

EAST BAY REGIONAL PARK DISTRICT

APPROVED CATERER AGREEMENT BRAZILIAN ROOM - TILDEN REGIONAL PARK FERN COTTAGE - KENNEDY GROVE REGIONAL RECREATION AREA TEMESCAL BEACH HOUSE –TEMESCAL REGIONAL RECREATION AREA SHORELINE CENTER - MARTIN LUTHER KING, JR. REGIONAL SHORELINE

THIS AGREEMENT is entered into as of _____, between the EAST BAY REGIONAL PARK DISTRICT a California Special District ("District"), whose address is 2950 Peralta Oaks Ct., Oakland, CA 94605, and _____ ("Caterer") whose address is _____.

IN CONSIDERATION of the mutual terms, covenants, and conditions herein, District grants to Caterer, pursuant to the authority of Section 5540 of the California Public Resources Code of the State of California, the right during the term of this Agreement to book and operate catering and special events services at the Indoor Rental Facilities, including the Brazilian Room in Tilden Regional Park; Temescal Beach House in Temescal Regional Recreation Area; Shoreline Center in Martin Luther King, Jr. Regional Shoreline; and Fern Cottage in Kennedy Grove Regional Recreation Area, (the "Facilities"), upon the following terms and conditions:

I. FACILITIES

The Brazilian Room, Fern Cottage, Shoreline Center and Beach House, see Exhibit A, are available to the public to reserve for events such as weddings, receptions, reunions, meetings, and other group events ("Users"). District will continue to provide for these uses by selecting, scheduling, booking, generally supervising, and charging fees for such uses. District will in good faith endeavor to inform Users of the availability of Caterer's services except where District is aware that User has arranged to self-cater. In addition, the District shall continue the exclusive right to use the office and residential area within the Brazilian Building as the Reservable Facilities Office.

- a. Use by Caterer. Caterer shall, as one of District's Approved Caterers, provide full catering services to Users who are booked for events by District at the Facilities, and who desire catering services from Caterer and who are willing to enter a catering contract with Caterer as described in Paragraph 7 below. Users shall have the right to provide their own food services such as a family potluck (subject to District's rules and regulations). The services Caterer shall be available to provide are more fully set forth in Paragraph 2 of Exhibit B. Caterer shall limit its use of the facilities to the hours when its Users have it reserved. Any booking accepted by Caterer shall be forwarded to the Facilities Supervisor within one week of booking the date.

- b. Representation of District. While performing services to a User at a Facility, Caterer is responsible for the care of the Facility and shall represent the District in a positive manner. Caterer agrees to maintain and operate the Facilities during and after such use in a clean, safe, and sanitary condition, free of trash, or obstructions of any kind and in compliance with 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. Caterer shall comply with all applicable laws, rules, and regulations. This Agreement is expressly subject to present and future regulation and policies of the District. Caterer shall remedy without delay during the event they are catering any defective, dangerous, or unsanitary condition caused by it.
- c. Present condition. Caterer acknowledges and agrees that the Facilities are in good and tenable condition. Caterer shall accept the right to use the Facilities in its presently existing condition, "as is" and agrees that District shall not be obligated to make any alterations or improvements thereto. District retains the right to improve the Facilities provided its usefulness to the public is reasonably similar for the purposes herein.

2. TERM

The term of this Agreement ("Term") shall commence on J_____, and end on December 31, 2025, provided, however, that either party can terminate this Agreement upon 30 days' prior written notice. There is one two-year renewal option subject to the District's sole discretion based on satisfactory performance. Conditions regarding exercise of options are set forth in detail in Paragraph 3 of Exhibit B.

3. PURPOSE OF AGREEMENT

Subject to compliance with the terms of this Agreement and during the term of this Agreement, Caterer has the right to book catering services with Users at District Facilities reserved by User. This Agreement does not guarantee Caterer any amount of work or services.

4. DAYS AND HOURS OF OPERATION OF THE LICENSED PROPERTY

The District Facilities' available to the public the days and hours specified in Exhibit I, but such days and hours may be changed by District from time to time. Caterer shall be available to perform its services at any time that Caterer is not already booked to capacity, (except for a two-week period, either consecutive or separate, where caterer may take time off for vacation). Caterer will be scheduled to attend open houses conducted by the District for users of the facilities. The Facilities Supervisor will assign date in a rotating fashion.

