

**CASITAS MUNICIPAL WATER  
DISTRICT LAKE CASITAS  
RECREATION AREA  
11311 Santa Ana Road  
Ventura, California 93001**

**REQUEST FOR PROPOSAL**

Notice is hereby given that proposals are being requested to operate a Casitas Water Adventure Temporary Seasonal Snack Bar Concession at Lake Casitas Recreation Area located at 11311 Santa Ana Road, Ventura, California 93001 per the following specifications.

Proposals will be received at the Lake Casitas Recreation Area ("LCRA") until **3:00 p.m., Tuesday, December 20, 2016**. At this date and time all proposals will be publicly opened. Only the names of the Proposers will be read aloud. If further information is needed, please contact Carol Belser at (805) 649-2233, extension 111.

**A pre-proposal meeting will be held on Thursday, November 17, 2016 at 9:00 a. m. at the LCRA to address and answer questions from prospective proposers.**

**MAILED proposals must be marked "Casitas Water Adventure Snack Bar Proposal" and submitted to the address below by the December 20, 2016 3:00 p.m. deadline. Postmarked dates will not be accepted.**

Lake Casitas Recreation Area  
11311 Santa Ana Road  
Ventura, CA 93001  
Attn: Carol Belser

It is the responsibility of the Proposer to ensure that any proposals submitted shall be received prior to the opening time. **Proposals received after the December 20, 2016, 3:00 p.m. deadline will be returned to Proposers unopened.**

The receiving time at the LCRA will be the governing time for acceptability of proposals. Proposals will not be accepted by telephone, facsimile or e-mail. **ALL PROPOSALS** must bear original signatures and figures.

**1. Introduction**

(a) Casitas Municipal Water District "Casitas" is seeking a corporation, business, or individual to operate a Temporary Seasonal Snack Bar Concession to provide a source for customers to purchase lunch items, snacks, beverages, ice cream items and gift shop items within the Lake Casitas Recreation Area "LCRA" located at 11311 Santa Ana Road, Ventura CA 93001.

(b) The LCRA and Demised Premises on which the Temporary Seasonal Snack Bar ("Snack Bar") are show on Exhibits: A-1 - Aerial Map of LCRA, A-2 - Demised Premises Site Map, B - Casitas Water Adventure Brochure and C – Example of Concession Agreement. The LCRA is operated by Casitas under a Management Agreement with the U.S. Bureau of Reclamation ("USBR").

(c) Casitas Water Adventure ("CWA") operates within the Lake Casitas Recreation Area and has a seasonal visitation of over 64,000 guests with a maximum daily capacity of 1,250. Approximately 64,963 tickets were sold during the 2015 season with 45% being sold on Saturdays and Sundays. Tickets often sell out on Saturdays which traditionally have the highest attendance.

(d) Lake Casitas with a capacity of 254,000 acre-feet is a reservoir for domestic, municipal, irrigation and industrial use. Because Lake Casitas is a drinking water reservoir, no swimming or body contact is allowed. The lake is experience an historic drought and is at under 40% capacity.

(e) The LCRA has an annual operating budget of approximately 3.5 million dollars. It is operated

entirely from fees for entrance, camping, CWA receipts and concession revenues, receiving no Federal, State or County general fund contribution for its operation.

(f) LCRA is a popular year round recreation and camping area with approximately 413 groomed sites ranging from full hook ups to tent camping drawing both RV and tent campers. The approximately 550,000 visitors annually are primarily from the Southern California region. Numbers reflect individual visits to the LCRA and are based on a consistent method to track visitation numbers using an accounting of gate entry numbers in the formula. The LCRA encompasses 1,200 acres of land and is surrounded by 3,500 acres of scenic non developed watershed lands.

(g) Recreational activities include camping, fishing, boating, hiking, wildlife viewing, the summer season Water Adventure, nature activities, biking, children's playground structures, basketball court, disc golf, radio controlled model airplanes with an air strip, plus day use activities such as picnicking. The LCRA also provides several group sites for social gatherings, has a comprehensive Marina offering boat rentals, docking and a Café', and a park store.

(h) The CWA is seasonally operated from approximately Memorial Day through Labor Day.

## 2. Business Terms

Following the selection of a proposal by Casitas, staff will negotiate a Concession Agreement with the selected party based on the terms below. The final Concession Agreement will be subject to approval by the Board of Directors of Casitas, and the US Bureau of Reclamation.

(a) Proposed Term: Casitas has the authority to offer a five (5) year agreement to operate a Temporary Snack Bar seasonally each year.

(b) Proposed Payments: Percentage rent in an amount not less than ten percent (10%) of gross sales.

(c) Required Insurance: Concessionaire shall provide Workers' Compensation and Employers' Liability Insurance to cover all concessionaire staff while performing any work incidental to the performance of the Concession Agreement. General Liability Insurance shall be provided with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A- and (2) are admitted insurance companies in the State of California. Concessionaire will also be required to name Casitas Municipal Water District and the United States Government (USBR) as additional insureds. This will be a condition of the Concession Agreement.

(d) Hours of Operation: The Concession shall be open for business daily corresponding with the CWA opening and closing schedule generally between the months of May and September (approximately ninety (90) days) with hours which vary during the week between 8:00 a.m. and 8:00 p.m. Concessionaire is required to operate the business seven (7) days a week and on holidays when extended hours are encouraged.

(e) An example Concession Agreement, containing most of the standard terms and conditions required by Casitas for a concession agreement, is attached as Exhibit C. **It is the responsibility of the Proposer to review the example agreement, examine the economic environment and conduct such further investigations as are necessary or appropriate to ensure that the nature of the undertaking and the obligations to be assumed by the Proposer are fully understood.**

**3. General Requirements.** The intent of this Request for Proposal ("RFP") is to result in a Concession Agreement for the Temporary Seasonal Snack Bar for the CWA at LCRA. The evaluation of the responses and award of any resulting Agreement will be in conformance with the rules of this section and applicable State law and Casitas policies. A Proposer's submitted proposal is an irrevocable offer valid for ninety (90) days following the closing date for receipt of proposals. In addition to an explanation of Casitas' mandatory requirements, this RFP includes instructions which prescribe the format and content of the proposal to be submitted.

(a) Examination of the Request for Proposal: Proposers should carefully examine the entire RFP and exhibits thereto and should become fully aware of the nature of the services to be provided.

(b) Questions Regarding the RFP: If further information is needed, please contact: Carol Belser, Park Services Manager at (805) 649-2233 x 111.

(c) Proposers are strongly recommended to monitor the LCRA website at [www.lakecasitas.info](http://www.lakecasitas.info) where the RFP and any necessary addenda will be posted. Verbal communications from Casitas staff concerning the RFP are not binding on Casitas and shall in no way excuse the successful Proposer of obligations as set forth in the RFP and any addenda thereto.

#### **4. Steps of Proposal Development and Review**

(a) Preparation: The proposal must be complete in all respects as required in these specifications described in detail in Section 7 entitled "Proposal Contents". A proposal is to be prepared in such a way as to provide a straightforward and concise discussion of the Proposer's ability to satisfy the requirements of this RFP. Emphasis should be placed on conformance to the RFP instructions, responsiveness to the RFP requirements and on the completeness and clarity of content.

(b) Proposer's Cost: The cost of developing a proposal is the responsibility of the Proposer and is not chargeable to Casitas.

(c) Signatures: Proposals shall be on Proposer's letterhead and signed by an individual(s) who is/are authorized to bind the Proposer contractually. The Proposer must not include any limiting statements in its proposal that would preclude the proposal from being held as an irrevocable offer for at least ninety (90) days after the date the proposals are to be received. An unsigned proposal will be rejected.

(d) Terms: Proposals shall not include terms which conflict with the terms of this RFP.

(e) Delivery of Proposal: Sealed proposals must be received by the Park Services Manager by the time and date stated on page 1 of this RFP. Proposals received after that time will be returned to the Proposer unopened.

(f) Mandatory Requirements: These instructions prescribe the proposal format and the approach for the development and presentation of proposal data. The format of the instructions must be adhered to. All requirements and questions in the RFP must be responded to and all requested data must be supplied.

(g) Proposal Format: Respond to all information requested in this RFP. Brochures and advertisements will not be accepted as a substitute for these requirements.

#### **5. Qualifying Proposals Must Address All Items**

(a) Submittal and Selection Process: Casitas reserves the right to award the contract to the Proposer whose proposal is in the best interest of Casitas, as determined by Casitas. The basis of the award shall be, but is not limited to, the criteria below.

(b) Qualifications of Proposer: Business history and experience, type of legal entity with whom Casitas would contract, etc.

(c) Project Management - Qualifications of project manager.

(d) Results of Credit – Credit, business and personal reference checks.

(e) Business Plans: Proposer's plans for operations to enhance current and future business activity and opportunities for optimum customer service.

(f) Any other criteria Casitas determines necessary for a fair and complete proposal.

**Note:** The above criteria are not listed in order of importance. Weighted values will be assigned to the criteria during the evaluation process. Once an award recommendation is decided upon by Casitas, the proposals will be available for public inspection (See Section 6).

(g) **Conformance to Specifications:** Each proposal will be checked for the required material and information in conformance with the requirements of this RFP. These requirements are obligatory and failure to respond fully may deem the proposal non-responsive.

## **6. Proposal Terms**

(a) **Right to Reject Proposals and Waive Defects:** Casitas reserves the right to reject all proposals or waive any technical defect or discrepancy in a proposal.

(b) **Proposal Acceptance Periods:** All proposals shall remain firm for ninety (90) days following the closing date of receipt of proposals.

(c) **Ownership of Proposal Documents:** Proposer understands that all information, documents, records and materials submitted to Casitas in response to this RFP, and subsequent documents deemed necessary by Casitas, will become and remain irrevocably the exclusive property of Casitas. All information, documents, and material, with the exception of certain items that are excludable by law, will become public information and made available upon request for review to the other Proposers and the public after a selection has been made and recommended to the Casitas Board of Directors.

(d) **Proprietary Information:** Proposer should clearly designate any and all proprietary information contained in its proposal. Financial statements and tax returns will be held as confidential information and returned to Proposer following the evaluation process.

(e) **Rejection of Proposals:** To better ensure open competition, proposals may be rejected if, in Casitas' determination, they show any irregularities, conditions, non-conformities, or obviously unbalanced proposals. Proposals shall be in accordance with the laws of the State of California.

## **7. Proposal Contents**

All proposals should include, at a minimum, the information described in the following section. The inclusion of any additional information that will assist in the evaluation is encouraged.

- (a) **Proposer's Business Concept and Plan:**
- (1) Submit a description of any planned capital improvements to the facility (as referenced in Section 9 "Proposal Evaluation").
  - (2) Include a tentative plan for merchandising and promotions, including a listing of menu items and key supply elements within the Temporary Seasonal Snack Bar and adjacent area. Additionally, provide a cost estimate for any proposed improvements (temporary building/facades, tables, benches, etc.) and timeline for completion of preparing the facility for commencement of operation. The cost estimate shall include local, State and Federal regulatory and permitting costs if applicable.
  - (3) List proposed days and hours of operation if they vary from Section 2(d).
  - (4) Submit a projection of revenues and expenses for a five-year period. Identify funding/financing for capital improvement costs.
  - (5) Submit a marketing and advertising plan for the business.
  - (6) Confirm that all insurance requirements will be met.
  - (7) Indicate the proposed minimum monthly rent, percentage rent and lease term.

- (8) Provide contact information including name, address, and phone number.
- (9) Indicate business entity, e.g. corporation, sole proprietor, partnership, etc.
- (10) List corporate officers if applicable.
- (11) Indicate the length of time and locations at which Proposer has operated a similar business(s).
- (12) Provide a minimum of three (3) business and three (3) personal references.
- (13) Submit a financial statement indicating total net worth. The statement should correspond to the most recent full calendar or fiscal year. An audited financial statement is preferred.
- (14) Provide a minimum of three credit references.
- (15) Indicate if the Proposer is involved in any litigation or other disputes that could affect its ability to execute a Concession Agreement and/or undertake the operation of the concession.
- (16) Indicate if the Proposer has ever filed for bankruptcy or had projects that have been foreclosed on. If applicable, list the dates and circumstances.
- (17) Submit any other documents or reports that would assist in determining the financial condition of the Proposer.
- (18) Casitas will conduct a credit check and a background check on the Proposer.

