to be additional insureds under the terms of this policy, both as to the activities of the Concessionaire and as to the activities of the said insureds as related to the concession activity described herein."

2. "This insurance shall be primary insurance as respects the interests of the additional insureds and any other insurance maintained by the additional insureds shall be excess and not contributing insurance with this insurance."

3. "This insurance policy shall not be terminated, canceled or coverage reduced without thirty (30) days prior written notice to the Agency. The Agency is not liable for the payment of premiums or assessments on this policy."

All policies of insurance shall also contain provisions or endorsements stating that such insurance applies to the liability assumed by Concessionaire under this Agreement, including without limitation that set forth in 1-5.01, Indemnification and Hold Harmless, and that such insurance applies separately to each insured against whom claim is made or suit is brought, except with regards to the limits of the insurer's liability.

No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Concessionaire to furnish insurance during the term of this Agreement. Said policy or policies shall be underwritten to the satisfaction of Agency. Signed complete duplicate policies shall be submitted to Agency concurrently with the execution of this Agreement. Signed complete duplicate policies showing that such insurance coverage has been renewed or extended shall also be filed with Agency. A certificate of memorandum of insurance does not, for Agency purposes, constitute a signed complete duplicate. Executed copies of renewal policies or certificates thereof shall be delivered to Agency within thirty (30) days after the renewal of the term of each such policy. All policies shall contain a provision that Agency, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees. The policies shall contain no special limitation on the scope of protection afforded to Agency, its governing board, directors, officers, employees, agents or representatives, or any of them. Any failure with reporting provisions of the policies, including breaches or warranties, shall not affect the indemnity or other obligations of Concessionaire to the Agency under the terms of this Agreement.

Any deductible and/or self-insured retention must be declared to and approved by Agency. Agency reserves the option to: (1) require the Concessionaire to reduce or eliminate such deductible or self-insured retention as to Agency, or (2) require Concessionaire to procure a bond guaranteeing the payment of any deductible or self-insured retention of losses, related investigations, claims administration and defense expenses.

The foregoing requirements as to the types, limits and Agency's approval of insurance coverages to be maintained by Concessionaire are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under the Agreement.

1-5.04. Additional Insurance.

If Agency reasonably concludes, justified by the industry standards, that the amounts of coverage required by Paragraph 1-5.02 are no longer adequate,

then Concessionaire shall increase or obtain the insurance coverage required by Agency.

1-5.05. Failure to Provide Required Insurance.

Concessionaire agrees that if Concessionaire fails to provide the insurance required with evidence thereof to Agency, then Agency, in addition to any other remedies, may obtain such insurance at Concessionaire's sole cost and expense and Concessionaire agrees to reimburse Agency for such insurance, within ten (10) days after Agency sends Concessionaire notice thereof.

1-5.06. Agency's Title to Real Property. Concessionaire acknowledges the jurisdiction and title of Agency to all roads leading to the lake and marina, and to the Concession Area, excepting removable improvements owned by Concessionaire, and Concessionaire agrees never to contest said title in any court or administrative proceeding.

1-6. ENVIRONMENTAL COMPLIANCE.

1-6.01. Compliance with Environmental Laws. It is the intent of both Agency and Concessionaire, and Concessionaire hereby agrees, that Concessionaire shall at all times be responsible and liable for, and shall be in complete compliance with all governmental laws, ordinances, rules and regulations, licenses, permits, orders, approvals, plans, authorizations, and similar items, and all applicable judicial, administrative and regulatory decrees, judgments and orders (all collectively referred to herein as "laws"), present and future; relating to environmental protection, Environmental Matters, and Industrial Hygiene, directly or indirectly affecting the use, occupancy, enjoyment or operation of the concession area being used or having been used ("Premises"). "Governmental" as used herein shall include, without limitation, federal, state, and local governments, and political subdivisions and agencies, departments, commissions, boards, bureaus and instrumentalities of the federal, state and local governments. "Hazardous Materials" as used herein shall include, without limitation, whether now or subsequently listed in any Governmental listing or publication defining hazardous materials, common household items containing substances now or subsequently listed as a hazardous material or substance, chemicals, drugs, any materials used for laboratory analysis, nuclear and/or radioactive materials, toxic substances, Hazardous Substances ("Hazardous Substance" means any substance, material or waste [including petroleum and petroleum products] which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant," or which is or becomes similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance), hazardous wastes, contaminated or polluting

substances, materials or waste. "Environmental Matters" and "Industrial Hygiene" shall include, without limitation, any matter which affects the environment or which may affect the environment, the use of sophisticated electrical and/or mechanical equipment, chemical, electrical, radiological or nuclear processes, radiation, sonar and sound equipment, use of lasers, and laboratory analysis and materials. As between Concessionaire and Agency, Concessionaire shall be deemed to be (1) the person in control, (2) an operator of the Premises, and (3) the person in charge with respect to the Premises for purposes of reporting requirements under "The Comprehensive Environmental Response, Compensation and Liability Act of 1980" ("CERCLA") and as amended by the "Superfund Amendments and Reauthorization Act of 1986" ("SARA"), any subsequent amendments thereto, or replacement statutes or ordinances, any rules and regulations enacted with respect to CERCLA and SARA, and any state or local laws with respect to environmental protection, Environmental Matters, and Industrial Hygiene.

Concessionaire further agrees, at its sole expense, to procure, maintain in effect, and comply with all conditions of any and all permits, licenses, approvals, authorizations and similar items required by Governmental agencies for Concessionaire's use of the Premises. Concessionaire shall, prior to any use of the Premises affecting Industrial Hygiene or involving the use of Hazardous Materials or Substances, in, on or under the Premises, notify Agency of the intended use of such Hazardous Materials or Substances and provide Agency evidence of compliance with all Governmental agencies and laws pertaining to such use. Concessionaire shall in all respects handle, treat, deal with and manage any and all Hazardous Materials and Substances in, on, under or about the Premises in total conformity with all applicable Governmental laws, relating to Hazardous Materials and Substances, environmental protection, and Industrial Hygiene.

1-6.02. No Hazardous Materials or Substances on Premises. Except to the extent commonly and lawfully used in the day-to-day operation of the Premises, Concessionaire shall not cause, permit or suffer any Hazardous Materials or Substances to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Premises or any portion thereof by Concessionaire, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of Agency. Any request by Concessionaire shall be in writing and shall demonstrate to the reasonable satisfaction of Agency that such Hazardous Materials or Substances are necessary to the business of Concessionaire and will be stored, used and disposed of in a manner that complies with all laws applicable to such Hazardous Materials and Substances. Such consent shall not be unreasonably withheld, but Agency shall in no case be

obligated to consent to the presence of any Hazardous Materials or Substances which will increase the likelihood or magnitude of liability for environmental damages or to any treatment, storage or disposal of which requires a permit or variance under the Federal Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), or state analogues thereto, and Concessionaire shall in no case be obligated to execute any application for such a permit or variance.

1-6.03. Concessionaire's Duty to Monitor; Disposal of Oil and Batteries. Concessionaire agrees to monitor the Concession Area to ensure compliance with environmental laws. Concessionaire shall, at its own cost, provide and maintain used oil recycling and battery disposal facilities.

1-6.04. Notice to Agency. Concessionaire shall not take any remedial action in response to the presence of Hazardous Materials or Substances in, on, under, or about the Premises, nor enter into any settlement agreement, consent decree or other compromise in respect to any investigations, claims or proceedings relating to Hazardous Materials or Substances in any way connected with the Premises, without first notifying Agency of Concessionaire's intention to do so and affording Agency a reasonable opportunity to appear, intervene or otherwise appropriately assert Agency's interest with respect thereto.

1-6.05. Environmental Assessment by Agency. At any time that Agency, in Agency's sole discretion, has reason to believe that any adverse environmental condition may be present on the Premises, Agency may conduct an environmental assessment of the Premises. If an adverse environmental condition is found on or about the Premises and is attributable to the acts or omissions of Concessionaire and/or its Authorized Representatives, and/or to events occurring within the Premises during the Term, Concessionaire shall immediately reimburse Agency for Agency's expenses in conducting the environmental assessment, in addition to Concessionaire's indemnification obligations with respect to the environmental condition as described in this Agreement.

1-6.06. Environmental Assessment by Concessionaire. Upon execution of this Agreement and every two years from the anniversary date of this Agreement, Concessionaire shall at its sole cost and expense engage a licensed certified Environmental Consultant acceptable to Agency to perform an environmental assessment of the Premises. The Environmental Consultant shall prepare a report of its assessment and the report shall be submitted to Agency within ten (10) days of its completion. The initial assessment and report shall be completed not later than sixty (60) days after execution of this Agreement and each assessment and report thereafter shall be completed not later than sixty (60) days after each applicable anniversary date. Each assessment and report must

adequately assess and report on the presence or non-existence of Hazardous Materials or Substances within the entire Concession Area. In addition, Concessionaire shall perform, or have performed at its cost and expense, any environmental assessments or other investigation of the Premises that may be required by any Governmental agency.