5. CATERER FEES, PAYMENT, REPORT, RECORD-KEEPING

Computation and Payment of Caterer Fee. In accordance with the payment schedule set forth below, Caterer shall pay a Caterer Fee ("Caterer Fee") to District of gross sales on food and beverage only, in the following manner:

“Social” events are computed at 11.5% of F&B sales before taxes: (4% Caterer + 7% Maintenance + .5% Promotional). Include weddings, birthdays, and other social events including business social events that are not meetings.

“Business” events are computed at 5.5% of F&B sales before taxes: (2% Caterer + 3% Maintenance + .5% Promotional).

Fees are waived for District in-house events when EBRPD is the customer.

- a. By the 20th of the following month for any month the Caterer operates throughout the Term, Caterer shall send to the Finance Department, 2950 Peralta Oaks Court, Oakland, CA 94605, the Caterer Fee, and a monthly report (in reasonable detail as specified by District) showing Caterer's Gross Receipts for the preceding month, signed, and certified to be correct by Caterer's chief finance officer. The report shall contain Caterer's computation of each month's Caterer Fee, broken into separate categories for (i) food, (ii) beverage. The monthly report, food and beverage invoices and a copy of the check/payment shall also be emailed to the Facilities Supervisor Sarah Lamborn at slamborn@ebparks.org.
- b. Gross Receipts. Caterer's "Gross Receipts" shall mean Caterer's gross receipts, as defined in Section 4.d., less any permissible deductions as set forth in Section 4.e.
- c. Definition of Gross Receipts. The term "Gross Receipts" shall mean the dollar aggregate of the selling prices of food and beverages by Caterer, whether made for cash, check, credit account, exchange, coupon redemption, or otherwise, and shall include where the orders originate or are accepted by Caterer at the Facilities, even though delivery or performance is made from elsewhere, and where orders originate outside of the facilities but delivery or performance of such orders is made from the facilities. Such gross sales clear through Caterer's books and records so that Caterer shall be able to render full and complete reports as required by this Agreement. Gross receipts from business conducted in cooperation with any of District's other Caterers or licensees shall be included either in such other Caterer's or in Caterer's gross receipts, as District shall direct, but not both. Each charge or sale upon credit shall be treated as a sale in each month during which it occurs. Caterer shall not accept any non-refundable deposit payment attributable to a sale beyond the Term and option periods.
- d. Permissible Deductions. The following items may be deducted from Gross Receipts, but only to the extent that they have been included in Gross Receipts:
 - i. the amount of any city, county, state, or federal sales, use or excise taxes on sales rendered from the Facilities where such taxes are added to the selling price, are stated separately, and are paid by Caterer directly to the taxing authority.
 - ii. the net amount of cash refunds made by Caterer of funds previously paid to Caterer and reported in gross sales on account of either; (a) cancellation of a rental reservation, or (b) the food or merchandise, or part of it, returned by the purchaser to, and accepted by, Caterer (but not exceeding in any instance the

- amount of the selling price of the item in question)
 - iii. the sums and credits received in the settlement of claims for loss or damage to food and merchandise.
 - iv. the liquor sales made by caterers that do not possess a liquor license.
 - v. fees shall be waived for District events catered by Caterer.
 - vi. no exclusion or deduction shall be allowed for uncollectible accounts-receivable or other extensions of credit.
- e. Record-keeping, Inspection. Caterer shall keep true and accurate books and records showing all of its income and expenses and business transactions in connection with the Concession in separate records of account in a manner reasonably acceptable to District, and District shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including State of California sales tax return records, Federal and State income tax returns and Federal and State payroll tax reports.
- f. Caterer shall fully cooperate with District in making any such inspection and examinations of its record-keeping and shall provide District, its employees, agents, and representatives with adequate and convenient facilities. District shall also be entitled, during the Term, and once after expiration or termination of the Term, to an audit of the books of account, cash receipts, records and other pertinent data showing business done by Caterers on the Facilities, to be made by a District designee. If any audit shows that there is a deficiency in the payment of Caterer Fees, the deficiency shall become immediately due and payable. The costs of such an audit shall be paid by District unless an audit discloses that Caterer understated gross receipts by ten percent or more, or discovered record-keeping inadequacies which, in the opinion of the auditors, could result in the understatement of gross receipts by ten percent or more, in which case Caterer shall pay at District's discretion all of District's cost of audit. The acceptance by District of any monies paid to District by Caterer as Caterer Fees, as shown by any statement furnished by Caterer, shall not be an admission of either the accuracy of such statement or the sufficiency of the amount of the Caterer Fees. Recommendations to improve record-keeping made by and approved by the District's auditors, employees, agents, or representative shall be implemented by Caterer.