**8. Disclosures**

(a) Casitas will provide the lease site "as is." Proposer will be responsible for temporary building and all necessary operational permits. Any remodeling/improvements will require the Proposer to obtain prior written approval from Casitas, all the necessary permits and approvals required by Casitas, the USBR and any other governing agencies. The Proposer will be required to comply and show proof of all local, State, and Federal laws and regulations regarding bidding, prevailing wages, labor, and other legal mandates such as County of Ventura Health Permit and/or requirements for any improvements made to the Demised Premises.

(b) The Proposer will bear the costs of all mitigation, design, review, planning, permitting and any other approval process required by any local, State and Federal regulatory agencies in relation to facility improvements.

(c) Casitas will conduct a credit check and background check on the Proposer.

(d) Revenue received by Casitas: See Table 1 attached hereto.

**9. Proposal Evaluation**

(a) Evaluation Process and Criteria for Evaluation: Specific criteria have been established to assist Casitas in the evaluation of the proposals. The proposal review team may use additional criteria that they deem to be significant in selecting the best proposal.

(b) Business Plan – 60 points.

- (1) Proposed minimum and/or percentage monthly rent to be paid to Casitas.
- (2) Days/hours of operation.
- (3) Price structure for goods and services to be provided on site.

- (4) Customer benefit.
- (5) Marketing & advertising plan.
- (c) Management - 20 points.
  - (1) Company history.
  - (2) Business experience.
- (d) Financial Information – 20 points.
  - (1) Financial statement/financial history.
  - (2) Five-year revenue & expense projections.

(e) Additional Information From Proposers: Casitas reserves the right to request information from Proposers beyond that specified in the RFP. Proposers may be requested to appear before the proposal review team.

**10. Qualification of Proposal**

This is not a bid solicitation and therefore Casitas is not obligated to accept any proposal or to negotiate with any Proposer. The Proposal review team reserves the right to reject any or all proposals without cause of liability.

**11. Submission Requirement**

One original and one copy of the proposal must be submitted by the time and date stated on page 1 of this RFP. Questions regarding the RFP should be directed to Carol Belser, Park Services Manager at (805)-649-2233 x 111.

**12. Public Information Notice**

All information received from Proposers will be considered confidential during the review process. After the proposal review team completes its evaluation, the team will recommend selection or another action to the Board of Directors. At that point all information except that information defined below as excluded, will be treated as public information and made available upon request for review to other proposers and the public. Any Agreement entered into is subject to the prior approval of the USBR.

All excluded information which contains financial assets, net worth, and other such information of a non- public nature, including real estate appraisals and rating sheets and other notes resulting from the evaluation process, will be treated as confidential information by Casitas and will not be made available for public review or to other proposing parties.

**Attachments**

Table 1.

**Exhibits**

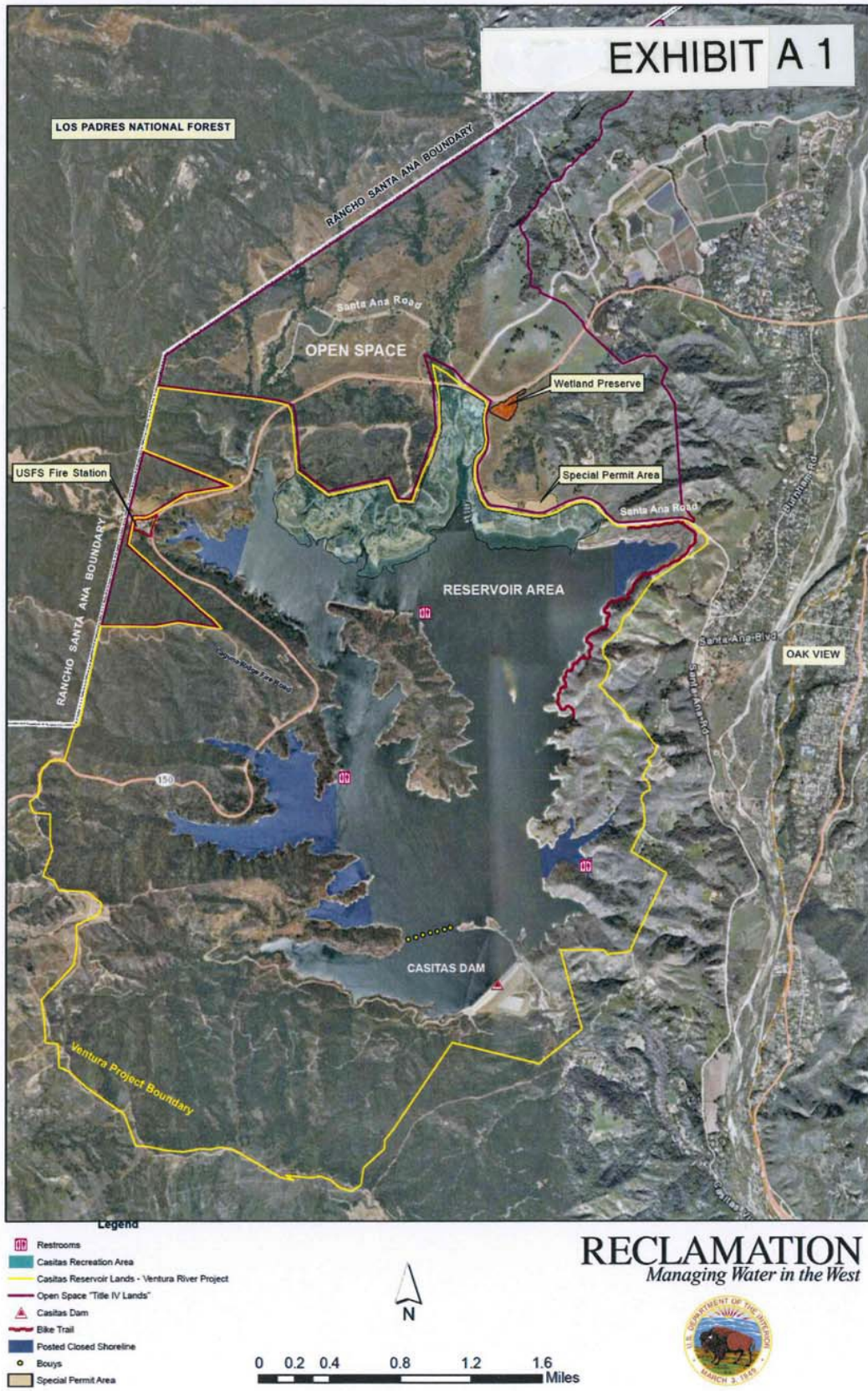
- A-1 - Aerial of LCRA.
- A-2 - Park Store Demised Premises Site Map.
- B - Lake Casitas Recreation Area Campgrounds Brochure Location – under separate cover.
- C – Example Concession Agreement –under separate cover.

**Table 1**  
**CWA Revenue Received by Casitas**

	<b>2012/13 Season</b> July 2012 – June 2013	<b>2013/14 Season</b> July 2013 – June 2014	<b>2014/15 Season</b> July 2014 – June 2015
Terms of Gross Receipts	10%/11%	11%/12%	12%/13%
Total received by Casitas	\$6,469	\$6,661	\$7,281



Exhibit – A-1





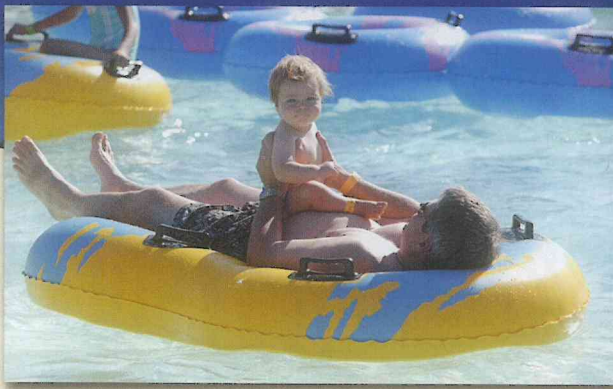
**Exhibit – A-2**



**Exhibit B**  
**Casitas Water Adventure Brochure (Under Separate Cover)**

**Exhibit C**  
**Example Concession Agreement (Under Separate Cover)**





## Junior Lifeguard Program

Have your children participate in this fascinating 3-week camp. The junior guards program will include still water and ocean safety, lifesaving skills, techniques and procedures, first aid and CPR, development of swimming skills, physical fitness, boat and rescue watercraft safety.

## Water Aerobics

Come to the water park before all the guests arrive and start your day off with a cardiovascular workout. We offer aqua aerobics and water walking that are a safe alternative to high impact aerobics.

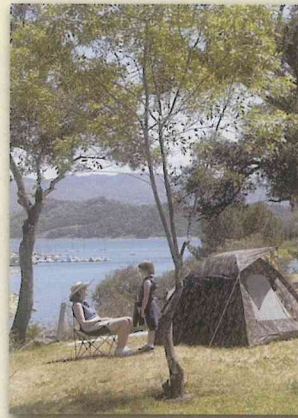
## Birthday Party

Plan your next party or event at Casitas Water Adventure. Whether it's a small party for you and your close friends or a large gathering for a company picnic, Casitas Water Adventure is the place to have it!



## Directions

From the 101 Freeway take the Highway 33 connector toward Ojai. Continue 10 miles to Baldwin Road, which is also Highway 150 for approximately 3 miles to Santa Ana Road. Turn left. Entrance to Lake Casitas Recreation Area is within 100 yards on right hand side.

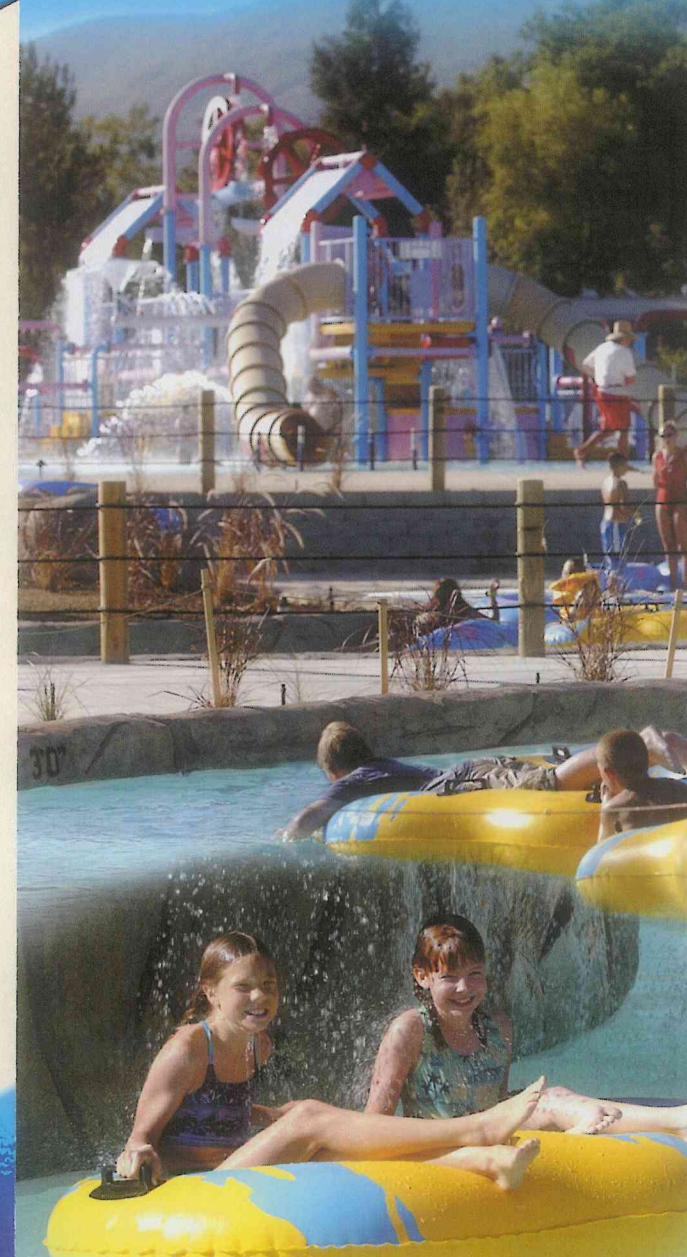
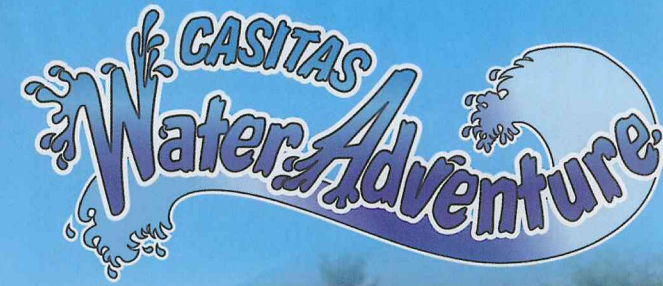


## Lake Casitas

The Lake Casitas Recreation Area welcomes thousands of visitors each year for camping, boating, fishing, hiking, biking, water play and special events. Lake Casitas is conveniently located between Santa Barbara and Ventura. It has 35 miles of beautiful shoreline and is surrounded by thousands of acres of oak tree-studded rolling hills and scenic open space.