1-6.07. Environmental Remediation. In the event an environmental assessment or investigation discloses any condition reasonably related to Concessionaire's use of the Premises that requires remediation, Concessionaire shall, at its sole cost and expense, promptly take all actions to remediate the Premises which are required by any Governmental agency or which are reasonably necessary to mitigate the condition or to allow full economic use of the Premises. Such actions shall include but not be limited to preparation of a remedial action plan by the Environmental Consultant designed to correct all conditions of the property. Any proposed remedial action plan shall be submitted for approval to all Governmental agencies that have jurisdiction and also submitted to Agency for Agency's approval, which approval shall not be unreasonably withheld.

If Agency disapproves of any proposed Remediation Plan, Agency shall provide a written disapproval within sixty (60) days of Concessionaire's submittal to Agency. In the event Agency reasonably disapproves of the proposed Remediation Plan, the Concessionaire shall submit a revised Remediation Plan to Agency for approval pursuant to the terms of this section.

Upon approval of the Remediation Plan by Agency and Governmental agencies with jurisdiction over the Premises, Concessionaire shall remediate contaminants in accordance with the Remediation Plan. In addition Concessionaire shall conduct any necessary cleanup operations to remove hazardous waste contaminants or other contaminants that are attributable to Concessionaire's use occupancy or enjoyment of the Premises (including cleanup of groundwater) to levels acceptable by all appropriate Governmental agencies, and provide Agency with written certification thereof. Agency's approval shall not be deemed to create any obligation or responsibility on the part of Agency or to release Concessionaire from any obligation, responsibility or liability under this Agreement.

Concessionaire shall keep Agency fully informed of the status of all remedial actions taken and shall provide Agency with copies of all environmental tests, reports, correspondence and other documents delivered to and received from any Governmental agency, Environmental Consultant or other firm that views, inspects or performs work on site. Agency shall have the right to join and participate in, as a party if it so elects, any negotiations, settlements, remedial actions, legal proceedings or actions initiated in connection

with any investigations, claims or proceedings concerning the Premises or the Remediation Plan; provided, however, that Concessionaire may amend the Remediation Plan without the approval of Agency in the event any Governmental agency requires such modification of the Remediation Plan.

Concessionaire shall provide Agency with a copy of a written remediation report from the approved Environmental Consultant sent to the appropriate Governmental agency or agencies certifying that the levels of contamination are within acceptable levels. Concessionaire's final remediation report shall be submitted to Agency for approval in accordance with the procedures set forth for the Remediation Plan.

1-6.08. Additional Indemnity Regarding Hazardous Materials and Substances. In addition to the indemnity provisions of section 1-5.01, Agency and Concessionaire also agree that with regard to any and all matters that relate to Hazardous Materials and Substances on the Premises and remediation and cleanup by the Concessionaire, the following specific indemnity and notice provisions shall apply.

a. Concessionaire shall defend, indemnify and hold Agency, its governing board, its members, their directors, officers, employees, agents, and representatives, and each of them harmless from any and all liability [actual or threatened], claims, actions, administrative proceedings, judgments, orders, damages [including, without limitation, foreseeable and unforeseeable consequential damages], costs, expenses, Governmental charges, fines, penalties and losses [including, without limitation, sums paid in settlement of claims] and all consultant, expert and legal fees and expenses [including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether of the property or Premises, or any other property], or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources, arising directly or indirectly out of or in connection with the violation of any laws relating to environmental protection, Environmental Matters or Industrial Hygiene, or any provision of this section 1-8, or the use, transportation, generation, storage, and/or disposal of Hazardous Materials and Substances by Concessionaire in, on, under, or about the Premises during Concessionaire's occupancy of the Premises, and arising out of or in connection with any Hazardous Materials or Substances being present in, on or around any part of the Premises, or in the soil, groundwater or soil vapor on or under the Premises. This obligation shall include, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans whether such action is required or necessary prior to or following the termination of this Agreement. Neither the written consent by Agency to the use, generation, storage, or disposal

of Hazardous Materials and Substances nor the strict compliance by Concessionaire with all laws and precautions pertaining to Hazardous Materials and Substances shall excuse Concessionaire from Concessionaire's obligation of indemnification pursuant to this section or section 1-5.01.

In addition, Concessionaire shall defend and indemnify and hold Agency, its governing board, its members, their directors, officers, employees, agents, and representatives, and each of them, harmless from any and all costs, expenses and damages, including clean up and remediation costs and expenses, fines and penalties arising from Concessionaire's failure to perform completely its clean up and remediation obligations set forth herein.

b. Agency and Concessionaire shall each promptly notify the other if either knows or has reason to know, suspects or believes that there may be any Hazardous Materials or Substances in, on, or around the Premises, or in the soil, groundwater or soil vapor on or under the Premises, or that Agency, Concessionaire or the Premises may be in violation of or subject to any threatened or pending investigation, inquiry, claim, proceeding, notice or order by any Governmental agency or any other person under any law pertaining to any Hazardous Materials or Substances.

1-7. PERFORMANCE BOND.

1-7.01. Performance Bond. So long as Concessionaire provides the Environmental Impairment Liability Insurance coverage as required by Section 1-5.02F, Concessionaire is not required to provide the Performance Bond under this Section 1-7.01. Otherwise, Concessionaire agrees to secure and maintain from the date the Concessionaire cannot comply with Section 1-5.02F and until such time as Agency has received certification from all appropriate Governmental agencies that remediation pursuant to section 1-6 has been completed, a performance bond or other form of surety in the amount of Two Hundred Thousand and NO/100 Dollars (\$200,000.00), which amount shall apply toward covering necessary clean up operations to remove hydrocarbons and/or Hazardous Materials or Substances that are directly attributable to Concessionaire's tenancy as described in section 1-6 herein. Such bond shall be in substantially the form prescribed by Agency and attached as Exhibit C to this Agreement and hereby incorporated by reference. Such bond shall be separate and apart from any other bond Concessionaire may provide to the Agency. Concessionaire may propose another form of surety which provides the same amount of security as a performance bond. Approval of such other form of surety shall be in the sole discretion of the Agency. Such bond or other form of surety shall be delivered to Agency not later than the date the Concessionaire can no longer comply with Section 1-5.02F, and maintained in Agency's possession at

all times during the term of this Agreement. If Concessionaire has unreasonably delayed or failed to perform all required remediation provided for in the Remediation Plan as described in sections 1-6 and 1-12.02, Agency may redeem the performance bond or other form of surety. Notwithstanding this form of surety, the amount of such surety does not fix the Concessionaire's maximum financial responsibility for any cleanup that is required pursuant to sections 1-6 and 1-12.02.

1-8. ASSIGNMENT AND SUBLEASE.

1-8.01 Agency Approval for Transfer or Assignment. Except as provided in section 1-8.02, no transfer or assignment by Concessionaire of this Agreement or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by Agency. Agency approval shall not be unreasonably withheld. Should Concessionaire desire to enter into an assignment, Concessionaire shall request approval, in writing, at least sixty (60) days before the effective date of any such assignment, and provide the following:

a. The full particulars of the proposed transaction, including its nature, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to such proposed transaction;

b. A description of the identity, net worth, and previous business experience of the Assignee, including, without limitation, copies of Assignee's latest income, balance sheet and change-of-financial-position statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by Assignee;

c. Any further information requested by the Agency; and

d. A statement that Concessionaire intends to consummate the transaction if Agency grants approval.

1-8.02. Assignment of Improvements for Security Purposes. The Concessionaire's possessory interest in Concessionaire's improvements, for the purpose of affording security only, may be assigned, transferred or encumbered only with prior written approval of the Agency. Any document by which an interest is granted to a third party, subject to approval of Agency, shall affirm that the person acquiring that interest has been advised of the terms of this Agreement, and expressly agrees that upon termination of the interest of Concessionaire granted by this Agreement, its interest shall also be terminated.

1-8.03. Assignee as Tenant upon Termination. In the event of termination of this Agreement, Agency at its sole option, may elect to treat any assignee, sub-tenant, or holder of any interest conveyed by Concessionaire as Agency's tenant, subject to the terms and conditions of this Agreement that would be applicable but for the termination.

1.8.04. Indebtedness upon Concessionaire's Assets. No mortgage shall be executed, and no bonds or other evidence of interest in, or indebtedness upon the assets or proposed assets of Concessionaire shall be issued except for the purposes of installing, enlarging, or improving plant and equipment and extending facilities for the accommodation of the public, and then only upon prior authorization in writing in each case obtained from Agency. In the event of default on such mortgage or such other indebtedness or of another assignment, transfer or encumbrance, and in the event that the creditor thereof shall succeed to the possessory interest of Concessionaire in Concessionaire's improvement, then under these circumstances, operating rights and privileges shall be as outlined in this Agreement; however, the right of any person or persons to actually operate the said concession is subject to the approval of Agency.