6. LATE CHARGE

Caterer hereby acknowledges that late payment by Caterer to District of any Caterer Fee or other sum payable by Caterer pursuant to this Agreement will cause District to incur costs not contemplated by this Agreement, the exact amount of which would be extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing, and accounting charges, personnel costs, and late charges which may be imposed on District by the terms of any indebtedness secured by the Facilities. Accordingly, if District does not receive any Caterer Fee or any other sum owed by Caterer within five days of its due date, Caterer shall pay to District a late charge equal to the amount listed in current year fee schedule. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs District will incur by reason of late payment by Caterer. Acceptance of such late charge by District shall in no event

constitute a waiver of Caterer's default with respect of such overdue amount, nor prevent District from exercising any of its other rights and remedies. Any audit undertaken on behalf of District to determine any overdue amount(s) shall be in addition to audits allowed under Section 5 and shall be at the cost of Caterer.

- a. Confidentiality of Information. Any information obtained by District pursuant to the provisions of this Section 4 shall be treated as confidential, except in any proceedings between the parties hereto, and except further that District may divulge such information to a lender and/or to any person as required by law.
- b. No Partnership Formed. District is not and shall not in any way or for any purpose become an agent, partner, or joint venture of Caterer in its business or otherwise.

7. CATERING CONTRACTS

Upon request, Caterer shall provide Facilities Supervisor a copy of their executed catering contract to be used by Caterer as its agreement with each User it serves pursuant to this Agreement. Changes to term or provision of such catering contract shall also be made available upon request. Catering contracts must include a cancellation policy. Such agreement shall also clearly state that the District is not a party thereto and is not responsible for performance by the Caterer.

8. FACILITIES AND EQUIPMENT CATERER SHALL PROVIDE

The Caterer shall provide all facilities and equipment required for its operation other than the kitchen equipment and tables and chairs now at the Facilities.

9. REPAIR AND MAINTENANCE OF FACILITIES

Routine Repair and Maintenance. All facilities and equipment which are a part of the Facilities and used by Caterer shall be promptly maintained in good order and repair. Caterers are responsible to list any damages or items that need repair as they are found and provide this information to the Facilities Supervisor for the District to repair or replace these items. As to its operations hereunder, Caterer shall, and District shall cause all other Caterers to leave the kitchen, including the stove, ovens, refrigerator, and floors of the Facilities in a clean, orderly condition, with all trash/compost/recycling collected and emptied into the appropriate bin or dumpster. Any damage or item that needs repair must be reported to Facilities Supervisor as soon as discovered. Caterer is responsible for recycling all glass, aluminum, plastic, and cardboard as posted at each site, as well as green waste when available.

District shall not be obligated to make any improvements, alterations, additions, or repairs in or upon any facility structure, grounds or equipment operated or used by Caterer if deemed not to interfere with Caterer's operation. All District property used by Caterer shall be returned to District upon the termination of this Agreement in as good condition as when received by Caterer, save normal wear and tear.

10. QUALITY OF CATERER'S SERVICES

Caterer shall conduct its operations in an orderly manner and so as not to annoy, disturb or offend customers, patrons, or others in the park. Caterer shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and, upon objection of the District concerning the conduct, demeanor, or appearance of any such person, Caterer shall immediately take all necessary steps to remedy the situation. Caterer shall respond to client promptly providing efficient service, adequate to meet all reasonable demands. Caterer shall serve only quality products obtainable for the type of service offered.

District reserves the right to prohibit the sale, rental or use by Caterer of any article or item which District regards as objectionable, unnecessary or of inferior quality for proper service to the public. District prohibits the use of Styrofoam and actively encourages the reduction in the use of plastics at the Facilities. Styrofoam "to go" containers and single use plastic water bottles are not permitted.

No pesticides, herbicides or fungicides may be used by Caterer.

Caterer shall not store food, supplies, equipment, or any other item inside or outside of a structure at the Facilities, except as specifically approved in writing by Facilities Supervisor at Facilities Supervisor's sole discretion.

District prohibits the sale or use of non-recyclable containers or plastics. No pull-top cans with removable tabs are to be used or sold by Caterer. Caterer must maintain a recycling and composting program or arrangement with park staff to utilize the park's recycling and compost containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.