**Lake Casitas Recreation Area**  
 11311 Santa Ana Road • Ventura, CA 93001  
 General Information: 805-649-2233  
 Reservations: 805-649-1122  
[www.lakecasitas.info](http://www.lakecasitas.info)





# FUN FOR THE ENTIRE FAMILY AT CASITAS WATER ADVENTURE!



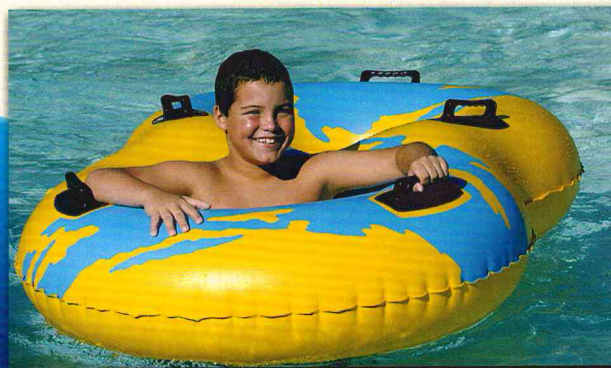
Children of all ages and adults will have fun on the interactive, multi-level playground. It features waterfalls, slides, stairs, jet sprays and all kinds of watery surprises.

The whole family can share in the newest attraction, a 1,200-foot slow-moving scenic river ride that carries visitors on inner tubes through a waterfall and jet sprays, and under fog-filled bridges.

**T**he water park at Lake Casitas is open throughout the summer, offering everyone a splash.

For the smallest of tots, a zero-depth pool sprays water from all angles. There is no standing water, so little ones can have a fun and safe time playing and cooling off.

A lagoon 18 inches deep is the ideal spot for young children and their parents to splash around, or for parents to relax while their kids enjoy some water play.



## Amenities and Services

Inner tubes are available for the river ride. American Red Cross certified lifeguards are on hand at all times, and life jackets are available at no extra charge while supplies last. Other amenities include lounge chairs, grass areas, shade structures, and restrooms with changing areas and coin-operated hot showers. Lunch items, snacks, drinks and ice cream are offered at the concession stand. Locker rentals are available for a nominal fee.



***THIS AGREEMENT IS AN EXAMPLE ONLY  
& MAY BE MODIFIED WHEN BID AWARDED***

**CASITAS MUNICIPAL WATER DISTRICT**



**CONCESSION AGREEMENT  
FOR THE OPERATION AND MANAGEMENT OF  
THE CASITAS WATER ADVENTURE  
TEMPORARY SEASONAL SNACK BAR  
AT LAKE CASITAS RECREATION AREA**

Lake Casitas Recreation Area,  
11311 Santa Ana Road, California 93001  
(805)-649-2233

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**AGREEMENT FOR THE OPERATION AND MANAGEMENT  
OF THE CASITAS WATER ADVENTURE TEMPORARY SEASONAL  
CONCESSION AT  
LAKE CASITAS RECREATION AREA**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CASITAS MUNICIPAL WATER DISTRICT (hereinafter referred to as "Casitas") and \_\_\_\_\_ (hereinafter referred to as "Concessionaire").

**WITNESSETH:**

WHEREAS, the United States has constructed the Ventura River Project, including Casitas Dam and reservoir, pursuant to Act of Congress (Public Law 423, 84<sup>th</sup> Cong., 2d session) approved March 1, 1956, for irrigation, for furnishing water for municipal and domestic use, and for providing incidental recreation and fish and wildlife benefits: and

WHEREAS, the United States has contracted with Casitas pursuant to Contract No. 14-06-200-5257 "contract between United States and Ventura River Municipal Water District Providing for the construction of a Storage and Conveyance System", dated March 7, 1956, for repayment of federal costs incurred in construction of the Ventura River Project, for operation and maintenance of Project Works, with the stipulation that the title Ventura River Project remains with the United States; and

WHEREAS, Lake Casitas Recreation Area (hereinafter referred to as "LCRA") is the property of the United States Government managed by the U.S. Bureau of Reclamation (hereinafter referred to as "USBR"), operated by Casitas under agreement as shown in Exhibit A-1 attached hereto; and

WHEREAS, Casitas is authorized by the Management Agreement Number 11-LC-20-0216, between the USBR and Casitas, to issue and administer third party contracts for concessions and services for the purpose of providing appropriate and necessary services, goods, and facilities for the use of the visiting public consistent with said Management Agreement and in accordance with any current or future planning documents; and

WHEREAS, Casitas is authorized by the provision of Water Code Section 71,000 et seq. to enter into an agreement for concessions and services that are consistent with public recreational facilities appurtenant to facilities operated or contracted to be operated by Casitas; and

WHEREAS, Concessionaire acknowledges that Casitas, in its sole discretion, controls access to the LCRA, and that Concessionaire's business volume is limited to persons granted access to the LCRA by Casitas; and,

WHEREAS, Concessionaire acknowledges that Casitas imposes reasonable fees and charges on LCRA users , and that Concessionaire's business volume will likely be limited to those persons subject to those Casitas fees and charges; and,

WHEREAS, the words of this Agreement have been chosen specifically to support Casitas' directives and standards and to create a customer base, attract and serve the public and to operate current and future recreational facilities and ancillary services; and

WHEREAS, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed; and

WHEREAS, the parties hereto desire to enter into an Agreement for the operation and administration of Casitas Water Adventure (hereinafter referred to as "CWA") Temporary Seasonal Snack Bar (hereinafter referred to as "Snack Bar") concession services; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them agree as follows:

1. **INCORPORATION BY REFERENCE**

All Schedules and Exhibits attached hereto are incorporated by reference herein.

2. **DEFINITIONS**

See Appendix 1 for definitions used in this Agreement and Appendix 2 for abbreviations and acronyms.

3. **INTERPRETATIONS**

(a) This Agreement shall be interpreted according to the rules that govern the interpretation of contracts, as prescribed in Part 2 of Division 3 of the California Civil Code, commencing with Section 1635.

(b) For jurisdictional purposes, this Agreement shall be deemed entered into and enforceable in Ventura, California.

(c) Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.

(d) A reference to a person includes firms, partnerships, corporations, limited liability company and other business organizations and their successors and permitted assignees or transferees.

(e) Headings are for convenience and reference only.

4. **GRANT OF CONCESSION**

In consideration of the Concessionaire's obligations contained in this Agreement, Casitas hereby authorizes and grants Concessionaire the non-exclusive use of the Demised Premises to operate and maintain a non-exclusive CWA Snack Bar limited to the time frame that coincides with the seasonal operation of the CWA and commercial activities described herein. The Concessionaire hereby accepts such authorization and grant upon the terms and conditions of this Agreement. Nothing in this Agreement shall be construed by Concessionaire as preventing Casitas from constructing, operating or contracting for additional concession facilities of any type.

5. **DEMISED PREMISES**

The operation of the Concession shall be conducted on the real property described in Exhibit A attached hereto on a temporary basis and only during the CWA season.

(a) Condition of Demised Premises "AS IS". Concessionaire accepts the Demised Premises in "As Is" condition, and further agrees to make no demands upon Casitas for any improvements or alterations to the Demised Premises, except as may otherwise be provided herein.

(b) Temporary Seasonal Facilities. Each year of this Agreement, Concessionaire will erect a temporary snack bar facility on the Demised Premises prior to the commencement of the CWA season and dismantle and remove same from the LCRA at the end of each season. The season operation generally runs from Memorial Day through Labor Day.

(c) No Exclusive Use. Under no circumstances will long-term, private, exclusive use be permitted within the Demised Premises. The Concessionaire is not authorized to permit or grant any visitor, person, employee, or organization exclusive rights to occupy or use the subject services or facilities or preclude use by the public. The Concession contract is issued on a **non exclusive** use basis.



(d) Use of Demised Premises. The premise shall be used only for said purposes, and such other purposes as are related thereto provided express approval is granted by the Casitas General Manager, and for no other purposes whatsoever.

(e) Relocation. Casitas shall have the option to require Concessionaire to relocate the Snack Bar to a different location in the LCRA ("New Demised Premises"). Casitas may exercise such option by giving Concessionaire written notice not less than thirty (30) days prior to the proposed effective date of relocation. If Casitas exercises its option to relocate the Demised Premises, Concessionaire shall relocate to the New Demised Premises at no cost or expense to Casitas, except as otherwise provided in subparagraph (f) and (g).

(f) Casitas' Obligations. To the extent that the original Demised Premises includes structures, buildings, improvements, or fixtures owned by Casitas, then Casitas shall pay for improving the New Demised Premises so that they are substantially similar to that portion of the original Demised Premises owned by Casitas, but Casitas shall not bear any other costs or expenses incurred by Concessionaire in relocating from the original Demised Premises to the New Demised Premises including, but not limited to, salaries of Concessionaire staff for time allocated to such relocation, legal fees, or Concessionaire's loss of business revenue.

## 6. INUNDATION OR DROUGHT

The water level of Lake Casitas is subject to change and fluctuation from natural causes, and/or the use of water of the reservoir for domestic water supply, diversion channels and other purposes. In the event that the Demised Premises are permanently inundated or in the event that drought or imminent threat of permanent inundation affects the Demised Premises such that the rights granted to Concessionaire hereunder can no longer be exercised, Concessionaire may, at no cost or expense to Casitas, relocate to an alternate site mutually agreed upon in writing by Casita and Concessionaire, and this Agreement shall remain in effect for the remaining portion of its term. In the event of inundation or drought which precludes the exercise of the rights granted to Concessionaire hereunder, and the parties are unable to mutually agree upon an alternate site in the LCRA, this Agreement shall terminate.

## 7. TERM OF AGREEMENT

(a) The term of this Agreement will be for five (5) years from the date first written above, unless terminated sooner as provided in Paragraph 23 herein.

(b) There is no clear or inferred right of first refusal clause incorporated in this Agreement for subsequent agreements of similar nature.

(c) The Demised Premises shall be considered vacated after all areas, including storage and parking areas, are clear of all of Concessionaire's belongings, and keys and other property furnished for Concessionaire's use are returned to Casitas. Should Concessionaire hold over beyond the termination date or fail to vacate the Demised Premises on or before the termination date, Concessionaire shall be liable for additional rent and damages which may include damages due to Casitas loss of prospective new Concessionaires.

(d) The Concessionaire understands and agrees that the USBR will not carry forward agreements and contracts should the Management Agreement between Casitas and the USBR expire or terminate.

## 8. PAYMENTS

For the use granted herein, Concessionaire agrees to pay Casitas as follows:

(a) Percentage Rent in an amount equal to ten percent (10%) of gross sales, made from or upon the Demised Premises during each calendar month during the term hereof.

(b) Miscellaneous Charges for any services, equipment, and labor provided by Casitas for wastewater hauling or other services as set forth by Board adopted rates requested by Concessionaire. Miscellaneous charges will be invoiced by Casitas to the Concessionaire and paid in a timely manner in accordance with Casitas requirements.

(c) Place and Date of Payment. Concessionaire shall make all required payments by check or draft issued and payable to the "Casitas Municipal Water District," and mailed to Lake Casitas Recreation Area, 11311 Santa Ana Road, Ventura, California 93001, or such other place designated in writing by Casitas. Concessionaire shall compute the Percentage Rent each calendar month during the term and shall pay the Basic Rent, Percentage Rent and Miscellaneous Charges to Casitas on or before the fifteenth (15<sup>th</sup>) day of the immediately following calendar month. Concessionaire agrees to deliver or cause to be delivered to Casitas, within fifteen (15) days following the end of each calendar month during the term, a written statement signed and certified by Concessionaire to be true and correct, showing in accurate detail the amount of Concessionaire's Gross Sales for the preceding calendar month, together with remittance of any Percentage Rent due. In addition, Concessionaire shall furnish Casitas with an annual financial statement and a balance sheet prepared according to standard accounting principles. The financial statement shall be submitted within sixty (60) days of the close of an annual year.

