

SPECIAL USE AGREEMENT

THIS SPECIAL USE AGREEMENT ("Agreement") is entered into as of _____ by and between East Bay Regional Park District ("District") whose address is 2950 Peralta Oaks Ct., Oakland, CA 94605-0381, and City of Alameda ("Licensee") a municipal corporation, 2263 Santa Clara Ave., Alameda 94501.

1. LOCATION. Licensee shall be limited to approximately 3.80 acres as shown in Exhibit "A" ("Premises") at Robert Crown Memorial State Beach ("Crown Beach").
2. FEE. There will be no fee for the use of the Premises.
3. USE. District grants to Licensee, subject to terms and conditions contained in the Master Lease, the controlling document, between the District and the California Department of Parks and Recreation, dated September 14, 2017 and expiring on September 13, 2047, and as specifically approved by the State Park's District Superintendent as shown in Exhibit "B", the exclusive license to operate a dog park on the Premises pursuant to the authority of Section 5540 of the Public Resources Code of the State of California.

This Agreement permits Licensee to develop and provide facilities in order to regulate and supervise a dog park area under the guidelines and regulations of Licensee as described in Exhibit "C". All such rules and regulations shall not conflict with policy, rules, and regulations established by District. All Licensee sponsored activities and participating individuals are subject to the provisions of the District's Ordinance No. 38 and Licensee agrees to abide by all rules and regulations therein.

No goods, merchandise or material shall be kept, stored or sold by licensee in or on said Premises which are in any way explosive or hazardous. No offensive or dangerous trade, business or occupation shall be carried on therein or thereon by Licensee. Licensee shall not sell food, beverages, or other merchandise or rent equipment at the Premises.

4. TERM. Licensee is granted for a term of ten-years beginning September 1, 2022 and terminating August 31, 2032 with a possible 15-year extension at the discretion of both parties ending July 13, 2047, based on satisfactory performance by adhering to all terms of Agreement.

This Agreement shall be subject to early termination by either party as follows:

- a. In the event the State Park system assumes operational responsibility of Robert Crown Memorial State Beach from the District, the Licensee will have sixty days to remove the dog exercise facility and related structures, unless otherwise agreed in writing by State Park.
- b. Upon at least ninety days prior written notice to such effect by Licensee to District.
- c. District retains the right to terminate this Agreement upon at least ninety days prior notice should the District upon determination by its Board of Directors that a dog park is an incompatible use of the Premises. The Board of Directors shall have sole discretion to determine whether a dog park is an incompatible use or constitutes a nuisance or public safety hazard to other park users.

5. **EMPLOYEES-PERSONNEL.** All persons employed or utilized in connection with the operation of the Premises, including relatives, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees or volunteers of Licensee, and in no event shall any such person be under the age of 16 years. If in the reasonable judgment of District, any such person is incompetent, disorderly, discourteous, or otherwise objectionable, such person, including relatives, shall be discharged or reassigned to a non-District facility upon Licensee's receipt of written notice from District's General Manager to such. Licensee shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Premises to the extent reasonably required to ensure such standards of operation called for in this Agreement.

Licensee shall insure all employees who supervise minors meet the provisions of the Public Resources Code, Section 5163 & 5164, Exhibit "D" that Licensee will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted.

6. **CONDITION OF PREMISES.** The taking of possession of the Premises by the Licensee shall, in itself, constitute acknowledgment that the subject Premises are in good and tenantable condition. Licensee agrees to accept said Premises in their presently existing condition, as is, and that the District shall not be obligated to make any alterations, additions, improvements, or repairs.
7. **MAINTENANCE.** Licensee agrees to maintain any and all structures, facilities, improvements, and equipment on the Premises in good order and repair, at Licensee's sole cost and expense, during the entire term. Licensee shall perform, at Licensee's own expense, any required maintenance and repairs. Should Licensee fail, neglect or refuse to do so, the District shall have the right, but not the obligation, to perform such maintenance or repairs for the Licensee's account, and the Licensee agrees to promptly reimburse the District for the cost thereof, provided, however, that the District shall first give Licensee fifteen-days' written notice of its intention to perform such maintenance. District shall not be obligated to make any repairs to or maintain any improvements on the subject Premises unless otherwise required by this Agreement.