1.9. AGENCY'S RIGHT OF ENTRY.

1-9.01 Purposes of Entry. Agency and its authorized representatives, employees, and agents shall have the right to enter the Concession Area at any time for any of the following purposes:

a. To inspect, investigate, and survey the Concession Area, except that any inspection, investigation, or survey of any area which Concessionaire has locked shall only be conducted during Concessionaire's normal business hours.

b. To do any and all work of any nature necessary for the preservation, maintenance, and operation of the Don Pedro Recreation Area.

1-9.02. Notice of Entry. Agency may inspect, investigate, and survey the Concession Area without notice to the Concessionaire. Concessionaire shall be given reasonable notice when Agency intends to perform any work in the Concession Area that may impact the operation of the marina. Concessionaire shall adjust its operations such that the Agency's work may proceed expeditiously and Agency will conduct its activities within the Concession Area in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Concessionaire.

1-9.03. No Liability for Agency Entry. Agency shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Agency's entry into the Concession Area. However, Agency must use due diligence to protect the Concessionaire's interest and business during such entry.

1-10. DEFAULT.

1-10.01. Concessionaire's Performance. Concessionaire's performance under this Agreement is of prime material consideration to the Agency.

1-10.02. Concessionaire's Default. The occurrence of any of the following shall constitute a default by Concessionaire as determined by the Agency in the Agency's sole discretion:

a. Failure to pay any concession fee when due, if the failure continues for five (5) days after registered notice has been given to Concessionaire.

b. Abandonment and vacation of Concession Area, consisting of failure to operate the concession for at least five (5) consecutive days when scheduled to do so.

c. Failure to perform any other provision of this Agreement if the failure to perform is not corrected within fifteen (15) days after registered notice has been given to Concessionaire, except that Concessionaire shall be considered to be in default if it fails to correct immediately any problem presenting a hazard or emergency of which it has knowledge. If the default cannot reasonably be corrected within 15 days, Concessionaire shall not be in default if it commences to correct the default within the 15-day period and diligently and in good faith continues to correct the default.

d. Concessionaire becomes insolvent, makes an assignment for the benefit of creditors, institutes any proceedings under the Bankruptcy Act as the same now exists or under any amendment thereto which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein Concessionaire seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or an involuntary proceeding is filed against Concessionaire under any such bankruptcy laws. In any of these events, Concessionaire's interest in this Agreement shall not become an asset in any of such proceedings.

1-10.03. Agency's Remedies. Agency shall have the following remedies if Concessionaire commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law.

a. Termination of Agreement. Agency may terminate this Agreement, including Concessionaire's right to possession of the Concession Area. To this end, Concessionaire hereby irrevocably appoints the Agency as its agent to remove any and all persons or property within the Concession Area and place any such property in storage for the account of and at the expense of Concessionaire. Agency may re-let the Concession Area upon such terms and to whom it deems proper and Concessionaire shall be liable immediately to Agency for all costs Agency incurs in re-letting the Concession Area. However, Agency must use due diligence to not incur costs unreasonably.

b. Appointment of Receiver. Agency may have a receiver appointed to collect concession fees and conduct Concessionaire's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Agency to terminate this Agreement.

c. Agency's Right to Cure Concessionaire's Default. Agency, during such time as Concessionaire is in default, may cure the default at Concessionaire's cost. If Agency at any time, by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum (including payment of Agency's employees' salaries and related costs for work performed by them to cure the default), the sum paid by Agency shall be due immediately from Concessionaire to Agency at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less, from the date the sum is paid by Agency until Agency is reimbursed by Concessionaire. The sum, together with interest thereon, shall be in addition to any concession fees.

d. Interest on Unpaid Concession Fees. Concession fees not paid when due shall bear interest at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less, from the date due until paid.

1-10.04. Procedure for Termination of Agreement. If Agency elects to terminate this Agreement, as provided for in Sections 1-10.03, the following procedure shall be followed:

a. The decision to terminate shall be made by the Recreation Director of the Agency, pursuant to his or her authority to enforce the Rules and Regulations of the Agency.

b. If Concessionaire desires to appeal any such decision to terminate as made by the Recreation Director of the Agency, Concessionaire shall have the right to appeal to the Board of Control within 30 (thirty) days of the date of the Recreation Director's decision, pursuant to the duty of the Board of Control to act as an appeals review board on all appeals from Rules and Regulations enforcement actions by the Recreation Director.

c. If the Board of Control upholds any such termination made by the Recreation Director, and Concessionaire desires to appeal that decision by the Board of Control, Concessionaire shall submit the dispute between Concessionaire and Agency to mediation and complete the entire mediation process before resorting to court action. All mediation fees shall be divided equally between Concessionaire and Agency. Pursuant to Evidence Code Section 1152.5 all evidence and testimony offered in the course of mediation shall not be admissible in evidence or subject to discovery in any court action.

d. Before initiating any court action, Concessionaire must follow the requirements of this section. If Concessionaire fails to follow the provisions of this section before initiating a court action, it is hereby expressly agreed that any court action initiated in violation of this section shall be dismissed upon motion by the Agency pursuant to applicable statutes. Agency shall recover its attorneys' fees in defending the court action pursuant to this Agreement and as sanctions for bad faith litigation tactics pursuant to applicable statutes.

1-11. CONFLICT OF INTEREST.

1-11.01. Warranty of Concessionaire. Concessionaire warrants and covenants that no official or employee of the Turlock Irrigation District, the Modesto Irrigation District or the City and County of San Francisco:

a. Has been employed or retained to solicit or aid in the procuring of this Agreement;

b. Will be employed in the performance of this Agreement without the immediate divulgence of such fact to Agency.

c. Shares in any personal advantage of this Agreement or its operations

1-11.02. Incompatibility of Conflicting Employment. In the event Agency determines that the employment by Concessionaire of any official or employee of the Turlock Irrigation District, Modesto Irrigation District, or the City and County of San Francisco is not compatible with such official's or employee's

duties to any of the above agencies, Concessionaire, upon request of Agency, shall terminate such employment immediately.

1-11.03. Rights of Agency. For violation of this section 1-11, Agency shall have the right both to terminate this Agreement and, in its discretion, to recover the full amount of any compensation paid to such official, employee, or business entity by the Concessionaire.

1-12. SURRENDER OF CONCESSION AREA; PURCHASE OF IMPROVEMENTS BY AGENCY.

1-12.01. Surrender of Concession Area. Within ninety (90) days after the expiration or termination of this Agreement, Concessionaire shall surrender to Agency the Concession Area in good condition, except for ordinary wear and tear occurring after the last necessary maintenance performed by Concessionaire. Concessionaire shall remove all its personal property (including its trade fixtures) within the above stated time. Concessionaire shall perform all restoration within the above stated time made necessary by the removal of its personal property. All of its personal property shall be disposed of in a manner satisfactory to Agency. Should Concessionaire fail to remove or properly dispose of its personal property within the above stated time, Agency can elect to retain or dispose of that personal property at Concessionaire's expense.

1-12.02. Environmental Investigation and Remediation. Concessionaire shall upon termination of this Agreement at its sole cost and expense, engage a licensed/certified Environmental Consultant acceptable to Agency to perform an environmental investigation of the Premises. The environmental investigation shall, at a minimum, consist of those steps which are the normal and customary items done in an environmental investigation by qualified Environmental Consultants in similar circumstances. The results of such environmental investigation must be provided to Agency, in writing, not later than sixty (60) days after termination of this Agreement.

In the event the environmental investigation discloses any condition reasonably related to Concessionaire's use of the Premises that requires remediation, Concessionaire shall have a remedial action plan ("Remediation Plan") prepared by the Environmental Consultant designed to correct all conditions of the Premises. Any proposed remedial action plan shall be submitted for their approval to all Governmental agencies that have jurisdiction and also submitted to Agency for Agency's approval, which approval shall not be unreasonably withheld.

If Agency disapproves of any proposed Remediation Plan, Agency shall provide a written disapproval within sixty (60) days of Concessionaire's submittal to Agency. In the event Agency reasonably disapproves of the proposed Remediation Plan, the Concessionaire shall submit a revised Remediation Plan to Agency for approval pursuant to the terms of this section.

Upon approval of the Remediation Plan by Agency and Governmental agencies with jurisdiction over the Premises, Concessionaire shall remediate contaminants in accordance with the Remediation Plan. In addition Concessionaire shall conduct any necessary cleanup operations to remove Hazardous Materials and Substances or other contaminants that are attributable to Concessionaire's occupancy of the Premises (including cleanup of groundwater) to levels acceptable by all appropriate Governmental agencies, and provide Agency with written certification thereof.

Concessionaire shall keep Agency fully informed of the status of all remedial actions taken and shall provide Agency with copies of all environmental tests, reports, correspondence to and from any Governmental agency and to and from any and all Environmental Consultants or firms that view, inspect or perform work on site. Agency shall have the right to join and participate in, as a party if it so elects, any negotiations, settlements, remedial actions, legal proceedings or actions initiated in connection with any claims concerning contamination resulting from Concessionaire's tenancy or the Remediation Plan; provided, however, that Concessionaire may amend the Remediation Plan without the approval of Agency in the event any Agency requires modification of the Remediation Plan.