(d) Late Charge. A late payment charge of two percent (2%) per month shall be added to any payments received after the last day of the calendar month in which payment is due. Casitas is not obligated to notify Concessionaire of accumulated late charges.

(e) Adjustments to Gross Sales. There shall be no deduction from gross receipts for any overhead or cost or expense of operations, such as, but without limitation, salaries, wages, costs of goods, interest, debt amortization, credit, collection costs, discounts from credit card operations, insurance and taxes. Bona fide bad debts actually incurred by Concessionaire or its subcontractors, assignees, licensees, concessionaires and permittees may be deducted from gross receipts. There shall, however, be no deduction for bad debts based on past experience or transfers to a bad debt reserve. Subsequent collection of bad debts previously reported as gross receipts shall be included in gross receipts at the time they are collected.

(f) Concessionaire is not guaranteed a profit.

## 9. ACCOUNTING

Concessionaire hereby agrees at all times during the term to use a point of sale computer system or other device to accurately record all sales and keep true, full and accurate books of account containing a complete statement of Concessionaire's Gross Sales in accordance with generally accepted accounting principals and practices (showing all of its sales separate from its other concessions and/or stores). The electronic data processing and record keeping equipment shall contain such features as the Casitas General Manager may reasonably require for the purpose of assuring that an accurate record of the transaction is created and retained by the equipment to be use.

(a) Records. Concessionaire shall maintain accounting books and records including, but not limited to, daily sales records and journals, sales returns and allowance detail, cash receipts, accounts receivable, disbursement journals, bank statements, deposit slips, inventory records, purchase orders, receiving records, state sales and use tax returns and a complete general ledger.

(b) Storage. All accounting books and records maintained by Concessionaire shall be kept by Concessionaire for a period of no less than three (3) years after the close of each calendar year

(c) Inspection. Concessionaire hereby grants to Casitas and its agents and accountants the right, during Concessionaire's normal business hours and upon reasonable notice, to inspect such books and records kept in connection with the business done or transacted in or upon the Demised Premises, for the purpose of verifying Concessionaire's Gross Sales. Casitas, for itself and for its agents and accountants, agrees to keep confidential all sales figures, audits and reports furnished by or obtained from Concessionaire, as between Casitas and its attorneys, lenders, financial partners, if any, accountants and other financial advisors.

(d) **Audit.** At any time and from time to time, Casitas may elect to perform an audit of Concessionaire's Gross Sales, provided such audit shall not unreasonably interfere with the operation of Concessionaire's business. Such audit shall be conducted by either Casitas or a certified public accountant to be designated by Casitas in its sole discretion. If any statement of Concessionaire's Gross Sales previously furnished by Concessionaire shall reflect less than ninety-seven percent (97%) of the amount of Concessionaire's Gross Sales as shown by such audit and additional Percentage Rent is payable by Concessionaire as a result of such understatement, or if such audit shows that Concessionaire has failed to maintain the books and records required herein so that Casitas is unable to verify the accuracy of any statement of Concessionaire's Gross Sales previously furnished by Concessionaire, then Concessionaire shall immediately pay to Casita all reasonable costs and expenses (including reasonable auditor and attorney fees) which may be incurred by Casitas in conducting such audit and collecting such underpayment, if any. In any event, Concessionaire shall promptly pay to Casitas all additional Percentage Rent shown by audit to be payable hereunder, together with interest at the maximum lawful rate from the date when said payment should have been made. If Concessionaire shall understate Gross Sales by more than three percent (3%) three (3) or more times during the Term, Concessionaire shall be deemed in default under Paragraph 24 of this Agreement and Casitas shall have all rights and remedies as are set forth in subparagraphs (a) through (q).

(e) **Subcontractors.** Concessionaire shall cause all of its subcontractors to comply with the accounting requirements set forth above to the extent those requirements are applicable, and all other applicable requirements of this Agreement.

#### 10. **OPERATIONS.**

(a) General

- (1) **Compliance.** Concessionaire shall comply with all applicable Federal, State, and local laws, rules, regulations and procedures; and, where permits and/or licenses are required for the Concession and/or any refurbishment or construction authorized herein.,
- (2) The parties to this Agreement will coordinate regarding any administration, operation, maintenance and development activities pursuant to this Agreement. It is of chief priority that any such activities do not affect any project water management, operation, and maintenance activities of Casitas, and, in the opinion of Casitas, will not interfere with Casitas' water retention and delivery operations in the Recreation Area.
- (3) Concessionaire shall have non-exclusive rights to operate the Snack Bar only during the CWA annual seasons and is obligated to stock and sell goods and supplies that are needed, desired and appropriate in a public waterpark environment and recreational campground setting. Casitas reserves the right to deny specific goods.
- (4) Concessionaire shall maintain a cell phone or other appropriate methods for Casitas to directly contact the Concessionaire. Concessionaire shall respond to any message left by Casitas within a twenty-four (24)-hour time frame.
- (5) Concessionaire warrants and agrees to fully comply with all laws, conditions and requirements contained in Exhibits B through E attached hereto and made a part hereof, including, but limited to, all laws regarding discrimination (Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), Americans with Disabilities, hiring, recruitment and employment of staff including, but not limited to, labor laws, workers compensation requirements, Immigration Reform and Control Act of 1986.
- (6) Concessionaire shall not enter into a sub-concession or any agreement to subcontract any service without the prior approval and written consent of Casitas. In the event that Concessionaire chooses, with Casitas' consent, to subcontract any particular service, this Concession Agreement shall be amended to provide for the proposed additional service(s).

- (7) The Concession is subject to the LCRA entrance requirements including, but not limited to, entrance fees, permits, inspections and quarantines, and restrictions as deemed necessary or otherwise approved by the Casitas Board of Directors.
- (8) In the event Concessionaire fails to remove the Snack Bar within thirty (30) days of the last day of each season, then same may be removed or demolished by Casitas and Concessionaire shall reimburse Casitas for any cost or expense in connection therewith.

(b) Concessionaire Staff

- (1) Facilities Manager. Concessionaire shall be the Facility Manager with whom Casitas may deal on a daily basis. The Facility Manager shall be fully acquainted with the Concession operations, familiar with the terms and conditions prescribed therefor by this Agreement, and authorized to act in the day-to-day operation thereof.
- (2) Facilities Staff. The parties hereto will ensure that adequate personnel are available to accomplish the operation, administration and maintenance of the Demised Premises as agreed to herein. The Concessionaire is required to keep an updated list of all employees, service and delivery companies and contractors on file with Casitas at all times. Such employees, service and delivery companies and contractors will not necessarily be granted access into the LCRA. All employees must be eligible for employment under the state of California employment laws. Concessionaire and employees must represent the Concession in an appropriate and professional manner. Unprofessional or inappropriate behavior on the part of Concessionaire or his/her employees towards Casitas staff and/or customers will be investigated and may warrant removal of park privileges.
- (3) Tuberculosis Screen. Concessionaire shall not employ any person who cannot produce a certificate showing that within the last two (2) years the person has been examined and has been found to be free of communicable tuberculosis. Concessionaire staff shall be required to undergo the foregoing examination at least once every four (4) years. Any staff that has a documented positive skin test confirmed by X-ray shall be immediately referred to the County's Health Officer. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the California Business and Professions Code, or a notice from a public health agency or unit of the Tuberculosis Association, which indicated freedom from active tuberculosis.
- (4) Compliance; Employee Documentation; Indemnity. Concessionaire warrants that it fully complies with all applicable employment laws. Concessionaire further warrants that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Concessionaire shall obtain and retain all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended.
- (5) Employee Conduct. The Casitas General Manager may at any time give Concessionaire written notice to the effect that the conduct or action of an employee of Concessionaire is, in the reasonable belief of the Casitas General Manager, detrimental to the interest of the public patronizing the Demised Premises. Concessionaire shall meet with the Casitas General Manager to consider the appropriate course of action with respect to such matter.

(c) Prices

- (1) Pricing Policy and Review. Concessionaire shall at all times maintain a complete list or schedule of the prices charged for all goods or services supplied to the public. Said prices shall be fair and reasonable based upon comparability with prices charged for similar goods and/or services in the Ventura and Santa Barbara County areas. In the event Casitas notifies Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the Casitas General Manager and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall either make such price adjustments as may be ordered by the Casitas General Manager or appeal the implementation of such adjustments to the Casitas Board of Directors, whose decision thereon shall be final and conclusive. However, Concessionaire shall comply with the ordered price adjustment pending the appeal and final ruling thereon by Casitas' Board of Directors.
  - (2) Complimentary Services and Reduced Rates. The Concessionaire shall require its employees to observe strict impartiality as to rates and services in all circumstances. The Concessionaire may, subject to the prior written approval of the General Manager, grant complimentary or reduced rates under such circumstances as are customary in businesses similar to that which will be conducted under this Concession Agreement. However, the General Manager reserves the right to review and modify the Concessionaire's complimentary or reduced rate policies.
- (d) Authorized Goods and Services
- (1) Concessionaire is authorized non-exclusive rights to sell to the general public prepared and packaged snack bar food supplies, confections, soft drinks, approved personal products, souvenirs and clothing. The Snack Bar Concession shall be specifically excluded from selling fireworks, weapons and firearms including, but not limited to, knives, slingshot, bow and arrow, bowfishing equipment, guns and/or rifles of any type and any items which Casitas deems inappropriate or offensive. Any other goods and services desired to be provided by the Concessionaire beyond that listed above must be requested in writing by the Concessionaire and receive prior written approval by the Casitas General Manager.
  - (2) The supply in the Snack Bar shall be ample in quantity and appropriate to meet the needs of the visiting public. All food, beverages, confectionary and other products intended for human consumption shall be of a high standard of quality, and pricing specified above.
  - (3) Concessionaire may **not** obtain an Off-Sale Beer and Wine License for the sale of beer and wine from the California Department of Alcoholic Beverage Control.
  - (4) All goods and services sold by Concessionaire shall conform to Federal, State and local laws, ordinances and regulations. Following receipt of written notification that the provision of such goods or services is harmful to the public welfare, Concessionaire shall immediately remove or withdraw from sale any goods or services which may be found objectionable to the Casitas General Manager.

(e) Hours of Operation

Concessionaire shall establish regular hours of operation that will accommodate the visiting public demands. Upon commencement of the Concessionaire Agreement and by April 1 of each succeeding year, the Concessionaire shall submit to Casitas for review, change and approval a written seasonal schedule of hours (opening and closing times) for the operation. Any change to the schedule must be submitted to, and approved by, Casitas prior the implementation of the schedule change.

(f) Security

- (1) Concessionaire acknowledges the need for securing the Demised Premises and shall provide at its sole expense any legal devices, installation, or equipment designated for the purpose of protecting the Demised Premises from unlawful conduct including, but not limited to, theft, burglary or vandalism, provided written approval for said security measures is first obtained from the Casitas General Manager.
- (2) Concessionaire employed security personnel have no authority to take law enforcement action or carry firearms. Concessionaire shall comply with all law enforcement protocol within the LCRA pursuant to Casitas' Ordinances. Concessionaire will work with Casitas to ensure law and order is maintained and preserved and protect recreation facilities, resources and lands from unauthorized use related to any and all concession activities pursuant to this Agreement. Concessionaire may bear the cost and administration of additional law enforcement services required or specifically requested through local law enforcement such as the County of Ventura. In the event an incident arises where more than one law enforcement agency responds, the federal law enforcement agency shall have precedence over State and County law enforcement agencies and the Concessionaire may bear any cost billed in association with any services requested by Concessionaire.

(g) Safety

Concessionaire shall use its best efforts to correct any unsafe condition of the premises, as well as any unsafe practices occurring thereon. Concessionaire shall use its best efforts in requesting local paramedical assistance for any member of the public who is in need thereof, because of illness or injury occurring on the premises. Concessionaire shall cooperate fully with Casitas in the investigation of any accidental injury or death occurring on the premises, including a prompt report thereof to the Casitas General Manager. Concessionaire shall make safety improvements as requested by Casitas' General Manager, insurance carrier or the Board.

(h) Advertising and Promotion

Concessionaire is responsible for the advertising and promotion of his/her own business.