Caterer personnel may drive private vehicles into areas of the park prohibited to non- District vehicles only as required for loading and unloading items used to operate the Facilities. Written permission from Facilities Supervisor is required prior to driving in.

Caterer is responsible to obtain an Alameda or Contra Costa County Health Permit annually and post at their kitchen facility. Facilities Supervisor has the right to inspect, or request copies of, such permit.

- a. **Compliance with Laws.** Caterer shall comply with all laws concerning the Facilities or Caterer's use of the Facilities. The judgment of any court of competent jurisdiction or the admission by Caterer in any action or proceeding against Caterer that Caterer has violated any laws in the use of the Facilities shall be deemed to be a conclusive determination of that fact between District and Caterer, even though District is not a party to such action or proceeding.
- b. **Other Limitations on Caterer's Use of Facilities.** Caterer shall not use the Facilities for or

permit in or upon the Licensed Property any of the following: Any nuisance or offensive, noisy, or dangerous trade, business, manufacture, or occupation; any activity which violates public policy; or any auction, liquidation, fire, or bankruptcy sale. Caterer agrees not to cause, permit, or suffer any waste to the Facilities.

- c. Control of Alcoholic Beverages. Caterer agrees to adhere to all reasonable rules and regulations District shall promulgate from time to time to control the sale and/or consumption of alcoholic beverages on the Facilities, to the end that events not become disorderly, and that life or property is not endangered. No alcoholic beverages other than beer, wine and champagne shall be dispensed per Park District Ordinance 38 Section 410. Caterer must provide a bartender at the bar 100% of the time while alcoholic beverages are served.
- d. Exterior Displays. Caterer shall not display any posters, brochures, or written material within the East Bay Regional Park District or in the Facilities without the prior written consent of District's Facilities Supervisor. Application for such consent shall show in reasonable detail the type, character, and size of any such materials.

II. CATERER'S EMPLOYEES

Caterer shall keep the District's Facilities Supervisor advised, in writing, of the names, mailing addresses, and phone numbers of all its managers and sub-agents engaged in providing services hereunder at the Facilities and shall maintain such a list on the Facilities. Such persons shall be fully trained by Caterer and qualified to perform duties assigned to them.

- a. All persons employed or utilized in connection with the operation of the Facilities, including relatives, and minors, age of fourteen and above, with valid work permits and employed under the strict guidelines of California Child Labor laws, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired to be recognizable as employees of Caterer. If in the reasonable judgment of District, any such person is incompetent, disorderly, discourteous, or otherwise objectionable, such person, including relatives, shall be discharged, or reassigned to a non-District facility upon Caterer's receipt of written notice from District's General Manager to such. Caterer shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Facilities to the extent reasonably required to ensure such standards of operation called for in this Agreement.
- b. Caterer shall ensure all employees who supervise minors meet the provisions of the Public Resources Code, Section 5164, Exhibit C which is attached hereto and made a part hereof, that Caterer will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted.
- c. Caterer's employees are prohibited the use of or being under the influence of alcohol or narcotics during working hours or while on District property.
- d. Caterer agrees to work with the District's Facilities Supervisor in an orientation program

for its sales reps, lead supervisors and managers and owners working within the park. Such orientation shall be sufficient to enable Caterer to address inquiries about the park in which the facility is located from the visiting public.

12. NON-DISCRIMINATION

In the performance of this contract, the Caterer will not discriminate against any applicant because of sex, sexual orientation, race, religion, age, color, disability, or national origin. The Caterer and Caterer's employees shall not discriminate because of sex, sexual orientation, race, religion, age, color, disability, or national origin, against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the public. Nor shall the Caterer or Caterer's employees or members 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 sex, sexual orientation, race, religion, age, color, disability, or national origin.

13. RIGHT OF ENTRY

Caterer agrees that District and its agents may enter upon the Facilities at all reasonable times to inspect the same, and to fulfill any of the rights granted District under the terms of this Agreement, or otherwise to protect any of the rights of District and there shall be no liability against District for damages thereby sustained by Caterer nor shall Caterer be entitled to any abatement or reduction of fees herein by reason of the exercise by District of any such right herein reserved.