Concessionaire's obligation to cleanup all Hazardous Materials and Substances resulting from its occupancy of the Premises shall be satisfied when (i) Concessionaire has provided Agency with a copy of a written remediation report from the approved Environmental Consultant sent to the appropriate Governmental agency or agencies certifying that the levels of contamination are within acceptable levels and, (ii) the Agency approves Concessionaire's final remediation report in writing.

1-12.03. Purchase of Improvements by Agency upon Expiration or Termination of Agreement.

a. Upon expiration or termination of this Agreement, a third party that acquires or is assigned or awarded the concession operation, or the Agency if there is no such third party, shall acquire the then existing floating marina buildings and dock, the above ground fuel storage tanks, the houseboat mooring lines, all at Fleming Meadows, the buildings and improvements at the Blue Oaks

location, and any other improvements made and any merchandise, personalty, supplies and materials related to the business, at either location at the fair market value of such improvements and goods, but without regard to the location value of the improvements and of the concession lease.

b. The Concessionaire shall supply the Agency with an accurate inventory and documentation of all capital improvements made by Concessionaire and the initial costs thereof by January 1 of the year immediately following the date of this Agreement. Concessionaire shall update such inventory at least annually, by January 31 of each subsequent year. Not later than thirty (30) days before the expiration of this Agreement or not later than ten (10) days after any termination of this Agreement, any capital improvements not included on the most recent inventory shall not be provided to the Agency.

1-13. DURATION OF PUBLIC FACILITIES. By entering into this Agreement, Agency makes no representation, warranties, or stipulations as to the type, size, location, or duration of the public facilities to be maintained within the Don Pedro Recreation Area during the term of this Agreement.

1-14. DISPUTE RESOLUTION.

a. Unless otherwise specified in this Agreement, any dispute arising under this Agreement which is not disposed of by agreement shall be decided by the Recreation Director, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to Concessionaire.

b. The decision of the Recreation Director shall be final and conclusive unless, within 30 days from the date of receipt of the Recreation Director's decision, Concessionaire complies with the following:

(1) Concessionaire shall personally serve the Recreation Director with a demand for arbitration under the Arbitration Rules of the American Arbitration Association ("Rules") setting forth the nature of the dispute and the claim or relief sought (including the amount, if any)

The dispute shall be submitted to one (1) neutral arbitrator selected from the panels of arbitrators of the American Arbitration Association if Concessionaire and the Agency cannot mutually agree on a person to serve as the neutral arbitrator.

The Agency and Concessionaire agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the neutral arbitrator and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery shall be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein by reference.

The arbitrator hearing shall be held in Sonora, California, unless the parties agree otherwise.

1-15. WAIVER.

1-15.01. No Waiver if Delay or Omission. No delay or omission in the exercise of any right or remedy of Agency on any default by Concessionaire shall impair such a right or remedy or be construed as a waiver.

1-15.02. No Waiver by Acceptance of Concession Fee. The receipt and acceptance by Agency of any delinquent concession fee payment shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular concession fee payment involved.

1-15.03. Notice for Termination. Only written notice from Agency to Concessionaire shall constitute acceptance of the surrender of the Concession Area and accomplish a termination of the Agreement. No other act or conduct of Agency shall constitute an acceptance of the surrender of the Concession Area by Concessionaire before the expiration of the term. Acceptance by the Agency shall not be unreasonably withheld.

1-15.04. No Waiver for Consent or Approval. Agency's consent to or approval of any act by Concessionaire requiring Agency's consent or approval shall not be deemed to waive or render unnecessary Agency's consent to or approval of any subsequent act by Concessionaire.

1-15.05. Written Waiver Required. Any waiver by Agency of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

1-16. NOTICE.

1-16.01. Written Notice Required. 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 (1) in writing and either served personally or sent by prepaid, registered first-class mail and (2) faxed to the other party or person. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed and faxed to the other party as set forth below. Either party may change its address and fax number by notifying the other party of the change in writing.

a. Notices to Concessionaire shall be addressed to:

Senior Vice President / C.O.O.
Forever Resorts
7501 East McCormick Parkway
Scottsdale, AZ 85258
Fax number: (480) 998-9965

b., Notices to Agency shall be addressed to:

DON PEDRO RECREATION AGENCY
31 Bonds Flat Road
La Grange, CA 95329
Fax number: (209) 852-2780

1-16.02. Response to Written Notice. Unless this Agreement requires an earlier response or allows a later response, within thirty (30) days of receipt of any communication given pursuant to Section 1-16.01, the receiving party shall respond in writing to the sending party if this Agreement requires a response or if a response is requested by the sending party.

1-17. AGENT FOR SERVICE OF PROCESS. If Concessionaire is not a resident of this State, or is an association or partnership without a member or partner who is a resident of this State, or is a foreign corporation, then Concessionaire shall appoint the California Secretary of State as its agent for the purpose of service of process in any court action between it and the Agency arising out of or in connection with this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Concessionaire. Concessionaire may also be personally served with such process out of this State, and such service shall constitute valid personal service upon Concessionaire; and it is expressly agreed that Concessionaire is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

1-18. MODIFICATION OF AGREEMENT. The parties may by mutual consent agree in writing to any modification of or addition to this Agreement which is not prohibited by law. Agency may grant reasonable extensions of time to Concessionaire for the performance of any obligation by Concessionaire.

1-19. EFFECT OF CONSENT, APPROVAL OR INSPECTION.

No consent or approval of, or inspection by, Agency called for or permitted under this Agreement, or lack thereof, shall impose any duty or obligation on

Agency or relieve Concessionaire of any duty or obligation, contractual or otherwise.

1-20. MISCELLANEOUS PROVISIONS.

1-20.01. Time of Essence. Time is of the essence of each provision of this Agreement.

1-20.02. Successors. This Agreement shall be binding and inure to the benefit of the parties and their successors. As used in this Agreement, the word successor means assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of this Agreement to the rights or obligations of either party.

1-20.03. California Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

1-20.04. Paragraph Titles; Table of Contents. The paragraph titles and the table of contents of this Agreement shall have no effect on its interpretation.

1-20.05. Singular and Plural. When required by the context of this Agreement, the singular shall include the plural, and the plural shall include the singular.

1-20.06. Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

1-20.07. Ambiguities. Each party and its counsel have had sufficient opportunity to and have fully reviewed this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

1-20.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and all prior negotiations, documents, memoranda, or writing are merged into this Agreement.

1-20.09. Negotiations to Extend Concession. At least one year prior to expiration of this Agreement, Concessionaire may request to negotiate a new agreement to extend this concession. Agency and Concessionaire agree to negotiate to develop mutually agreeable terms and conditions for a new agreement. If agreement is reached, Concessionaire shall be awarded the concession under the terms of that negotiated agreement. If Concessionaire and Agency are unable to reach agreement by the date six months prior to the

expiration of this Agreement, Agency may proceed to solicit bids for a new concessionaire and Concessionaire may submit a bid.

2. DEVELOPMENT.

2-1. CONCESSIONAIRE SCHEDULE. Concessionaire has submitted a Schedule and Estimated Costs for Property ("Schedule") which is attached as Exhibit D and is hereby incorporated by reference. The cost figures in the Schedule shall be considered estimates only and the Parties recognize that such figures may vary. The Schedule describes the improvements the Concessionaire shall make to the marina facilities.

2-2. TIME OF COMPLETION OF IMPROVEMENTS. Concessionaire must complete the improvements in accordance with the Schedule, as determined under Section 2-1, or as otherwise agreed upon in writing between the Concessionaire and the Agency.

2-2.01. Improvements Necessary Prior to Increased Services. Upon completion of the following improvements, Concessionaire shall be authorized to increase the number of rental houseboats allowed in section 2-3.01 from thirteen (13) to twenty (20):

a. Concessionaire shall improve and expand the public parking facilities at the marina to accommodate seventy-five (75) vehicles. Concessionaire shall provide Agency with engineered drawings of the proposed improvements for approval, and Agency shall approve the location of the facilities prior to commencing any work. In addition, the paved parking area in front of the Concessionaire housing area will be made available for public parking.

b. Concessionaire shall upgrade the existing sewage pumping system from the marina to the Sewage Treatment Facility to increase the rate of pumping so that it can adequately accommodate the demand placed upon it. Concessionaire shall submit a plan for Agency approval prior to commencing any work.

2-3. AUTHORIZED SERVICES.

2-3.01. Marina Services. Concessionaire shall, unless indicated as optional, at its own expense construct, maintain, and operate a boat marina and other facilities for the public offering the following services:

a. At the Fleming Meadows location:

(1) Floating marina facility providing at least one grade of fuel, ice, propane, fishing supplies, food service, beverages, groceries, telephone, and sewage pump out facilities.