- (1) Signs. Concessionaire shall not post advertising signs or other materials upon the Demised Premises without prior written approval from Casitas. Concessionaire acknowledges that Casitas greatly limits such approval in order to maintain the natural setting of the LCRA. Outdoor signs or other forms of advertising (e.g. web, newspaper, etc) must not be displayed on LCRA property or provided to, or allowed to be accessed by, the public without the prior review and written approval of Casitas. All signs will be professionally made. All signage must include an approved USBR logo or name and Casitas Municipal Water District and/or Lake Casita Recreation Area logo or name.
- (2) Concessionaire shall not promote or sponsor private or public events requiring the use of any other areas of the LCRA, other than the Demised Premises or as approved by Casitas. However, this provision shall not prohibit Concessionaire from generally advertising or encouraging public use of the LCRA in a manner that complies with the provisions of this Agreement. Concessionaire shall not promulgate, nor cause to be distributed, any advertising or promotional materials objectionable to Casitas. Casitas

shall require all advertising in newspapers, magazines and trade journals, radio and television commercials and other advertising be approved in advance.

- (3) Where possible, Concessionaire agrees that any advertising or promotional materials promulgated by Concessionaire, which refers to the "Lake Casitas Recreation Area," or any derivative thereof, shall also include the phrase "Casitas Municipal Water District" unless specifically approved otherwise by the Casitas General Manager.

(i) Interruptions of Business

There is the possibility of interruptions of this Concession Agreement. These interruptions could be due to contamination of Lake Casitas, impacts on the Concession Agreement due to construction and maintenance projects, insurance changes, changes in lake level and any other similar business interruptions. Should these interruptions require Casitas to place additional restrictions upon the Concessionaire, Casitas shall not be liable for any expense or loss of business due to Concessionaire's complying with those additional restrictions, as long as the restrictions were consistently applied to other like-users of the LCRA. However, since insurance changes can be mandated by Casitas' insurer, Concessionaire shall not hold Casitas liable for expense or loss of business due to Concessionaire's complying with additional restrictions due to insurance changes, even where those restrictions were not consistently applied to like-users of the LCRA.

(j) Annual Review

Concessionaire shall be evaluated by Casitas under the Concessions Review Program. The Concessions Review Program will consist of four separate evaluations: (1) Operations and Facilities Evaluation, (2) Public Health Service Inspection, (3) Safety and Environmental Evaluation, and (4) Contract Compliance Evaluation. The Operation and Facilities Evaluation shall be conducted annually. All other evaluations shall be conducted as Casitas may desire. Casitas may, at its discretion, terminate this Concession Agreement in the case of an unsatisfactory rating on any of the evaluations.

(k) Utilities

The Demised Premises shall contain a two phase 90 AMP electrical outlet and a one-half inch ( $\frac{1}{2}$ " ) line of potable water. Concessionaire shall contract directly to provide and pay for any other necessary utilities serving the Demised Premises, including trash dumpster rental and the installation of necessary metering devices. Such necessary utilities include, but are not limited to, water, telephone, electricity, trash collection and propane services. The telephone number may be placed in the name of the Concessionaire. Concessionaire waives any all claims against Casitas for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the premises. Concessionaire shall pay for any new connections to the existing electrical services.

(l) Sanitation

No offensive matter, or refuse, or substance constituting any unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted to accumulate or remain on the Demised Premises and within a distance of fifty (50) feet thereof. Concessionaire shall pay fees to collect and remove refuse to an area approved disposal site or landfill that is not located within the watershed of Lake Casitas. Refuse shall be removed as needed, but minimally once per week. Concessionaire shall furnish all equipment and materials necessary for refuse collection, including trash receptacles of the size, type, color and number required by the Casitas.

- (1) Debris. Concessionaire shall keep assigned areas free of foul odors, litter, debris, garbage, personal items, stored or abandoned equipment, working or not, vehicles, furniture, and fixtures. No added sanitation facilities shall be allowed. Concessionaire shall engage and pay for services including three (3) yard trash dumpster rental and the



removal of the trash and garbage that is generated by the Snack Bar Concession from the LCRA. Casitas will empty trash containers located in the adjacent outdoor picnic areas. Concessionaire shall empty containers located within Demised Premises.

- (2) Concessionaire shall promote recycling and make it convenient for public use.
- (3) Concessionaire shall make every effort to reduce and recycle solid waste generated as a result of the operation of the Water Adventure Snack Bar Concession which may include making arrangements with a local waste hauler to pick up and dispose of waste and recyclable material.
- (4) Sewage Disposal and Gray Water. There are no arrangements in this Agreement to provide the Concessionaire sewage disposal other than in the adjacent public restrooms. Gray water removal and costs associated with its removal will be the responsibility of the concessionaire.

(m) Incident Reporting

Concessionaire shall investigate or cooperate in the investigation by the agency having jurisdiction, all incidents involving death, serious injury or property damage, or other incidents of a serious nature within the Demised Premises. Concessionaire shall make an initial verbal/phone message report on such incidents to Casitas' designated representative within two (2) hours of knowledge of the incident. Under most circumstances, or when requested by Casitas, Concessionaire shall submit a written incident report via hard copy or e-mail to Casitas' designated representative within two (2) calendar days of the verbal notice.

(n) Hazardous Materials

- (1) Concessionaire may not allow contamination or pollution of the LCRA, waters or facilities and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include, but are not limited to, hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
- (2) Concessionaire shall comply with all applicable Federal, State, and local laws and regulations, and Casitas' Ordinances, policies, directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in the LCRA, water or facilities.

(o) Pest And Weed Control

Concessionaire shall not permit the use of any pesticides/chemicals on the Demised Premises.

(p) Protection Of Natural And Cultural Resources

- (1) Concessionaire will implement best management practices necessary to minimize sedimentation and erosion; protect land and water resources; prevent and suppress fire; protect against introduction and spreading of noxious weeds and other pests detrimental to natural values, agriculture or public health and safety; and will cooperate in soil and water conservation, and fish and wildlife enhancement practices.
- (2) Concessionaire will comply with the National Environmental Policy Act (NEPA), including the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA) and other related laws as may be enacted or amended.

## 11. MAINTENANCE

(a) **Casitas' Duties.** Casitas shall repair and maintain the areas of and surrounding the Demised Premises. Casitas shall not maintain the any part of the temporary building erected by Concessionaire that is located within the Demised Premises. There shall be no abatement of rent, and no liability of Casitas, by reason of any injury to or interference with Concessionaire's business arising from the making of any repairs, alterations, or improvements to any portion of the Demised Premises. Casitas shall have absolutely no other responsibility to repair, maintain or replace any portion of the Demised Premises at any time. The Concessionaire waives the right to make repairs at Casitas' expense under California Civil Code Section 1942, or under any other law, statute or ordinance now or hereafter in effect.

(b) **Concessionaire's Duties.** Concessionaire shall maintain the Concession equipment and premises in good repair and condition. Concessionaire shall perform and pay for all repairs and replacements in compliance with applicable law. All maintenance and repairs shall be commenced within thirty (30) days of the need thereof and diligently completed. Maintenance includes, but is not limited to:

- (1) **Temporary and Seasonal Facilities Color Palette and Park Theme.** Concessionaire shall endeavor to create an atmosphere that is compatible with a natural park setting. All facility color schemes and façade materials must be approved by the Park Services Manager prior to installation.
- (2) **Graffiti Eradication and Control of Graffiti from the Outside Surfaces of Temporary Structures on said Demised Premises.** Concessionaire shall immediately remove graffiti at all times during the days and hours of operation when observed and repair any property located on the Demised Premises damaged by criminal conduct.
- (3) **Equipment Repair or Replacement.** Repair and replacement of all equipment necessary to conduct Concession operations shall be made at Concessionaire's sole expense. Any replacement equipment purchased by Concessionaire as Trade Fixtures shall be the property and responsibility for maintenance of the Concessionaire. Concessionaire shall dispose of replaced property in an approved manner in accordance Federal, State and local laws and regulations.
- (4) **Concessionaire's Damage Liability.** The Concessionaire is additionally liable for any damage to the Demised Premises resulting from the acts or omissions of the Concessionaire, including, without limitation, any damage relating to a roof penetration caused by the Concessionaire or Concessionaire's invitees and any actual or consequential damage to the Demised Premises and/or building arising from Concessionaire's use of the Demised Premises, Concessionaire's personal property, or systems or equipment serving the Demised Premises that are the responsibility of the Concessionaire to maintain, repair, replace.
- (5) **Default of Maintenance Obligations.** In the event Concessionaire defaults in the exercise of its maintenance obligations assumed herein, Casitas reserves the right to cure said default and seek reimbursement from the Concessionaire for all costs incurred plus a supervisory fee in the amount of ten percent (10%) of the cost thereof. Any reimbursement demand by Casitas under this provision shall be satisfied by Concessionaire within fifteen (15) days.

## 12. FEES AND TAXES

(a) **Public LCRA entrance and use fees** will be set in accordance with the fee schedule established by Casitas and Casitas shall have the right to collect as income, receipts derived from recreation related permits and contracts which it issues and administers for activities within the LCRA, as authorized in the California Water Code Section 71660 et. Seq.,

(b) The use or occupancy of the Demised Premises by Concessionaire constitutes a property interest which may be subject to possessory interest taxes. Concessionaire will be liable for the payment of such possessory interest taxes and any other taxes which may be levied on the property pursuant to the applicable taxation code. Concessionaire shall pay the applicable County or State agency, before delinquent, all taxes and assessments including said possessory interest tax levied against Concessionaire by reason of use and occupancy of the Demised Premises.

### 13. RIGHTS OF CASITAS AND USBR

(a) The USBR retains the primary jurisdiction over the Ventura River Project and the LCRA. The USBR can give written notice to Casitas if the USBR determines that changes in land use for USBR purposes within the LCRA are necessary. Casitas will give written notice to Concessionaire if any land use changes required by the USBR are necessary.

(b) Casitas or the USBR may close the LCRA, or any portion thereof, including the Demised Premises, to public use whenever it is determined such restriction is necessary in the interest of water delivery project operation, public safety or national security. Casitas' designated representative will give written notice to Concessionaire of any such closure. This notice will be given as soon as practicable after a determination for closure is made and will include the date when the closure becomes effective. Concessionaire will enforce such closure and such enforcement will include coordination and cooperation with Casitas.

(c) The USBR and Casitas reserves the right to establish, grant or utilize additional easements or rights of way over, under, along and across the Demised Premises for utilities and/or public access to the LCRA provided Casitas shall exercise such rights in a manner as will avoid any substantial interference with the operations to be conducted hereunder. Concessionaire shall not claim any damages, loss of business, impact costs or other costs of any kind due to such an easement.

### 14. INDEMNIFICATION

To the fullest extent permitted by law, Concessionaire shall indemnify and hold harmless and defend Casitas its directors, employees, or authorized volunteers, and each of them from and against the following:

(a) Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever, for, but not limited to, injury to or death of any person including Casitas and/or Concessionaire, or any directors, officers, employees, or authorized volunteers of Casitas or Concessionaire, and damages to or destruction of property of any person, including but not limited to, Casitas and/or Concessionaire and their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with this Agreement, however caused, regardless of any negligence of Casitas or its directors, officers, employees, or authorized volunteers.

(b) Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Concessionaire.

(c) Any and all losses, expenses, damages (including damages to the work itself), and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Concessionaire to faithfully perform all of its obligations under the contract. Such costs, expenses, and damages shall include all costs incurred by the indemnified parties in any lawsuits to which they are a party.

(d) Concessionaire shall defend, at Concessionaire's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against Casitas or Casitas' directors, officers, employees, or authorized volunteers.

(e) Concessionaire shall pay and satisfy any judgment, award or decree that may be rendered against Casitas or its directors, officers, employees, or authorized volunteers, in any such suit, action or other legal proceeding.

(f) Concessionaire shall reimburse Casitas and its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

(g) Concessionaire agrees to carry insurance for this purpose as required by this Agreement. Concessionaire's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Casitas, or its directors, officers, employees, or authorized volunteers

(h) Concessionaire agrees to indemnify and hold harmless Casitas Municipal Water District and the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the Concessionaire's activities under this Agreement.

(i) The parties hereto shall each be responsible and liable only for the negligent acts or omissions of their respective employees or assigns to the extent provided by law. However, nothing in this Agreement shall be construed to be an admission of fault or liability, and nothing shall limit the defenses and immunities legally available to each party against each other and third parties.