In addition to the general maintenance required above, Licensee expressly agrees, at its own cost and expense, to maintain and operate all of the Premises in a clean, safe, wholesome, and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all present and future laws, rules or regulations of any governmental authority now or in the future having jurisdiction over the Premises. Licensee shall remedy without delay any defective, dangerous, or unsanitary conditions.

District reserves the right of entry for its employees and agents to inspect the Premises as deemed necessary by District, and the right (but not obligation) to do any and all work of any nature necessary for preservation, maintenance and operation of the park in which the Premises are located. Licensee shall be given reasonable notice when any such work may become necessary and will adjust concession operations in such a manner that District may proceed expeditiously.

8. **SIGNS.** Licensee shall not display any signs whatsoever on the Premises without the prior written consent of the Park Supervisor which will not be unreasonably withheld. Application for such consent shall show in reasonable detail the type, character and size of any such sign Licensee desires to display. District agrees not to withhold nor delay approval of reasonable requests for signs.

9. **TAXES.** Licensee shall pay when due all taxes levied on personal property used or maintained upon the Premises and shall pay any possessory or use tax that may be levied in connection with use of the Premises, Licensee agreeing to indemnify and save District harmless from all taxes whatsoever arising out of or in any way connected to the operations conducted by Licensee upon the Premises.

10. **INDEMNITY.** Licensee acknowledges that the District operates Crown Beach pursuant to agreement with the State of California, Department of Parks and Recreation. Whenever the term "District" is used in sections 10, 11, 12, and 13, the term "District" specifically includes the State of California, the Department of Parks and Recreation and all their offices, employees, and/or agents.

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

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

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

In the event a claim is made against District or District is named a co-defendant in any action, arising out of, or in any way related to activity conducted by Licensee, Licensee shall immediately notify District of such fact, and at District's option shall either retain legal counsel to represent District in such action at Licensee's sole expense or reimburse District for District's litigation costs, expenses and attorney's fees in undertaking to represent itself.

In the event a claim is made against both District and Licensee for the joint and several liabilities of District and Licensee, the determination as to the apportionment of liability between District and Licensee shall be made by the judge in a court of competent jurisdiction. Neither District nor Licensee shall request that the apportionment of liability be determined by a jury.

Notwithstanding the apportionment of liability between District and Licensee, Licensee shall

nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District, its officers, directors, agents, or employees.

- 11. INSURANCE.** Licensee will have and maintain the policies set forth in Attachment A, Insurance Requirements, attached hereto and incorporated herein by reference. Licensee must provide all insurance coverage, certificates and endorsements required by this Agreement before the Park District will execute this Agreement. If Licensee is self-insured, Licensee may satisfy any of District's insurance requirements by providing proof of its self-insurance and excess liability coverage. The insurance coverage must be kept current during all terms of this Agreement. All policies, endorsements, certificates, and/or binders will be subject to approval by Park District as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the Park District. A lapse in any required insurance coverage during this Agreement will be a breach of this Agreement.
- 12. WAIVER OF CLAIMS.** The Licensee hereby waives any claim against the District, its officers, directors, agents, or employees for damage or loss caused in connection with or as a result of any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof or as a result of any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.
- 13. DEFAULT.** The occurrence of any one or more of the following events shall constitute a material default of this License by Licensee.
 - a.** The vacating or abandonment of the Premises by Licensee.
 - b.** The failure of Licensee to make any payment of License fees or any other payment required to be made by Licensee hereunder, upon ten days written notice from Park District of non-payment.
 - c.** The failure of Licensee to observe or perform any of the covenants, conditions or provisions of this License to be observed or performed by Licensee where such failure continues for a period of thirty days after written notice thereof from Park District to Licensee. If the nature of Licensee's default is such that more than thirty days are reasonably required for cure thereof, then Licensee shall not be in default if Licensee shall commence such cure within the thirty-day period and thereafter diligently prosecutes such cure to completion.
 - d.** The failure of Licensee to comply with any written order or directives relating to the Premises from any governmental entity within the time set forth in such order and all applicable appeal rights have been exhausted.
 - e.** If any petition is filed by Licensee under any section or chapter of the federal Bankruptcy Code as it may be amended from time to time and such petition is not dismissed within ninety days after the filing thereof; if Licensee becomes insolvent or makes a transfer in fraud of creditors; if Licensee makes a general arrangement or general assignment for the

benefit of creditors; if a receiver, custodian or trustee is appointed for any of the assets of Licensee located at the Premises and the appointment is not vacated within ninety days.