(2) Marine services, repairs, and towing. This service may be contracted out by the Concessionaire upon approval of the Agency which will not be unreasonably withheld.

(3) Three-hundred thirty-six (336) boat slips.

(4) Houseboat slips and private houseboat mooring lines to accommodate up to one-hundred ninety-five (195) private houseboats.

(5) Thirteen (13) houseboat rentals, subject to the conditions in section 2-4 of this Agreement, and subject to the requirement that Agency permitted private houseboats assigned to Lake Don Pedro Marina be given preference for pumpout services. Upon completion of the improvements required in section 2-2.01, Concessionaire's authorized houseboat rentals shall be increased to twenty (20), subject to the conditions in section 2-4 of this Agreement.

(6) Fifty (50) water craft rentals consisting of any combination of the following, subject to the conditions in section 2-4 of this Agreement: fishing boats, deck boats, water ski boats, or personal water craft ("Wave Runners").

(7) Coin-operated ice facility at Agency's boat launch ramp (optional).

(8) Snack Bar facility at the swimming lagoon.

(9) Trading Post facility with gifts, camping supplies, and services, etc.

b. At the Blue Oaks location:

(1) 250 dry storage spaces.

(2) Repair and dry dock facilities.

2-3.02. Authorized Use of Spaces for Concessionaire Marina Employee Housing. The Concessionaire is authorized at no additional fee to use five (5) Agency-designated spaces adjacent to the marina within the Agency's Fleming Meadows area for housing for Concessionaire employees who work at the marina. Mobile

homes or other type manufactured residential housing used shall comply with all applicable laws. All housing units shall be subject to Agency approval of visual appearance, which shall not be unreasonably withheld. Agency has provided service hookups for four (4) housing units. Additional hookups may be installed at the Concessionaire's expense. In addition, Concessionaire is authorized to locate one (1) trailer at the Blue Oaks Houseboat Repair Yard and one (1) houseboat on the houseboat marina to house security personnel.

2-3.03. Authorized Houseboats. The maximum number of private houseboats (not including any rental houseboats authorized under Section 2-3.01) shall be 195 houseboats.

2-3.04. Repair of Concessionaire's Rental Boats and Crafts Authorized at Agency-Approved Land Location. Concessionaire is authorized to repair its own authorized rental boats and crafts at an Agency-approved land location or locations within the Concession Area.

2-3.05. Additional Services and Facilities. Additional services and facilities may be negotiated by the parties as situations demand.

2-4. CONDITIONS FOR BOAT AND WATER CRAFT RENTALS.

2-4.01. Conditions for Boat and Water Craft Rentals. Concessionaire may provide boat and water craft rentals as authorized in section 2-3.01 of this Agreement subject to the following conditions:

a. Prior to providing any boat and water craft rental services, Concessionaire shall establish written qualifications which must be met by all persons who wish to operate a boat or water craft. The qualifications shall be subject to the prior review and approval of the Agency. The qualifications shall be included in any advertising paid for or sponsored by the Concessionaire which mentions boat or water craft services.

b. Prior to providing any boat and water craft rental services, Concessionaire shall establish written safe operating instructions for boats and water craft. The instructions shall be subject to the prior review and approval of the Agency. Concessionaire shall have a program for educating renters about the safe operation of the boats and crafts.

c. If water ski boat and/or personal water craft rental services are provided, the Concessionaire shall additionally obtain an endorsement to its liability insurance policies which expressly covers the water ski boat and personal water craft rental services and any and all claims, lawsuits, and

liabilities arising therefrom. The water ski boat and personal water craft rental services and the activities related thereto shall not cause any increase in the cost of the liability insurance or in the insurance retention amount allocated by the Districts for Don Pedro Reservoir recreation-related activities.

2-4.02. Agency Review. Agency review and approval as required by this section shall not be construed as endorsing the qualifications or instructions, nor as any warranty as to the adequacy of the qualifications or instructions.

2-5. IMPROVEMENTS SUBJECT TO AGENCY APPROVAL. The location, design, and construction of improvements constructed or moved onto the Concession Area by Concessionaire shall be subject to Agency's prior approval.

2-6. MONTHLY REPORT. A monthly report of accounts due and payments made by Concessionaire during construction of improvements shall be furnished to Agency.

2-7. MODIFICATION OF IMPROVEMENTS. In the event that any modification, alteration, or addition to Concessionaire improvements are desired, the written approval of Agency must be obtained prior to commencement of any such work. Such approval will not be unreasonably withheld.

3. OPERATION AND MAINTENANCE.

3-1. QUALITY OF SERVICE.

3-1.01. Facilities and Services Provided in First-Class Manner. Concessionaire agrees to equip, operate, and manage the services and facilities offered in a first-class manner during the term. Where Concessionaire provides a food service, Concessionaire agrees that it shall furnish and dispense food and beverages of good quality and shall maintain a high standard of service at all times.

3-1.02. Personnel. The Concession Area shall be staffed with competent personnel at all times Concessionaire remains open for operation under this Agreement.

3-2. OPERATION OF CONCESSION AREA.

3-2.01. Agency Control of Rates, Charges, and Items Sold.

a. Concessionaire shall not charge the public a fee for the use of the land or Agency-owned public facilities within the Concession Area or for the use of

Don Pedro Lake or the right of access thereto. Concessionaire may charge for the use of its improvements within the Concession Area.

b. Concessionaire shall post rates and prices for all merchandise and services provided in such places as may be designated by Agency.

c. The Agency shall have access to and reserves the right to inspect and approve the schedule of prices and rates for all merchandise sold and all services rendered or performed within the Concession Area in accordance with Agency regulation 9000.002, Review of Concessionaire Fees by the Agency, as it may be amended from time to time, or any successive regulation. At the initiation of this Agreement, Concessionaire may charge for facilities and services provided at the rates included on the schedule included as Exhibit E to this Agreement.

d. Agency 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.

3-2.02. Days and Hours of Operation.

a. During the term, Concessionaire shall remain open every day, Sunday through Saturday, at the marina, except Agency approved days.

b. The hours of operation for the concession shall be as agreed upon with Agency.

c. Any requested changes in the days and hours of operation shall be submitted in writing to Agency for approval.

d. In the event of adverse weather or any other adverse operating conditions, Agency or its authorized representative may permit Concessionaire to temporarily close its operations.

3-2.03. Limitations on Use of Concession Area. Concessionaire shall not use or permit the Concession Area to be used in whole or in part, during the term of this Agreement, for any purpose other than as herein set forth, without the prior written consent of the Agency. Concessionaire shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by Federal, State, County, or other governmental bodies or departments or officers thereof, and this Agreement is expressly subject to the Rules and Regulations of the Agency, and its successor. Concessionaire has been provided a copy of, and has reviewed and understands, all Agency Rules and Regulations.

3-2.04. Advertising; Signs; Logo; Photography.

a. Advertising. Agency reserves the right to review and approve all advertising to be published or circulated by or on behalf of Concessionaire prior to publication or circulation. Approval shall not be unreasonably withheld. Concessionaire agrees to revise or delete any portions of the advertising that Agency deems to be false or misleading.

b. Signs. No sign, name or placard shall be posted, displayed or affixed upon any Concessionaire improvements or posted within the Concession Area without the prior written consent of Agency which approval will not be unreasonably withheld. Agency shall have the right to post appropriate Agency signs within the Concession Area at locations mutually agreed upon by the parties.

c. Logo. The Don Pedro Recreation Agency logo may only be used with the prior approval of the Agency.

d. Photography. Agency shall have the right to grant permission to persons or corporations engaged in the production of still or motion pictures and related activities for the use of the Concession Area for such still or motion picture purposes when such permission shall not interfere with Concessionaire's concession business.

3-2.05. Nondiscrimination.

a. Concessionaire and its employees shall not discriminate because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall Concessionaire or its employees publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex.

b. In the performance of this Agreement, Concessionaire will not discriminate against any employee or applicant for employment because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex. Concessionaire shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religious creed,

color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex.

3-3. MAINTENANCE.

3-3.01. Maintain Improvements in Good Order and Repair. Concessionaire agrees to maintain its improvements in good order and repair during the term and to perform any required maintenance and repairs at its own expense.

3-3.02. Maintain Improvements in Clean Condition and in Compliance with Law. Concessionaire agrees at all times during the term and at its own expense to maintain and operate its improvements and immediately adjacent areas in a clean, safe, wholesome and sanitary condition, free of trash, garbage, rubbish or obstruction of any kind, and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of this Agreement in force relating to sanitation or public health, safety or welfare.

3-3.03. Monitoring of Fuel Storage System. Concessionaire shall monitor the leak detection devices for the fuel storage tank(s), permanent or temporary, and any pipelines for leakage on a weekly basis and document each inspection. The record of all inspections shall be retained for three years by the Concessionaire who shall make the records available to the Agency upon request.

3-3.04. No Obligation On Agency to Repair. Agency shall not be responsible or obligated to make any repairs to or maintain any Concessionaire improvements within the Concession Area unless damage is caused by Agency necessitating repair. Concessionaire expressly waives the right to make any repairs or perform any maintenance at Agency's expense.