## 15. **INSURANCE**

Without limiting Concessionaire's indemnification of Casitas, Concessionaire shall provide and maintain at its own expense during the term of this Agreement the program(s) of insurance covering its operations listed herein. Such insurance shall be provided by insurer(s) satisfactory to the Casitas General Manager and evidence of such programs satisfactory to Casitas shall be delivered to the Casitas General Manager on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that Casitas is to be given written notice of at least thirty (30) days in advance of any modification or termination of any program of insurance. Further, all such insurance with the exception of Workers' Compensation insurance, shall be primary to and not contributing with any other insurance maintained by Casitas and shall name Casitas and the United States Government additional insureds. If Casitas insurance requirements change, the Concessionaire will be required to make changes in their insurance accordingly at Concessionaire's sole expense.

(a) **Certificate of Insurance.** Prior to execution of the Agreement, Concessionaire shall file with Casitas a Certificate of Insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to meet all insurance requirements under this Agreement.

(b) **Proof of Insurance.** The Concessionaire shall, upon demand of Casitas, deliver to Casitas such policy or policies of insurance and the receipts for payment of premiums thereon as are required under this Agreement. In the event evidence of such insurance coverage is not provided to Casitas within thirty (30) days prior to the commencement of this Agreement, Casitas shall, at its sole option, obtain such insurance coverage and charge Concessionaire the cost thereof plus any administrative costs involved in obtaining said insurance. Failure to provide required insurance coverage shall result in the loss of the use of the facility. Concessionaire shall provide increased limits of insurance if required of Casitas by Casitas' insurer at no cost or liability to Casitas.

(c) During the entire term and any extension of this Agreement, Concessionaire shall maintain Commercial General Liability Insurance coverage at least as broad as the Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001) with limits no less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury property damage and personal injury. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to Casitas) or the general aggregate limit shall be twice the required occurrence limit.

(d) During the course of this Agreement Concessionaire shall, if alcoholic beverages are sold, maintain Liquor Liability Insurance coverage at least as broad as the Insurance Services Office Liquor Liability Coverage (Occurrence Form CG 0033) with limits no less than ONE MILLION DOLLARS (\$1,000,000) per

occurrence for bodily injury and property damage. If a form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit shall be twice the required occurrence limit.

(e) Required Provisions. The general liability and liquor liability (if any) policies are to contain, or be endorsed to contain the following provisions:

- (1) The United States of America (Bureau of Reclamation), Casitas, its directors, officers, employees, or authorized volunteers shall be named as additional insured (via ISO endorsement CG 2026 or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Concessionaire; products and completed operations of the Concessionaire; premises occupied or used by the Concessionaire. The coverage shall contain no special limitations on the scope of protection afforded to the Casitas, its directors, officers, employees, or authorized volunteers.
- (2) For any claims related to this event, the Concessionaire's insurance shall state that coverage is primary as respects the United States of America (Bureau of Reclamation), Casitas, its directors, officers, employees, or authorized volunteers, and any insurance, self insurance, or other coverage obtained or maintained by Casitas, its directors, officers, employees, or authorized volunteers shall be in excess of said primary coverage and not contributing.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the United States of America (Bureau of Reclamation), Casitas, its directors, officers, employees, or authorized volunteers.
- (4) The Concessionaire's insurance shall apply separately to the insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. Mail has been given to Casitas.
- (6) Such liability insurance shall indemnify the Concessionaire against loss from liability imposed by law upon, or assumed under contract by, the Concessionaire for damages on account of such bodily injury (including death), property damage, and personal injury.
- (7) The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, and blanket contractual liability.

(f) Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by Casitas. At the option of Casitas, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

(g) Acceptability of Insurers. All of the insurance shall be provided on policy forms and through companies satisfactory to Casitas. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise approved by Casitas.

(h) Workers' Compensation & Employer's Liability Insurance. By his/her signature hereunder, Concessionaire certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the event. The Concessionaire shall cover or insure under the applicable laws relating to workers' compensation insurance, all of the employees working on or about the event, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts

amendatory thereof. The Concessionaire shall provide employer's liability insurance in the amount of at least ONE MILLION DOLLARS (\$1,000,000) per accident for bodily injury and disease. In the event Workers' Compensation & Employer's Liability Insurance does not apply to Concessionaire, Concessionaire shall execute a California Workers' Compensation Law Certificate of Exemption.

(i) Concessionaire shall require all contractors and permittees operating within the Demised Premises to carry adequate liability and property damage insurance and liability for causes or actions resulting from the negligence of their employees, subcontractors, or agents. Said insurance shall be of sufficient amount to cover, as a minimum, the Concessionaire's liability under its governmental liability act and shall be consistent with the services, facilities, etc. provided and the potential for injury or damage to life and property. Casitas shall be named as an additional insured on all such insurance, and a certificate of insurance shall be provided to Casitas by the contractor and permittee to ensure that the insurance is in effect.

#### **16. RESTORATION FOLLOWING DAMAGE OR DESTRUCTION OF THE DEMISED PREMISES**

If during the term of the Agreement the buildings or improvements or such fixtures or equipment, on, below, above or appurtenant to the Demised Premises at the commencement of the term or thereafter erected, installed or placed thereon or therein shall be destroyed or damaged in whole or in part by fire or any other cause, except condemnation, and provided such destruction or damage is required to be covered by insurance, Concessionaire shall give the Casitas General Manager notice as soon as practicable thereof. Concessionaire shall immediately secure the area to prevent injury, vandalism and further damage to persons, improvements, and the contents thereof. Concessionaire shall promptly restore same to the condition existing immediately prior to such occurrence, or if not possible or feasible in view of the damage sustained and availability of funds with which to rebuild, terminate this Agreement.

(a) In the event any part of the Demised Premises, building or structure essential to the operation of the Concession facility is totally or partially destroyed or damaged by any cause not resulting in fault or negligence of Concessionaire or Casitas and which is beyond the control of Concessionaire and/or Casitas, rendering the Demised Premises totally or partially inaccessible or unusable, Concessionaire may at its option terminate this Agreement upon written notice to Casitas.

(b) Should Concessionaire elect not to terminate this Agreement, Concessionaire shall within seven (7) days from the date of the damage or destruction, commence full repair at Concessionaire's cost and continue the performance of this Agreement in good faith to completion. In any event, the Demised Premises shall remain the property of Casitas. Casitas shall be under no obligation to make any repairs or reconstruct any buildings or structures.

#### **17. NON-ASSIGNMENT**

During the term of this Agreement, the responsibilities of the Concessionaire as described herein shall not be assigned to others without prior written approval of Casitas Board of Directors.

#### **18. THIRD PARTY CONTRACTS AND PERMITS**

Concessionaire may not enter into, or issue and administer, third party permits or concession contracts to persons or associations for the purpose of selling or soliciting services, goods, and facilities for the use of the visiting public consistent with the intent and conditions of this Agreement, without prior written approval of Casitas. Written approval shall be by amendment to this Agreement.

#### **19. IMPROVEMENTS, EQUIPMENT AND INVENTORY**

(a) Prior Written Approval. Construction of temporary and seasonal structures or improvements within the Demised Premises or removal of the same by the Concessionaire shall only be done with the prior approval of Casitas.

(b) Concessionaire shall not make any structure replacements or improvements on the Demised Premises without the prior written approval of Casitas of all plans, specifications and drawings. Approval may be

withheld if the proposed alteration, addition, or improvement is not within the theme or character of the LCRA or if not approved by Reclamation, exceeds the express or implied scope of Concessionaire's services under this Agreement, sacrifices the public health, safety, or welfare, or for any other reason infringes on Casitas' operation of the LCRA. The Concessionaire shall provide to Casitas an initial request for consideration by Casitas and the USBR. Said request may include conceptual sketches and drawings.

(c) **Cost and Expense.** In the event that Casitas consents to Concessionaire making any alteration, addition, or improvement to the structures on the Demised Premises, Concessionaire agrees that the same shall be made at Concessionaire's sole cost and expense.

(d) **Practices and Procedures.** In erecting and placing the Snack Bar on the Demised Premises, Concessionaire agrees to comply with all Federal, State, and local building and safety codes. Concessionaire agrees that Casitas shall have the right to access to the premises during the erection and placement of same for the purposes of Casitas' own inspection of the construction work. This inspection is not in service to the Concessionaire or a substitute for Concessionaire's inspection or control of the work. The Concessionaire shall provide to Casitas the names and phone numbers of the Concessionaire's representative and a listing of all authorized contractors for the work. The access to and use of the LCRA by the contractors and Concessionaire's representatives shall be in accordance with all applicable rules, regulations, and ordinances of the LCRA.

(e) **Insurance and Bonds.** If applicable, Concessionaire shall be responsible for providing insurance coverage for the construction in an amount not less than that specified in Paragraph 15 hereof.

## 20. **REVIEW OF ADMINISTRATION, OPERATION, MAINTENANCE AND DEVELOPMENT**

(a) The parties hereto shall meet prior to an upcoming season, or more often if requested by either party, to inspect the Demised Premises and Snack Bar and review the administration, operation, maintenance and requested development of the Concession. The purpose of this inspection and review is to ensure that administration, operation, maintenance and development procedures are adequate; to identify and correct deficiencies and problems; and to ensure the administration of the Concession is in accordance with the intended purposes and in compliance with Casitas Ordinances. Deficiencies and problems shall be corrected in a timely manner by the Concessionaire.

(b) The USBR may conduct an annual inspection of Casitas and Concession operations and will provide in writing necessary corrective action and time line for compliance.

## 21. **EXAMINATION OF RECORDS**

(a) Casitas, a public entity, requires that, at any time, the Concessionaire produce for examination any pertinent books, documents, papers, and financial records of the Concessionaire and/or the Concessionaire's contractors, permittees involving transactions related to this Agreement within the Public Records Act parameters.

(b) Casitas may, at any time, request an independent audit of the Concessionaire's financial activities for the LCRA. Such independent audit shall be performed at the cost of Casitas. Any discrepancies found during such audits shall be corrected within a reasonable amount of time, as determined by Casitas, by the responsible party.

## 22. **NOTICE TO CURE/DISPUTE RESOLUTION**

(a) Non-Compliance. Notification of non-compliance with the terms and conditions of this Agreement shall be in writing, giving a period of time in which the non-compliance shall be corrected. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time shall be grounds for termination of all or part of this Agreement or temporary suspension of operation after notice in writing of such intent.



(b) Dispute Resolution. In the event of any dispute or controversy arising out of or relating to this Agreement, the parties hereto agree to exercise their best efforts to resolve the dispute as soon as possible as outlined in Exhibit D.

(c) The inability of Casitas' and Concessionaire's designated representatives to mutually agree on a proposed action within thirty (30) calendar days, or longer period as may be agreed to by the parties hereto, may result in termination of this Agreement by either party.

## 23. **TERMINATION**

This Agreement shall terminate and all rights and obligations of the parties under this Agreement will cease under any one of the following conditions:

(a) Upon expiration of the term of this Agreement.

(b) For cause, including, but not limited to, violations of Casitas Ordinance entitled "An Ordinance of Casitas Municipal Water District Establishing Rules and Regulations for the Public Use of the Lake Casitas Recreation Area", failure to pay fees, violation of health and safety regulations and violation of Federal, State and local regulations as applicable, upon receipt of a written notice of termination from Casitas.

(c) Without cause, upon receipt of written notice of termination from either party. This termination notice must be received at least one (1) year prior to proposed early termination date.

(d) At any time upon written notice to Concessionaire that Casitas has received a notice of termination from the USBR.

(e) In the case of termination for cause, Concessionaire must completely vacate the Demised Premises within thirty (30) calendar days of written notice of determination.

## 24. **CANCELLATION UPON DEFAULT**

(a) Notice to Concessionaire. Upon the occurrence of any one or more of the events of default hereinafter described, this Agreement shall be subject to cancellation. As a condition precedent thereto, the Casitas General Manager shall give Concessionaire ten (10) days notice by registered, certified mail, or hand delivery of the date set for cancellation thereof; the grounds therefore; and that an opportunity to be heard thereon before the Board of Directors will be afforded on or before said date, if request is made therefor.

(b) Possession. Upon cancellation Casitas shall have the right to take possession of the Concession premises, including all improvements, equipment, and inventory located thereon, and use for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement.