14. INDEMNIFICATION

Caterer hereby waives all claims and recourse against the District, including the right to contribution for loss of damage by reason of death or injury to persons or damages to property, whether the person or property of Caterer, its agents, or employees, or third persons arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence or willful misconduct of District, its officers, directors, agents, or employees. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

Caterer shall indemnify, hold harmless, and defend the District, and its officers, directors, agents and employees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including attorneys' fees, penalties, judgments or obligations whatsoever for or in connection with injury (including death) or damage to any person or property or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Caterer, including, but not limited to, Caterer's development, construction, occupation, use, operation, or maintenance of the Facilities, including events occurring at the facilities, regardless of how the injury or damage was caused or suffered unless the injury or damage resulted from the gross negligence or the willful misconduct of District, its officers, directors, agents, or employees.

District shall have no responsibility to safeguard the equipment and property of Caterer or any of its invitees. District shall have no responsibility to safeguard or protect the Caterer, or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death) or personal injury.

In the event a claim is made against District or District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Caterer, Caterer shall immediately notify District of such fact, and shall either retain legal counsel acceptable to District to represent District in such action at Caterer's sole expense or if Caterer shall fail to do so, Caterer shall reimburse District's litigation expenses, including attorneys' fees, incurred in representing themselves.

Notwithstanding any apportionment of liability between District and Caterer, Caterer shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless it is determined that the injury or damage resulted from the gross negligence or intentional and willful misconduct of District, its officers, directors, agents, or employees.

The provision of this Section 14 shall survive the termination or expiration of this Agreement.

15. COVID-19 ACKNOWLEDGMENT, WAIVER AND ASSUMPTION OF RISK

The Licensee acknowledges that the novel coronavirus, COVID19, is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people. The Licensee acknowledges and agrees that the East Bay Regional Park District is directing all individuals that participate in permitted activities to conduct the activities in compliance with the applicable Federal, State, County, and local health orders. Further, any volunteer recognizes that it is their own responsibility to ensure compliance with all applicable orders. Further, the Licensee acknowledges and understands that the East Bay Regional Park District does not and cannot guarantee that any participants will not become infected with COVID-19 while participating in the permitted activities. The Licensee hereby releases, covenants not to sue, discharges, and hold harmless the East Bay Regional Park District, its Board of Directors, officers, employees, agents, and representatives from any claims, including all liabilities, actions, damages, costs, or expenses of any kind arising out of or relating to the permitted activities including but not limited to any illness, death, and loss of any kind by volunteers related to COVID-19. The Licensee understands and agrees that this waiver, release, and assumption of risk includes any claims based on the actions, omissions, or negligence of East Bay Regional Park District, its Board of Directors, officers, employees, agents, and representatives, whether a COVID-19 infection occurs before, during, or after participation in any activity.

16. INSURANCE TO BE CARRIED BY CATERER

Caterer ("Contractor") shall carry during the term of this License, at its own cost and expense, the insurance as listed on Attachment D.

17. WAIVER OF CLAIMS

The Caterer hereby waives any claim against the District, its officers, directors, agents, or employees for damage or loss caused in connection with or because of any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof or because of any judgment or award in any suit or proceeding declaring this Agreement null, void or delaying the same or any part thereof from being carried out.

18. SAFETY

To ensure the safety of the public, these safety precautions will be followed at all times;

(1) Smoking will be strictly prohibited on the Facilities and the surrounding area, and (2) All injury accidents shall be reported to the Park Supervisor within 24 hours.

Fire Protection. Caterer shall take all necessary precautions to prevent fire in or about the Facilities, and Caterer shall carefully observe all rules of District relative to fire prevention.

Hazardous Substances. No goods, merchandise or material shall be kept, stored, or sold in or on said Facilities which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said Facilities, other than as is provided for in this contract, and no machinery or apparatus shall be used or operated on said Facilities which will in any way injure said Facilities or adjacent buildings. Gasoline and other flammable material shall be stored, handled, and used by Caterer as required by present or future regulations and laws.

Caterer represents and warrants to District that Caterer will not generate, store, release or dispose of any hazardous materials on, under or about the Facilities in violation of any hazardous substance laws (as defined below). Caterer shall indemnify, defend, and hold District harmless from any costs, losses, claims, damages, penalties, and liabilities arising from Caterer's generation, storage, release, or disposal of any hazardous materials on or about the Facilities. The provisions of this section will survive the expiration or termination of this Agreement.

For purposes of this Agreement the term "Hazardous Materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances, including but not limited to petroleum and petroleum by-products, by any law or statute now or after this date in effect in California; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").