3-4. FACILITIES, ACCESS, UTILITIES, AND SERVICES.

3-4.01. Facilities and Access. Concessionaire shall at its own expense construct, maintain and operate the facilities within the Concession Area which must include a utility yard, roads, parking areas at the marina and the houseboat dock for at least 240 cars total, including the additional area to accommodate 75 cars that is required to be provided in section 2-2.01(a), above the 830' contour, a boat repair and storage facility at Blue Oaks, and safe and convenient access to the facilities at all times.

3-4.02. Concessionaire to Arrange and Pay for Utilities. Concessionaire shall make all arrangements for and pay for all utilities and services furnished to or

used by it, including, without limitation, gas, electricity, and telephone service, and for all connection charges.

3-4.03. Refuse Collection. Concessionaire may use the Agency's refuse containers and shall be responsible for the collection, removal and disposal of all rubbish, trash, and garbage resulting from the concession operations and activities at the marina, the Trading Post, and the Blue Oaks Houseboat Repair Yard. The rubbish, trash, and garbage shall be removed from the Concession Area by either the Concessionaire, private refuse disposal companies, or the Agency. If removal services are provided by the Agency, Concessionaire shall pay the Agency for these services at agreed upon rate which shall be reviewed every five years. Agency, however, will not remove any rubbish, trash, and garbage generated at the Blue Oaks Repair Yard. All such refuse collection, removal and disposal shall be performed to the satisfaction of Agency and Tuolumne County.

3-4.04. Sewage Disposal. Concessionaire shall be responsible for the proper disposal of all sewage within the Concession Area. Agency agrees to allow Concessionaire to dispose of the sewage at the Fleming Meadows Sewage Treatment Facility under the following conditions:

a. In no event shall the Agency be required to expand any part of the Fleming Meadows sewage system to accommodate Concessionaire's sewage.

b. At no time shall any Hazardous Material or Substance be introduced into the Sewage Treatment Facility. Cleanup of any Hazardous Material or Substance released into the Sewage Treatment Facility in violation of this section may be initiated by the Agency at the cost of Concessionaire.

c. Agency reserves the right to terminate Concessionaire's use of the Sewage Treatment Facility upon one year's notice to Concessionaire. If the sewage system is upgraded by the Agency, the Concessionaire will be responsible for a mutually agreed percentage of the cost of improvements that will be recovered as a sewage charge to Concessionaire until such costs of improvements are recovered. The sewage charge to Concessionaire shall be comparable with sewage charges by utility companies elsewhere. Concessionaire may increase prices for goods and services, except for pumpouts, as a result of increased sewage costs. Agency agrees to transport and dispose of Concessionaire's sewage until such time as the upgraded Sewage Treatment Facility is operational. Agency may terminate upon less than one year's notice if the Agency fails to meet or may fail to meet the regulatory requirements of its waste discharge permit for any reason, or if legislation or regulatory action requires the Agency to change its waste disposal practices or procedures. If

Concessionaire's deposit of sewage into the Sewage Treatment Facility partially or wholly causes the Agency to violate the terms of its waste discharge permit, Concessionaire shall be liable to the extent the Concessionaire's actions caused the violation. In such a case, the Agency shall provide Concessionaire notice of the violation and an opportunity to cure its portion of the violation.

3-5. SERVICES PROVIDED TO AGENCY.

3-5.01. Gasoline Provided at Cost. Concessionaire shall during its normal hours of operation provide gasoline to Agency at the marina for official Agency boats at Concessionaire's cost from the distributor to Agency's boats.

3-5.02. Boat Mooring. Concessionaire shall provide without cost to Agency mooring for one (1) Agency boat at all times during the term of this Agreement.


3-5.03. Attachment to Mooring Lines. Concessionaire shall provide without cost to Agency, one attachment to the houseboat mooring lines for Agency use. Agency shall provide its own mooring buoy.

3-5.04. Trading Post Use By Agency. Agency retains the right to use the Trading Post facility during periods when it is not being used on a day-to-day basis (such as the off-season) by Concessionaire for purposes authorized under this Agreement. Any alterations and/or improvements to the structure to accommodate the Agency's use of the facility will be made in consultation with Concessionaire. Agency shall be solely responsible for the costs of any such alterations or improvements, unless such alterations or improvements provide a benefit to Concessionaire in which case the parties agree to share the costs on a mutually agreeable basis.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CONCESSIONAIRE

[All limited liability company members must sign Agreement.]

By 


By _____

By _____


FOR THE AGENCY


TURLOCK IRRIGATION DISTRICT

By 
President


By 
Secretary

MODESTO IRRIGATION DISTRICT

By 
President

By 
Secretary

APPROVED AS TO FORM


LEGAL

PERFORMANCE BOND

TITLE: _____

PROJECT NO. _____

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ of _____

as Principal, and _____ as Surety, are jointly and severally held and

bound unto the Turlock Irrigation District in the sum of _____ Dollars

(\$_____) for the payment of which we jointly and severally bind ourselves, our heirs, executors,

administrators and assigns, and successors and assigns, firmly by these presents.

The condition of the foregoing obligations is such that, whereas on _____, 199_, the Principal executed a certain contract with the District, by the terms, conditions and provisions of which contract the Principal agreed to construct the above project in _____ County, California, all as set forth in the contract, which contract as so executed is incorporated herein by reference and made a part hereof as fully for all purposes as if here set forth at length.

NOW THEREFORE, if the Principal herein shall promptly and faithfully perform said contract in all respects, and shall well and truly and fully perform all work contracted to be done under said contract and within the time prescribed therein, then this obligation shall be void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of the contract agreed to between the Principal and the District, and no forbearance on the part of the District shall operate to relieve the Surety from liability on this Bond, and consent to make such changes, extensions, additions and alterations without further notice to or consent by such Surety is hereby given, and the Surety hereby waives the provisions of Section 2819 of the California Civil Code.

In the event suit is brought upon this Bond by the District and judgment is entered in its favor, the Surety shall pay all costs incurred by the District in such suit, including reasonable attorney's fees to be fixed by the Court.

PERFORMANCE BOND (continued)

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 199____, the name and corporate seal of each
(Date) (Month)
corporate party being hereto affixed and these presents duly signed by its authorized representative.

(Seal)

Principal

By: _____

Title:

(Seal)

Surety

By: _____

Title:

Title:

Note - Signatures of those executing for the surety must be properly acknowledged.

Lake Don Pedro Marina, L.L.C.
Preliminary Schedule and Estimated Costs for Property

	<u>Year 1-2001</u>	<u>Year 2-2002</u>	<u>Year 3-2003</u>	<u>Future</u>
A&E planning for master plan, parking existing conditions. Future	25,000	TBD	TBD	TBD
75 vehicle paved parking at the marina	50,000	50,000	TBD	TBD
Existing Sewage pumping System from marina increase Rate of pumping	20,000			TBD
Repair or replace cable, Winches, anchor as needed	25,000	TBD	TBD	TBD
Fuel system SPCC plan Safety material	30,000	TBD	TBD	TBD
Water system	2,500	TBD	TBD	TBD
Employee Housing upgrade Existing Housing as needed	40,000			TBD
Small Boatfleet expansion and replace	80,000	85,000	TBD	TBD
Propane system	TBD			TBD
Houseboats replace Existing & expansion	500,000	TBD	TBD	TBD
Electrical study repair as needed	10,000			TBD
Feasibility study for Cabin or rooms	TBD			TBD
Slip expansion	TBD			TBD
<u>TOTAL</u>	<u>\$782,500</u>	<u>\$135,000</u>		