(c) Notice to Lenders. The Casitas General Manager shall send a copy of any intended cancellation of this Agreement to any Lender whose security would be affected thereby provided that such Lender shall have previously registered with the Casitas General Manager by written notice specifying the name and address of said Lender; and upon Lender's request for postponement, extend the date set for cancellation by such time as the Casitas General Manager finds reasonable to correct the grounds for cancellation or to provide a new Concessionaire under a power of sale or foreclosure contained in the hypothecation or mortgage. Any new concessionaire shall be responsible for correcting the original grounds for cancellation within a time set by the Casitas General Manager.

(d) Events of default shall be:

(e) The abandonment, vacation or discontinuance of operations on the premises for more than forty-eight (48) consecutive hours.

(f) The failure of Concessionaire to punctually pay or make the payments required hereunder when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.

(g) The failure of Concessionaire to operate in the manner required by this Agreement, where such failure continues for more than ten (10) days after written notice from the Casitas General Manager to correct the condition therein specified.

(h) The failure to maintain the premises and the improvements constructed thereon in the state of repair required hereunder, and in a clean, sanitary, safe and satisfactory condition, whether such failure continues for more than ten (10) days after written notice from the Casitas General Manager to correct the condition.

(i) The failure of Concessionaire to keep, perform and observe all other promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the Casitas General Manager for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the Casitas General Manager.

(j) The Casitas General Manager determines that the Concessionaire is insolvent. Concessionaire shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether insolvent within the meaning of Federal Bankruptcy Law or not.

(k) The filing of a voluntary petition in bankruptcy by Concessionaire; the adjudication of Concessionaire as a bankrupt; the appointment of any receiver of Concessionaire's assets; the making of a general assignment for the benefit of creditors, a petition or answer seeking an arrangement for the reorganization of Concessionaire under any Federal Reorganization Act, including petitions or answers under Chapter XI of the Bankruptcy Act; the occurrence of any act other than under the federal bankruptcy laws which operates to deprive Concessionaire permanently of the rights, powers and privileges necessary for the proper conduct and operation of the Concession including the levy of any attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(l) Determination by the Casitas General Manager, the California Fair Employment and Housing Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of state and/or federal laws thereon.

(m) The execution by Concessionaire of an assignment for the benefit of creditors.

(n) Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this Agreement without approval thereof by the Casitas General Manager.

(o) Failure of Concessionaire to maintain any current licenses or permits required by any local, state or federal agencies necessary for the conduct of Concessionaire's business.

(p) Waiver. Failure or delay of Casitas to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of Casitas to declare one breach or default does not act as a waiver of Casitas' right to declare another breach or default.

(q) Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to Casitas.

## 25. **RIGHT OF ENTRY**

(a) General. Any officers and/or authorized employees of Casitas may enter upon the Demised Premises any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms of this Agreement, or for any other purpose incidental to the rights of Casitas within the

demised premises. No re-entry or taking of the premises by Casitas pursuant to this Agreement shall be construed as an election to terminate this Agreement, unless a written notice of such intention is given to Concessionaire or unless the termination thereof is decreed by a court of competent jurisdiction.

(b) Abandonment. In the event of an abandonment or discontinuance of operations for a period in excess of forty-eight (48) hours, Concessionaire hereby irrevocably appoints Casitas as an agent for continuing operation and authorizes Casitas to do any combination of the following: (1) Take possession of the premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such property in storage for the account of and at the expense of Concessionaire; (3) sublicense the premises; and, (4) after payment of all expense of such sublicensing or apply all payments realized there from to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this Agreement. Entry by Casitas upon the premises for the purpose of exercising the authority conferred under this provision shall not operate as a waiver of any other rights that Casitas may have in law or equity to remedy a breach of this Agreement.

**26. INDEPENDENT CONTRACTOR**

In performing the obligations hereunder, Concessionaire is engaged solely in the capacity of independent contractor, it being expressly understood that no relationship between the contracting parties hereto other than that of independent contractor has been or is intended to be created. The parties to this Agreement do not intend to create a partnership, joint venture, relationship of master and servant, or principal and agent. It is mutually understood and agreed that the relationship created between the parties to this Agreement is to be determined in accordance with the laws relating to owners and lessees of real property.

**27. SEVERABILITY**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

**28. NOTICE**

Any notices concerning this Agreement may be given, and all notices required by this Agreement or concerning performance under this Agreement shall be given, in writing, and shall be personally delivered or mailed addressed as shown below, or such other address or addresses as may be designated by either of the parties, in writing: Any notice required to be given under the terms of this Agreement or any law applicable thereto may be placed in a sealed envelope with postage paid, return receipt requested, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by the United States Postal Service.

Casitas: Casitas Municipal Water District, 11311 Santa Ana Road, Ventura, California, 93001

Concessionaire: \_\_\_\_\_

**29. BOARD REVIEW**

The Board of Directors may review all decisions by the Casitas General Manager contained in this Agreement. A decision rendered by the Casitas General Manager is deemed final if it is not placed on the Board's agenda within sixty (60) days of being rendered by the Casitas General Manager. If the Board places a decision rendered by the Casitas General Manager on the Board's agenda within said sixty (60) day period, the decision is not final until formally ratified by the Board.

30. **MERGER AND MODIFICATION**

This Agreement contains all the agreements of the Parties with respect to any matter covered or mentioned in this Agreement, and no prior agreements shall be effective for any purpose. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.

31. **ATTORNEYS FEES**

In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys fees, costs and expense.

32. **ASSIGNMENT**

Neither the Concessionaire nor CASITAS shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

33. **SUCCESSORS IN INTEREST**

Subject to Paragraph 28, the rights and obligation of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.

34. **DESIGNATED REPRESENTATIVES/NOTICES**

The parties hereto agree that the designated representatives for administration of this Agreement are as follows, or as may be further delegated in writing by the following:

Casitas – General Manager, Casitas Municipal Water District, 1055 Ventura Avenue, Oak View, California 93022.

Designated Representative – Park Services Manager, 11311 Santa Ana Road, Ventura California 93001.

Concessionaire –

Any written notice, demand, or request, as required or authorized by this Agreement, shall be properly given if delivered by hand, or by mail, postage prepaid, to the other party as above listed. Both parties hereto are responsible for notifying all affected parties of any subsequent change of address, organizational changes, responsibility adjustments, and other related changes, as they take place.

35. **AGREEMENT DRAFTING CONSIDERATIONS**

The parties hereto agree and acknowledge that this Agreement has been drafted after full arms-length negotiations, and that the usual rule of contractual construction that all ambiguities shall be construed against the drafting party shall not apply to the interpretation of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the first date written above.

**CASITAS MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
President of the Board of Directors

**CONCESSIONAIRE**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title:

Attest:

By: \_\_\_\_\_  
Secretary of the Board of Directors

## Appendix 1: Definitions

(a) "Administration, operation, maintenance, and development" means the acts or processes used to direct management of the Casitas Water Adventure Snack Bar; manage and enhance resources and facilities, law enforcement, and keeping facilities and equipment in good repair and usable working condition. The term maintenance includes the replacement and/or construction of equipment and/or facilities as may be agreed upon by the parties hereto.

(b) "Capital improvement" means a structure, fixture, or non-removable equipment provided either by Casitas or Concessionaire pursuant to the terms of this Agreement and located on the Demised Premises. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Agreement. A capital improvement is considered to be a real property improvement for the purposes of this Agreement.

(c) "Concession" means a non-Federal commercial business that supports appropriate public recreational uses and provides facilities, goods, or services for which revenues are collected. A concession generally involves use of the land described as the Demised Premises and may involve the use or development of real property improvements.

(d) "Concessionaire" means an entity contracted by Casitas through a third-party concessions contract to operate a concession.

(e) "Depreciated Value" means the value of equipment or Fixed Asset which includes the amount of depreciation not yet incurred plus the salvage or residual value.

(f) "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, consistent with 43 CFR 12.

(g) "Fixed Assets" are any permanent recreation-related structures, fixtures, or capital improvements placed on the Demised Premises, and recreation-related plant, property and equipment (PP&E) placed on or used within the LCRA by the Casitas and/or Concessionaire during the term of this Agreement or any extension thereof, whether constructed or acquired with or without Federal Financial Assistance.

(h) "Fixtures" includes "non-removable equipment" and means manufactured items of property of an independent form and utility, necessary for the basic functioning of a structure, that are affixed to and considered to be part of the structure such that title is with the Casitas as real property once installed. Fixtures do not include building materials (e.g. wallboards, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, and paint).

(i) "Concession Fee" means the fee established by a third party concessions contract, which the Concessionaire must pay to Casitas for operation of the concession. The fee is assessed as a percentage of the gross receipts.

(j) "Good repair" means maintaining functional use and longevity of facilities and equipment through use of appropriate actions including controlled maintenance, standard operating procedures, maintenance manuals, etc.; meeting Federal, State and applicable local health department standards; meeting public safety needs and standards; and maintaining facilities in a safe, neat, clean, and well kept condition.

(k) "Casitas" means the Casitas Municipal Water District, or its duly authorized representative(s).

(l) "Mutually agreed" means both parties' designated representatives are in agreement on a proposed action. Such agreements shall be in writing

(m) "National Environmental Policy Act' (NEPA) established an environmental policy for the United States, providing federal agencies with an interdisciplinary framework and action-forcing procedures for environmental planning and decision-making, and requiring public involvement throughout the process.

(n) "Property Inventory List" means an inventory list of Fixed Assets and Equipment acquired, including any items acquired, installed or constructed with the assistance of Federal funds, by Casitas or by Concessionaire solely at its own expense or at the expense of its contractors. The list provides details about each item including a description of each Fixed Asset, a serial number or identification number, the source of the item, who holds title, the acquisition date and cost of the item, the percentage of Federal participation in the cost, the location and condition of the item, and ultimate disposal data.

(o) "Property Record Inventory" means a list of all Fixed Assets at the time of execution of this Agreement. The list shall include a description of each Fixed Asset, a serial number or identification number, the source of the item, who holds title, the acquisition date and cost of the item, the percentage of Federal participation in the cost, and the location and condition of the item.

(p) "USBR" means the United States Department of the Interior, Bureau of Reclamation, or its duly authorized representative(s).

(q) "Recreation facilities" means those facilities constructed or installed within the LCRA for recreational use by the public or for support of such recreational use. Said facilities may include, but are not limited to, buildings and other structures (such as park headquarters, visitor centers, maintenance shops, etc.), campgrounds, picnic grounds, boat docks and ramps, electrical lines, water systems, roads, trails, parking areas, sewer systems, signs, trash facilities, boundary and interior fencing, etc.

(r) "Residual Value" means the value of a Fixed Asset after all of the depreciation has been incurred

(s) "Resource Management Plan" means the plan prepared in accordance with Title XXVIII of Public Law 102-575 and Reclamation's Resource Management Plan Guidebook.

(t) "Salvage Value" means the value of an item of Equipment after all of the depreciation has been incurred.

(u) "Structure" means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g. water, power, and sewer lines) and constructed site improvements (e.g. paved roads, retaining walls, sidewalks, and paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

(v) "Gross Sales" means money, cash receipts, assets, property or other things of value, including, but not limited to, gross charges, sales, fees and commissions made or earned by Concessionaire and/or all the assignees, subcontractors, licensees, permittees or concessionaires thereof, whether collected or accrued from any business, use or occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Demised Premises, including, but not limited to, food and beverage sales, merchandise sales, catering and "to-go" sales and services, and other revenues of any kind except: (i) the amount of any sales tax, use tax, gross receipts tax, successor tax or similar tax, imposed by a federal, state, municipal or governmental authority directly on sales and collected from customers; (ii) the exchange of merchandise between other concessions and/or stores of Concessionaire where such exchange is made solely for the convenient operation

of the business of Concessionaire and not for the purpose of depriving Casitas of the benefit of a sale which otherwise would be made from the Demised Premises; (iii) proceeds from the sale of trade fixtures, machinery and equipment; and (iv) the amount of any cash or credit refund made upon any sale from the Demised Premises previously included in Gross Sales.

(w) "Temporary Seasonal" means facilities, equipment and all concession items are temporary in nature, can and will be completely installed and then removed from the Demised Premises each annual season of the Casitas Water Adventure. The season generally runs from the weekend of Memorial Day through and including Labor Day and is set in writing Casitas by the last day of February for that calendar year's season.