19. DAMAGE OR DESTRUCTION

If at any time during the Term the Facilities are damaged or destroyed from any cause, District may elect either: (a) to terminate this Agreement; or (b) to restore the Facilities to substantially the same condition as existed immediately before such damage or destruction. If District elects to restore, such damage or destruction shall not terminate this Agreement and Caterer shall pay to District all proceeds Caterer receives because of such damage under the insurance policies required by Section 15. If District elects to terminate this Agreement, Caterer shall be entitled to retain any insurance proceeds it receives. Caterer shall give prompt notice to the District in the event of any fire or accident involving personal injury or property damage at the Facilities.

20. ASSIGNMENT, SUBLETTING

Except as provided in this Agreement, Caterer shall not assign or encumber its interest in this Caterer Agreement or allow any other person to occupy or use all or any part of the Facilities without first obtaining District's written consent, which may not be unreasonably withheld. No consent given by District pursuant to this Section shall constitute a further waiver of the provisions of this Section.

21. WAIVER OF CONTRACT TERMS

No waiver by either party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other terms, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of District to re-enter the Facilities or to exercise any right, power, privilege, or option or be accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such default or a relinquishment of any right or acquiescence therein. No notice to the Caterer shall be required to restore or revive time as of the essence after the waiver by the District of any default. No option, right, power, remedy, or privilege of District shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the District by this Agreement shall be deemed cumulative.

22. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default of this License by Caterer.

- a. The failure of Caterer to make any payment of license fees or any other payment required to be made by Caterer hereunder, upon 10 days written notice from District of non-payment.
- b. The failure of Caterer to observe or perform all the covenants, conditions, or provisions

of this License to be observed or performed by Caterer where such failure continues for a period of thirty days after written notice thereof from District to Caterer. If the nature of Caterer's default is such that more than thirty days are reasonably required for cure thereof, then Caterer shall not be in default if Caterer shall commence such cure within the thirty-day period and thereafter diligently prosecutes such cure to completion.

- c. The failure of Caterer to comply with any written order or directives relating to the Facilities from any governmental entity within the time set forth in such order and all applicable appeal rights have been exhausted.
- d. If any petition is filed by Caterer under any section or chapter of the federal Bankruptcy Code as it may be amended from time to time and such petition is not dismissed within ninety days after the filing thereof; if Caterer becomes insolvent or makes a transfer in fraud of creditors; if Caterer makes a general arrangement or general assignment for the benefit of creditors; if a receiver, custodian or trustee is appointed for any of the assets of Caterer located at the Facilities and the appointment is not vacated within ninety days.
- e. The discovery by District that Caterer has provided the District with false financial information.

23. REMEDIES

In the event of a material default by Caterer, District may:

- a. Terminate this Agreement in which case Caterer shall immediately surrender possession of the Facilities to District.
- b. Take possession of the Facilities as the agent and on account of Caterer, and if it so elects may license or rent the whole or any part of the Facilities for the balance or any part of the term of this License and retain any license fees received and apply the same in payment on account of Caterer. The performance of any or all said acts by District shall not release Caterer from the full and strict compliance with all the terms, conditions and covenants of this License on Caterer's part and Caterer shall pay any deficiency that may exist after deducting any license fees received, if any.
- c. It is understood that the remedies herein provided for District in case of a violation of the terms of this License by Caterer are not exclusive but are in addition to the remedies provided by law or at equity, and any of which remedies District shall have the right to use at its option.

24. HOLD OVER

Any holding over after the expiration of the term of this License, with the consent of District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable. District may terminate any hold over tenancy on thirty (30) days written notice to Caterer.