FOREVER RESORTS

LAKE DON PEDRO MARINA FIXED FEE SCHEDULE

56' HOUSEBOAT		2000	2001	2002	2003
VALUE	3 day weekend /4 day mid-week	\$995	\$995	\$995	\$995
	4 day weekend /5 day mid-week	\$1,295	\$1,295	\$1,295	\$1,295
	7 day week	\$1,695	\$1,695	\$1,695	\$1,695
SPRING	3 day weekend /4 day mid-week	\$1,395	\$1,395	\$1,395	\$1,395
	4 day weekend /5 day mid-week	\$1,595	\$1,595	\$1,595	\$1,595
	7 day week	\$1,895	\$1,895	\$1,895	\$1,895
REGULAR	3 day weekend /4 day mid-week	\$1,095	\$1,095	\$1,095	\$1,095
	4 day weekend /5 day mid-week	\$2,495	\$2,495	\$2,495	\$2,495
	7 day week	\$2,995	\$2,995	\$2,995	\$2,995
FALL	3 day weekend /4 day mid-week	\$1,595	\$1,595	\$1,595	\$1,595
	4 day weekend /5 day mid-week	\$1,995	\$1,995	\$1,995	\$1,995
	7 day week	\$2,295	\$2,295	\$2,295	\$2,295
58' HOUSEBOAT		2000	2001	2002	2003
VALUE	3 day weekend /4 day mid-week	\$1,495	\$1,495	\$1,495	\$1,495
	4 day weekend /5 day mid-week	\$1,795	\$1,795	\$1,795	\$1,795
	7 day week	\$2,195	\$2,195	\$2,195	\$2,195
SPRING	3 day weekend /4 day mid-week	\$1,895	\$1,895	\$1,895	\$1,895
	4 day weekend /5 day mid-week	\$2,095	\$2,095	\$2,095	\$2,095
	7 day week	\$2,495	\$2,495	\$2,495	\$2,495
REGULAR	3 day weekend /4 day mid-week	\$2,495	\$2,495	\$2,495	\$2,495
	4 day weekend /5 day mid-week	\$2,895	\$2,895	\$2,895	\$2,895
	7 day week	\$3,495	\$3,495	\$3,495	\$3,495
FALL	3 day weekend /4 day mid-week	\$2,095	\$2,095	\$2,095	\$2,095
	4 day weekend /5 day mid-week	\$2,495	\$2,495	\$2,495	\$2,495
	7 day week	\$2,795	\$2,795	\$2,795	\$2,795
65' HOUSEBOAT		2000	2001	2002	2003
VALUE	3 day weekend /4 day mid-week	\$1,995	\$1,995	\$1,995	\$1,995
	4 day weekend /5 day mid-week	\$2,495	\$2,495	\$2,495	\$2,495
	7 day week	\$2,995	\$2,995	\$2,995	\$2,995
SPRING	3 day weekend /4 day mid-week	\$2,195	\$2,185	\$2,195	\$2,195
	4 day weekend /5 day mid-week	\$2,895	\$2,895	\$2,895	\$2,895
	7 day week	\$3,195	\$3,195	\$3,195	\$3,195
FALL	3 day weekend /4 day mid-week	\$2,595	\$2,595	\$2,595	\$2,595
	4 day weekend /5 day mid-week	\$3,495	\$3,495	\$3,495	\$3,495
	7 day week	\$4,295	\$4,295	\$4,295	\$4,295
70' HOUSEBOAT		2000	2001	2002	2003
VALUE	3 day weekend /4 day mid-week	\$3,195	\$3,195	\$3,195	\$3,195
	4 day weekend /5 day mid-week	\$3,895	\$3,895	\$3,895	\$3,895
	7 day week	\$4,695	\$4,695	\$4,695	\$4,695
SPRING	3 day weekend /4 day mid-week	\$3,395	\$3,395	\$3,395	\$3,395
	4 day weekend /5 day mid-week	\$4,095	\$4,095	\$4,095	\$4,095
	7 day week	\$4,895	\$4,895	\$4,895	\$4,895
REGULAR	3 day weekend /4 day mid-week	\$4,095	\$4,095	\$4,095	\$4,095
	4 day weekend /5 day mid-week	\$5,095	\$5,095	\$5,095	\$5,095
	7 day week	\$6,295	\$6,295	\$6,295	\$6,295
FALL	3 day weekend /4 day mid-week	\$3,595	\$3,595	\$3,595	\$3,595
	4 day weekend /5 day mid-week	\$4,195	\$4,195	\$4,195	\$4,195
	7 day week	\$5,195	\$5,195	\$5,195	\$5,195
EXISTING HOUSEBOATS		2000	2001	2002	2003
WINTER	3 nights	\$390	\$390	\$390	\$390
	4 nights	\$504	\$504	\$504	\$504
	7 nights	\$732	\$732	\$732	\$732
SPRING / FALL	3 nights	\$798	\$798	\$798	\$798
	4 nights	\$1,038	\$1,038	\$1,038	\$1,038
	7 nights	\$1,662	\$1,662	\$1,662	\$1,662
SUMMER	3 nights	\$1,075	\$1,075	\$1,075	\$1,075
	4 nights	\$1,400	\$1,400	\$1,400	\$1,400
	7 nights	\$2,270	\$2,270	\$2,270	\$2,270
FLOATEL	2 people	\$88	\$98 (\$5)	\$108	\$118
	Each additional person	\$13.50	\$13.50	\$13.50	\$13.50

LAKE DON PEDRO MARINA FIXED FEE SCHEDULE

MOORAGE		2000					2001					2002					2003				
Houseboat Buoy		\$95					\$105					\$115					\$125				
H.B. Marina Single 18 wide		\$148					\$183					\$174					\$185				
H.B. Marina Double 24 wide		\$216					\$230					\$243					\$255				
H.B. Marina Full Double		\$298					\$325					\$343					\$360				
Open Double		\$100					\$110					\$115					\$125				
Open Single		\$110					\$120					\$127					\$135				
Covered Single		\$130					\$145					\$160					\$175				
Nightly slip		\$11					\$15					\$18					\$18				
Weekly		\$85					\$75					\$80					\$85				
STORAGE		2000					2001					2002					2003				
Covered - Locked		\$79					\$90					\$105					\$125				
Open - boat & trailer < 22'		\$31					\$43					\$43					\$45				
Open - boat & trailer > 22'		\$33					\$45					\$47					\$50				
Boat trailer only		\$14					\$25					\$27					\$30				
MISCELLANEOUS		2000					2001					2002					2003				
Battery charge- shop / slip		\$5.50 / \$15					\$7 / \$15					\$7 / \$15					\$7 / \$15				
Jump start-shop / slip / ramp		\$5.50/\$8.50/\$30					\$15 / \$15 / \$32					\$15 / \$15 / \$34					\$15 / \$15 / \$36				
Salvage Barge- 1 man / 2 men per hr		\$189 / \$250					\$189 / \$250					\$189 / \$250					\$189 / \$250				
Tow - Bl & 1 man / Bl & 2 men p/hr		\$64 / \$128					\$64 / \$128					\$70 / \$140					\$72 / \$144				
Shop Rate		\$68					\$68					\$70					\$72				
SMALL CRAFT RENTALS		2000					2001					2002					2003				
		1/2 Day	Day	24Hr	WK	1/2 Day	Day	24Hr	WK	1/2 Day	Day	24Hr	WK	1/2 Day	Day	24Hr	WK				
Patio Boat Style #1 28' /48hp		\$100	\$150	\$225	\$800	\$100	\$150	\$225	\$800	\$100	\$150	\$225	\$800	\$100	\$150	\$225	\$800				
Patio Boat Style #2 24' /70hp		\$150	\$225	\$338	\$1,125	\$150	\$225	\$338	\$1,125	\$150	\$225	\$338	\$1,125	\$150	\$225	\$338	\$1,125				
Fishing Boat 13' /10hp		\$30	\$42	\$63	\$208	\$30	\$42	\$63	\$208	\$30	\$42	\$63	\$208	\$30	\$42	\$63	\$208				
Fishing Boat 14' /15hp		\$42	\$56	\$84	\$278	\$42	\$56	\$84	\$278	\$42	\$56	\$84	\$278	\$42	\$56	\$84	\$278				
Ski Boat 120hp I.O		\$175	\$300	\$450	\$1,800	\$175	\$300	\$450	\$1,800	\$175	\$300	\$450	\$1,800	\$175	\$300	\$450	\$1,800				
Ski Boat Inboard		\$225	\$350	\$525	\$2,100	\$225	\$350	\$525	\$2,100	\$225	\$350	\$525	\$2,100	\$225	\$350	\$525	\$2,100				
SMALL CRAFT RENTALS		2000					2001					2002					2003				
		Hourly	1/2 Day	Day	24 Hr	WK	Hourly	1/2 Day	Day	24 Hr	WK	Hourly	1/2 Day	Day	24 Hr	WK	Hourly	1/2 Day	Day	24 Hr	WK
PWC		\$50	\$125	\$200	\$300	\$1,750	\$50	\$160	\$250	\$375	\$1,250	\$50	\$160	\$250	\$375	\$1,250	\$50	\$160	\$250	\$375	\$1,250
28' Deck Cruiser 130 hp		\$40	\$90	\$150	\$225	\$750	\$40	\$140	\$225	\$338	\$1,125	\$40	\$140	\$225	\$338	\$1,125	\$40	\$140	\$225	\$338	\$1,125
16' Fishing Boat: 25 hp		\$15	\$50	\$70	\$105	\$350	\$15	\$50	\$70	\$105	\$350	\$15	\$50	\$70	\$105	\$350	\$15	\$50	\$70	\$105	\$350

**Lake Don Pedro - Moccasin Point Marina
Schedule & Cost Estimate for Marina Upgrade**

	<u>Year 1-May 1997</u>	<u>Year 2-May 1998</u>	<u>Year 3-May 1999</u>
Marina/Anchorage	\$30,000	\$30,000	\$30,000
Electric	\$20,000	\$20,000	
Pump Out - Sewer System	\$40,000		
Fuel and Water Lines	\$35,000		
Housing	\$40 000		
Houseboat Dock		\$15,000	\$15,000
Buoys - Tools		\$12,500	\$12,500
Propane		\$8,000	
Marina Store & Shop Bldg.		\$12,500	\$12,500
ADA Bathrooms		\$8,000	\$7,000
Planning A & E	\$15,000		
Environmental	\$5,000		
Investigation	_____	_____	_____
Total	\$185,000	\$106,000	\$77,000
Net Total			\$368,000
Old Estimate			\$164,000
Agency			\$327,000
Weller Construction			\$214,200

Exhibit E

Lake Don Pedro - Moccasin Point Marina Cost Estimates for Property Upgrade

Marina and Anchorage: \$90,000

- A. Repair or replace all Bebee winches as needed.
- B. Replace all cables as needed.
- C. Install spring blocks to all shore bound cables as needed.
- D. Construct dead men anchors for all shore bound cables as needed. Note: Some cables currently tie to trees and rocks.
- E. Install snatch blocks and clevis to all spring blocks and anchors as needed.
- F. Refoam dock as needed.
- G. Reweld and straighten dock as needed.
- H. Repair and replace all broken underwater truss frame systems as needed.
- I. Resurface all broken areas of dock.
- J. Repair gangway.