EXAMPLE 11/22/2011



## Appendix 2: List of Acronyms

ESA	Endangered Species Act
IPM	Integrated Pest Management
LCRA	Lake Casitas Recreation Area
NEPA	National Environmental Protection Act
NHPA	National Historic Preservation Act
PP&E	Plant, Property and Equipment
RMP	Resource Management Plan
USBR	U.S. Bureau of Reclamation

EXAMPLE 11/22/2011

## **EXHIBIT A**

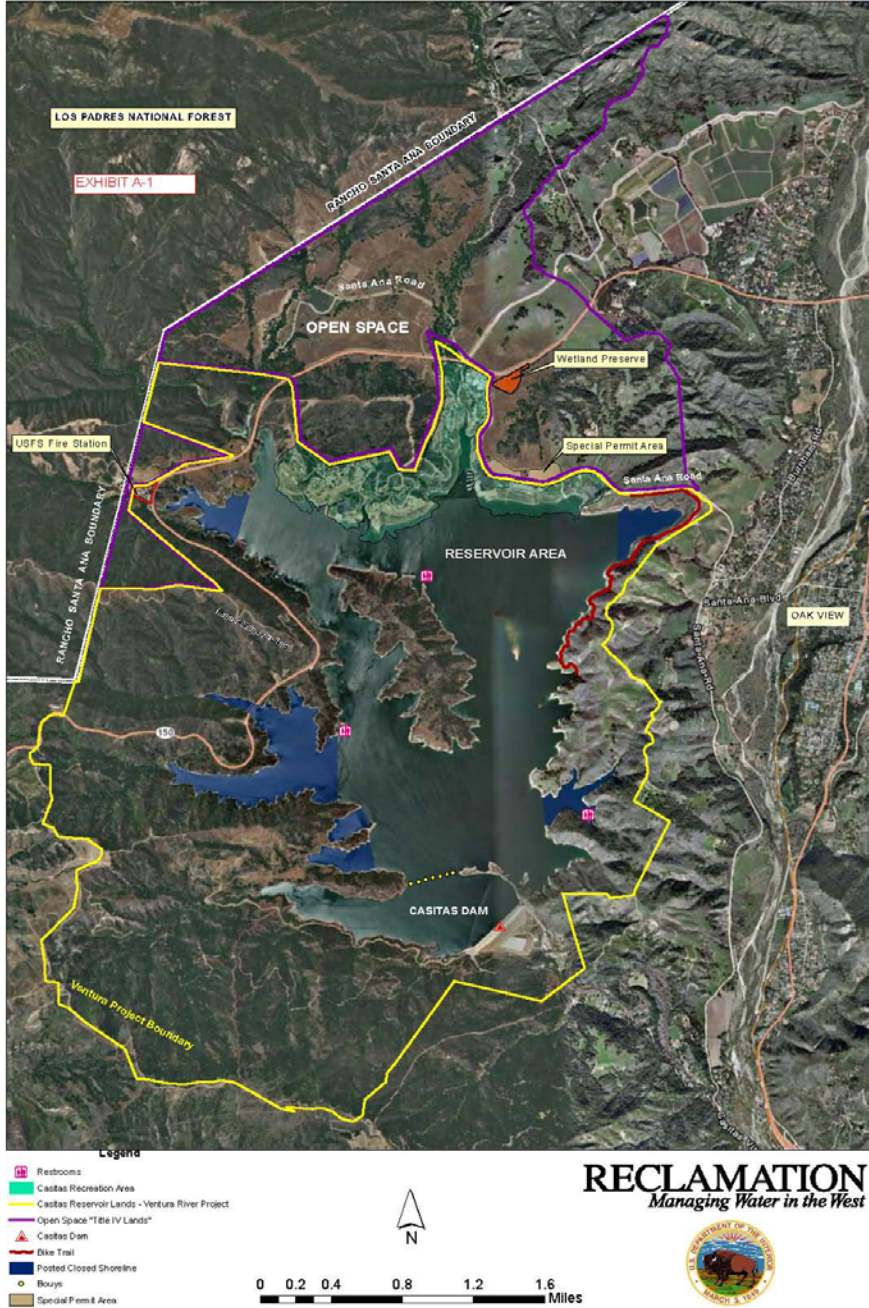
### **CASITAS WATER ADVENTURE SNACK BAR - DEMISED PREMISES**

The purpose of Exhibit A is to establish the physical boundaries of the concession operation as generally illustrated in Exhibit A-1 and A-2, attached hereto. Casitas owns and maintains the asphalt parking lot, a portion of which is used as temporary structure foundation of approximately 24 feet by 24 feet, ½ " water line for potable water and a two (2) phase 90 Amp electrical power outlet box. All picnic tables and trash receptacles in adjacent picnic area are the property of Casitas

The Casitas Water Adventure Temporary Seasonal Snack Bar Concession is authorized to conduct its business within the specified locations in the LCRA, Casitas and the USBR will continue have ownership/management over all assigned Demised Premises.

EXAMPLE 11/22/2011

Exhibit A - 1



2/2017

Exhibit A - 2



## **EXHIBIT B ENVIRONMENTAL REQUIREMENTS**

(a) Concessionaire shall operate, maintain and manage all structures, facilities and lands to minimize environmental consequences. Consideration will be given to alleviating potential harmful effects on landscape, soils, water, wildlife, cultural resources, timber, population, or other resources. Prior to any action which would modify the environment beyond those currently covered by existing NEPA documents, the Casitas will need to submit any necessary environmental reports as directed by the United States. No such modifications of the environment shall be undertaken without prior written approval of the United States.

(b) Violation of any of the provisions of this Exhibit may constitute grounds for termination of this Agreement. Such violations require immediate corrective action by the Concessionaire and shall make the Concessionaire liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(c) The Concessionaire agrees to include the provisions contained in this Exhibit in any subcontractor or third-party contract it may enter into pursuant to this Agreement.

(d) Casitas agrees to provide information necessary for the Concessionaire, using reasonable diligence, to comply with the provision of this Exhibit.

(e) Concessionaire shall fully comply with all applicable Federal laws, orders, and regulations, and the laws of the State of California concerning the pollution of streams, reservoirs, ground water, or water courses.

(f) In accordance with the National Historic Preservation Act of 1966 and Executive Order 11593, cultural resources will be given full consideration in any proposed actions initiated by the Concessionaire beyond those approved in existing plans and documents. Cultural resources (including archaeological, historical, structural, and Native American resources) that may be impacted will be adequately considered and, if necessary, any identified adverse effects will be mitigated or minimized prior to development. If, during construction or development, cultural resources are exposed, activities in the surrounding area will be halted while the resource is evaluated. Casitas will be notified immediately and will provide direction on how to proceed in compliance with 36 CFR 800.13. The cost of any recovery work, if necessary, and any required consultation between Casitas and the State Historic Preservation Officer will be borne by the Concessionaire. The Casitas will provide Concessionaire with copies of any cultural resource reports concerning the identification, evaluation, and treatment of cultural resources within the Recreation Area. Any cultural resources sites identified by the Concessionaire during its management activities will be reported to and recorded on the appropriate Casitas site record forms and copies provided to the USBR. No surface disturbing operations can proceed until the requirements of the article have been met. This provision will be included in all construction contracts.

(g) The Endangered Species Act of 1974 will be given full consideration in all activities.

(h) Concessionaire shall insure that recognized standards and proper uses are achieved on the lands covered by this Agreement. Land use planning and administration of the Federal Estate will conform to all applicable Federal laws, regulations, and Executive Orders. Following is a list of some of the more important of these:

- (1) Executive Order 11990, Protection of Wetlands.
- (2) Executive Order 11988, Floodplain Management.
- (3) Safe Drinking Water Act of 1974, (Public Law 93-523, U.S.C. 300, 88 Stat.1660).

- (4) Federal Land Policy and Management Act of 1976, (Public Law 94-579, 43 U.S.C. 1701).
- (5) Executive Orders 11664 and 11989 for Off-Road Use.
- (6) National Trails System Act, (Public Law 95-43, 16 U.S.C. 1241 Et seq.).
- (7) Fish and Wildlife Coordination Act, (Public Law 85-624, 16 U.S.C., 661, 662).
- (8) Antiquities Act of 1906, (34 Stat. 225, 16 U.S.C., 431).
- (9) National Historic Preservation Act of 1966 (NHPA), (Public Law 89-665, 80 Stat. 915, 16 U.S.C. 470) as amended by Public Laws 91-243, 93-54, 94-422, 94-458, and 96-515).
- (10) Archaeological Resources Protection Act of 1979, (Public Law 95-95, 93 Stat. 721).
- (11) Archaeological and Historic Preservation Act (Public Law 93-291).
- (12) Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.).
- (13) Executive Order 11593, Protection and Enhancement of the Cultural Environment
- (14) National Environmental Policy Act, (Public Law 91-190, 83 Stat. 852).
- (15) Endangered Species Act, (Public Law 93-205, 16 U.S.C. 1531 et seq.).
- (16) Executive Order 12088, Federal compliance with Pollution Control Standards.
- (17) The Clean Air Act, (Public Law 88-206, as amended, 42 U.S.C., 7401 et seq).
- (18) Clean Water Act of 1978, (Public Law 95-217, 33 U.S.C., 1288 et seq.).
- (19) Resource Conservation and Recovery Act (RCRA), (Public Law 94-580).
- (20) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund), Public Law 96-510.
- (21) 43 Code of Federal Regulation, Part 420 (off-road vehicle use on USBR lands).
- (22) 36 Code of Federal Regulation, Part 800, Protection of Historical and Cultural Properties.
- (23) Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. P.L. 100-460, 100-464, to 100-526 and 100-532).
- (24) Rehabilitation Act of 1973, Section 504, as amended (29 U.S.C. 700, et seq., P.L. 93-516 and P.L. 95-602).

## **EXHIBIT C**

### **AMERICANS WITH DISABILITIES REQUIREMENTS**

Concessionaire shall fully comply with the Americans With Disabilities Act (ADA) and Americans With Disabilities Guidelines (ADAG) as amended from time to time, as applicable.

EXAMPLE 11/22/2011



## EXHIBIT D-1

### EQUAL OPPORTUNITY REQUIREMENTS

During the performance of this Agreement, the Concessionaire agrees as follows:

(a) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.

(b) Concessionaire will, in all solicitations or advertisements for employees placed by or in behalf of the Casitas Water Adventure Snack Bar Concession, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

(c) Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of the Concessionaire commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Concessionaire will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Concessionaire will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant, thereto, and will permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Concessionaire's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, by Casitas or the USBR and the Concessionaire may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Concessionaire will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Concessionaire will take such action with respect to any subcontract or purchase order the United States may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event Concessionaire becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the United States, Casitas may request the United States to enter into such litigation to protect the interests of the United States.



## EXHIBIT D-2

### CERTIFICATION OF NONSEGREGATED FACILITIES

The term segregated facilities means: any waiting rooms, work areas, restrooms and washrooms, restaurants or eating areas, time clocks, locker rooms, storage areas, dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habitat, local custom, or otherwise. The Managing Partner certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Managing Partner agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. The Managing Partner agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certification in its files.

**NOTE:** The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

## EXHIBIT E

### TITLE VI, CIVIL RIGHTS ACT OF 1964

(a) Concessionaire agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Managing Partner receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to Concessionaire by the United States, this assurance obligates Concessionaire; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates Concessionaire for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates Concessionaire for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to Concessionaire by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. Concessionaire recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on Concessionaire, its successors, transferees, and assignees.

## EXHIBIT F

### DISPUTE RESOLUTION, MEDIATION AND ARBITRATION

(a) In the event of dispute or controversy arising out of or relating to this Agreement, the parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute.

#### Mediation

In the event that the parties can not by exercise of their best efforts resolve the dispute, they shall submit the dispute to Mediation. The parties shall, without delay, continue to perform their respective obligations under this Agreement which are not affected by the dispute. The invoking party shall give to the other party written notice of its decision to do so, including a description of the issues subject to the dispute and a proposed resolution thereof. Designated representatives of both parties shall attempt to resolve the dispute within [time period] after such notice. If those designated representatives cannot resolve the dispute, the parties shall meet at a mutually agreeable location and describe the dispute and their respective proposals for resolution to responsible executives of the disputing parties, who shall act in good faith to resolve the dispute. If the dispute is not resolved within [time period] after such meeting, the dispute shall be submitted to binding arbitration in accordance with the Arbitration provision of this Agreement.

#### Arbitration

Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator.

(a) The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

(b) All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than thirty (30) days after the notice of arbitration is served.

(c) The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.