25. MISCELLANEOUS

- a. Notices. Any notice, demand, request, consent, approval, or communication ("notice") that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, and shall be addressed to that party at the address set forth in the introductory paragraph of this Agreement. If personally served, the notice shall be effective upon receipt. If sent by mail, the notice shall be effective as of the date signed by recipient in the return receipt card. Either party may change its address by notifying the other party of the change of address in the manner as provided in this Section.
- b. Sales or Transfer of Facilities. If District transfers its rights to the Facilities, District, on consummation of the transfer, shall be released from any liability thereafter accruing under this Agreement on or after the date its rights to the Facilities are transferred, but District shall remain liable for any of its defaults under this Agreement accruing prior to the date of such transfer of Titles. If any Caterer Fees have been prepaid by Caterer, District can transfer the prepayment to District's successor and on such transfer, District shall be discharged from any further liability regarding the prepayment.
- c. Attorneys' Fees. In the event of a dispute between the parties arising out of or in connection with this Agreement, whether such dispute results in litigation, the prevailing party (whether resulting from settlement before or after litigation is commenced) shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit incurred by the prevailing party.
- d. Exhibits. All exhibits referred to in this Agreement are attached to it and incorporated by reference.
- e. Time of Essence. Time is of the essence of each portion of this Agreement.
- f. Rules and Regulations. Caterer shall comply with the rules and regulations promulgated by the District from time to time. If there is a conflict between the rules and regulations and any of the provisions of this Agreement, the provisions of this Agreement shall prevail. Caterers shall enforce rules of the facilities during their events.
- g. Caterer Fee Obligation. Except to the extent expressly provided in this Agreement, no event or occurrence during the Term, and no present or future laws, shall relieve Caterer of any of its obligations pursuant to this Agreement, including, without limitation, its obligation to pay any Caterer Fees and other sums required by any of the provisions of this Agreement. Caterer waives any rights now or hereafter conferred upon it by any laws, proclamations, decrees or orders to any abatement, diminution, or suspension of any payments of any Caterer Fees or other sums payable under this Agreement.
- h. California Law. This Agreement shall be construed and interpreted in accordance with

the laws of the State of California.

- i. Modification. This Agreement contains the entire agreement between the parties and cannot be amended or modified except by written agreement.
- j. Severability. The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

26. ADVICE OF COUNSEL

Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

27. HEADINGS

Headings are for convenience only and shall not be considered in the interpretation of this Agreement. This Agreement shall benefit and bind the successors and assigns of the respective parties hereto.

28. ENTIRE AGREEMENT

This Caterer Agreement constitutes the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the day first herein above written.

EAST BAY REGIONAL PARK DISTRICT

By _____
General Manager or Designee

Approved as to Form:

By _____
Assistant District Counsel

CATERER

By _____
President

EXHIBIT A

Current Rental Facility Fees and Hours of Operation are listed on the Park District's website:

<https://www.ebparks.org/activities/corpfamily/default.htm>

EXHIBIT B

SERVICES TO BE PERFORMED BY CATERER

Caterer shall be available during the days and hours of operation of the Facilities as established by District to provide the following services to the public:

Catering. Caterer shall offer a full range of high-quality catering services, with a variety of prices and choices to service a wide variety of groups and events properly and fully.

Additional Mid-Week Services. Caterer shall conduct and operate the mid-week services at the Facilities as were proposed by it and agreed upon during the selection process prior to execution of this Agreement, and such other special services and events as the parties may agree upon, in writing from time to time. Any promotional material regarding the Facilities will be subject to reasonable approval by District's Facilities Supervisor prior to distribution. Caterer will prepare and submit to District by each December 1st a written description of promotional plans for the following calendar year. Caterer shall include a reference to East Bay Regional Park District when promoting use at a District facility; an example, "doing business in an East Bay Regional Park District facility."

COVID-19 PROTOCOL COMPLIANCE

Caterer shall comply with all applicable COVID-19 rules and protocols for the Facilities as set by the Park District, County, State, or other authority, which are updated from time to time. Caterer responsibilities include, but are not limited to:

- Caterer employee training.
- Customer education including current rules, enforcement, and penalties, including loss of security deposit.
- Inclusion of COVID-19 rules and protocols in customer contracts
- Compliance with vaccine mandates for employees
- Monitoring and implementation of vaccine or negative test checks at guest arrival time of each reservation.

Caterer shall set a high standard for COVID-19 compliance and safety. Failure to do so, may result in suspension or termination of this agreement.

EXHIBIT E
Fingerprinting & TB Test Compliance
Public Resources Code – PRC S B 5163 & 5164

5163

(a) No person shall initially be employed in connection with a park, playground, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food caterer or other licensed caterer in that area, unless the person produces or has on file with the city or county, a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required, and a referral shall be made within thirty days of the examination to the local health officer to determine the need for follow-up care. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5164

(a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor if that person has been convicted of an offense specified in paragraph (2).

(2) (A) A violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or a sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) A felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, an offense specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that a record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires

as to whether that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all the county, city, city, and county, or special district's costs attributable to the requirements imposed by this section.

(Amended by Stats. 2010, Ch. 719, Sec. 54. (SB 856) Effective October 19, 2010.)