Electric: \$40,000

- A. Rewire dock to bring to code.
- B. Repair and rewire all dock lights on marina as needed.
- C. Install and rewire main panel on land as needed.
- D. Install marina approved electrical boxes to slips as needed.

Pump Out and Sewer System: \$40,000

- A. Install new pump out.
- B. Repair existing sewer lines on dock as needed.
- C. Repair sewer holding tank in dock to meet codes. (Alarm System)
- D. Tie into agency sewer system.

Fuel and Water Lines: \$35,000

- A. Replace all damaged or worn fuel lines and fittings as needed.
- B. Replace all worn and damaged water lines.

Housing: \$40,000

- A. Install 2 mobile homes at agency approved location for personnel.

Houseboat Dock: \$30,000

- A. Design and build dock to hold rental fleet.

Cost Estimates for Property Upgrade (Continued)

Buoys and Tools: \$25,000

- A. Purchase replacement buoys as needed.
- B. Sand blast, weld and repair existing buoys.
- C. Paint all existing buoys.
- D. Re-cable as needed all buoys.
- E. Tool purchases will include but not be limited to:
 - 1. Small hand tools
 - 2. Cable grabs
 - 3. Torch set
 - 4. Welder and equipment
 - 5. Electric testing equipment

Propane System \$8,000

- A. Paint tank and barge.
- B. Re-plumb as necessary.
- C. Re-foam barge as needed.
- D. Re-work electric to code.
- E. Install proper valving and quick disconnects.
- F. Install proper tie up system for barge.
- G. Inspect and replace line to store as needed.

Marina Store and Shop Building: \$25,000

- A. Paint both interior and outside.
- B. Roof repair.
- C. Remodel insides as needed for operations.

A.D.A. Store and Rest Rooms: \$15,000

- A. Provide handicap access to both rest rooms and store/cafe areas.

Architect and Engineering: \$15,000

- A. Planning for current and future improvements.

Environmental Investigation: \$5,000

- A. Environmental issues.

Net Total: \$ 368,000.00

These figures are based on the two previous inspections. Once repairs are started, and upon closer inspection, we believe additional deficiencies will be discovered and additional repairs needed.

PAYMENT BOND

TITLE: _____

PROJECT NO. _____

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ of _____

as Principal, and _____

as Surety, are jointly and severally held and bound unto the Turlock Irrigation District in the sum of _____ Dollars (\$ _____), for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of the foregoing obligations is such that, whereas on _____, 199__ the Principal executed a certain contract with the District, by the terms, conditions and provisions of which contract the Principal agreed to construct the above project in _____ County, California, all as set forth in the contract, which contract as so executed is incorporated herein by reference and made a part hereof as fully for all purposes as if here set forth at length.

NOW, THEREFORE, if the Principal herein or its subcontractors shall fail to pay for any material, services, supplies, implements or machinery, used in, upon, for or about the performance of all work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor as required by applicable statutory provisions, the Surety herein shall pay for the same in an amount not exceeding the sum specified in this Bond, otherwise the above obligations shall be void.

In the event suit is brought upon this Bond and judgment entered in the claimant's favor, the Surety shall pay all costs incurred by the claimant in such suit, including reasonable attorney's fees to be fixed by the court.

This Bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claim under applicable State Law, including but not limited to those persons, companies and corporations entitled to serve a stop notice under Section 3181 of the Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond.

PAYMENT BOND (continued)

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of the contract agreed to between the Principal and the District, and no forbearance on the part of the District, shall operate to relieve the Surety from liability on this Bond, and consent to make such changes, extensions, additions and alterations without further notice to or consent by such Surety is hereby given; and the Surety hereby waives the provisions of Section 2819 of the California Civil Code.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their several seals this _____ day of _____, 199__, the name and corporate seal
(Date) (Month)
of each corporate party being hereto affixed and these presents duly signed by its authorized representative.

(Seal) _____
Principal

By: _____
Title:

(Seal) _____
Surety

By: _____
Title:

By: _____
Title:

Note - Signatures of those executing for the surety must be properly acknowledged.

RATES

1997

<u>Houseboats</u>	<u>3 Nights</u>	<u>4 Nights</u>	<u>7 Nights</u>
<i>Regular</i> June 9-August 31	\$1,900.00	\$1,900.00	\$2,950.00
<i>Spring</i> May 22-June 8	\$1,295.00	\$1,295.00	\$1,915.00
<i>Fall</i> September 1-October 19	\$1,475.00	\$1,475.00	\$2,150.00
<i>Value</i> January 1-May 21 October 20-December 31	\$795.00	\$795.00	\$1,100.00

Houseboat Buoy \$85.00 Monthly

Slip Rental \$95.00 Monthly

Slip Rental \$10.00 Daily

Houseboat Slip Rental <19' \$135.00 Monthly
>19' \$160.00 Monthly
>23' \$189.00 Monthly

Covered Dry Storage \$85.00 Monthly

Open Dry Storage \$40.00 Monthly

Deck Cruiser

Regular Season
May 8-October 20
\$40.00 Per Hour
\$140.00 Four Hours
\$225.00 All Day
\$325.00 24 Hours

Value Season
October 21-May 7
\$27.00 Per Hour
\$95.00 Four Hours
\$135.00 All Day
\$200.00 24 Hours

Fishing Boat Rental Rates

Regular Season

May 8-October 20

\$14.00 Per Hour

\$50.00 Four Hours

\$70.00 All Day

\$105.00 24 Hours

Value Season

October 21-May 7

\$8.00 Per Hour

\$28.00 Four Hours

\$40.00 All Day

\$60.00 24 Hours

Personal Water Craft

\$50.00 Per Hour

\$160.00 Half Day

\$250.00 All Day

\$185.00 Per day for three days or longer

Ski Boats

Regular Season

May 8-October 20

\$60.00 Per Hour

\$170.00 Four Hours

\$275.00 All Day

Value Season

October 21-May 7

\$50.00 Per Hour

\$125.00 Four Hours

\$195.00 All Day

1998

Houseboat Buoy

\$95.00 Monthly

Slip Rental

\$105.00 Monthly

Slip Rental

\$12.00 Daily

Houseboat Slip Rental

<19'

\$145.00 Monthly

>19'

\$170.00 Monthly

>23'

\$199.00 Monthly

Covered Dry Storage

\$95.00 Monthly

Open Dry Storage

\$45.00 Monthly

**FIRST AMENDMENT TO THE CONCESSION LEASE AGREEMENT FOR
LAKE DON PEDRO MARINA**

This Amendment to that certain agreement entitled "Concession Lease Agreement for Fleming Meadows Recreation Area, Don Pedro Project, Located in Tuolumne County, California," dated March 20, 2001, is made as of November 25, 2003, between the TURLOCK IRRIGATION DISTRICT and MODESTO IRRIGATION DISTRICT (Districts) and LAKE DON PEDRO MARINA ("Concessionaire") who agree as follows:

1. The following shall be added to Section 2-3.02:

The Concessionaire is authorized to use a sixth space in the marina employee housing area to install a housing pad and housing unit with hookups subject to the following conditions:

- a) All work will be done at the Concessionaire's expense.
 - b) Pad will be no larger than 32' X 9' and be constructed with minimal disturbance to existing area.
 - c) Exact location and visual appearance of the housing unit and grounds must be approved in advance by the Agency.
2. Except as set forth in this amendment, all the provisions of the Agreement shall remain unchanged and in full force and effect.
 3. Districts' approval of this amendment does not remove any responsibility or liability of the Concessionaire for Concessionaire's work performed pursuant to this amendment.

CONCESSIONAIRE

LAKE DON PEDRO MARINA, LLC

[All limited liability company members must sign amendment]

By _____

By _____

FOR THE DISTRICTS

TURLOCK IRRIGATION DISTRICT

By Randy Fiorini
President

By Barbara A. Hestick
Secretary

MODESTO IRRIGATION DISTRICT

By Allen Short
General Manager

By _____
Secretary