- f. The discovery by Park District that Licensee or any assignee of this License Agreement has provided the Park District with false financial information.

14. REMEDIES. In the event of a material default by Licensee, Park District may:

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

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

Notwithstanding any of the provisions of this Agreement, the parties may hereafter, by mutual consent, agree to modifications thereof or additions thereto in writing which are not forbidden by law. District shall have the right to grant reasonable extensions of time to Licensee for any purpose or for the performance of any obligation of Licensee hereunder.

16. NON-DISCRIMINATION. In the performance of this License, Licensee will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, sexual orientation, age or national origin. Nor shall the Licensee publicize the accommodations,

facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of sex, sexual orientation, race, religion, age, color, disability, or national origin.

17. REMOVAL OF LICENSEE'S FACILITIES.

- a.** At least sixty calendar days prior to the end of the term or any extensions or renewal thereof, Park District shall advise Licensee in writing as to when all of the structures, fixtures and hardware at the Premises shall be removed.
- b.** Licensee agrees that all improvements of every kind and nature constructed, erected, or placed on the Premises whether by Licensee or by others shall remain the property of the Licensee. Licensee shall complete the removal of all facilities that are part of License operations, within thirty days following termination of this License. Licensee agrees to fill in all excavations with solidly compacted earth and to leave said Premises in a neat and clean and natural condition following any such removal. Should Licensee fail to remove the facilities within a reasonable time after request by Park District to do so, then the work may be performed by Park District and Licensee agrees to pay Park District all of its costs, inclusive of twenty percent administrative overhead for such work, promptly upon demand.

18. NOTICE. Any notice required or desired to be given or served hereunder shall be deemed properly given or served if sent by registered mail, postage prepaid, addressed to:

For Park District:

East Bay Regional Park District
2950 Peralta Oaks Court
P.O. Box 5381
Oakland, California 94605
Attention: Business Services Manager

For Licensee:

City of Alameda, Recreation & Parks Dept.
2226 Santa Clara Avenue
Alameda, CA 94501
Attn: Recreation & Parks Director

or at such other address as shall be last furnished in writing by one party to the other. For day to day operations, the contact at Park District shall be the Park Supervisor, dmecchi@ebparks.org or (510) 544-3171; and the contact for Licensee shall be Parks Manager, ARPD@alamedaca.gov ;

- 19. ATTORNEYS' FEES.** Should either party bring any legal action or proceedings for the breach of the term, covenant or condition of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and litigation expenses.
- 20. ADVICE OF COUNSEL.** Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.
- 21. MISCELLANEOUS.** Headings are for convenience only and shall not be considered in the interpretation of this Agreement. This Agreement shall benefit and bind the successors and assigns of the respective parties hereto.

22. HOLD OVER. Any holding over after the expiration of the initial term, with the consent of Park District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable.

23. MODIFICATION OF AGREEMENT. Notwithstanding any of the provisions of this Agreement, the parties may hereafter, by mutual consent agree to modifications thereof or additions thereto in writing which are not forbidden by law. District shall have the right to grant reasonable extensions of time to Licensee for any purpose or for the performance of any obligation of Licensee hereunder.

24. SEVERABILITY. The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

25. ENTIRE AGREEMENT. This license Agreement constitutes the entire Agreement between the parties regardless of any other representations that may have been made either orally or in writing.

IN WITNESS WHEREOF the parties have executed this Agreement effective the date above first written.

City of Alameda

East Bay Regional Park District

By: _____
Jennifer Ott
City Manager

By: _____
Sabrina B. Landreth, General Manager

Recommended for Approval

Approved as to Form:

Amy Wooldridge
Recreation and Parks Director

By: _____
Jason Rosenberg, Assistant District Counsel

Approved as to Form
City Attorney

Elizabeth Mackenzie
Chief Assistant City Attorney

EXHIBIT A

The site is located at the lower portion of Washington Park where it intersects with Crown Memorial State Beach within the Open Space and Open Space/Special Government Combining Zoning Districts. The approximately 3.8 acres of land are enclosed by a 4-foot high chain link fence.

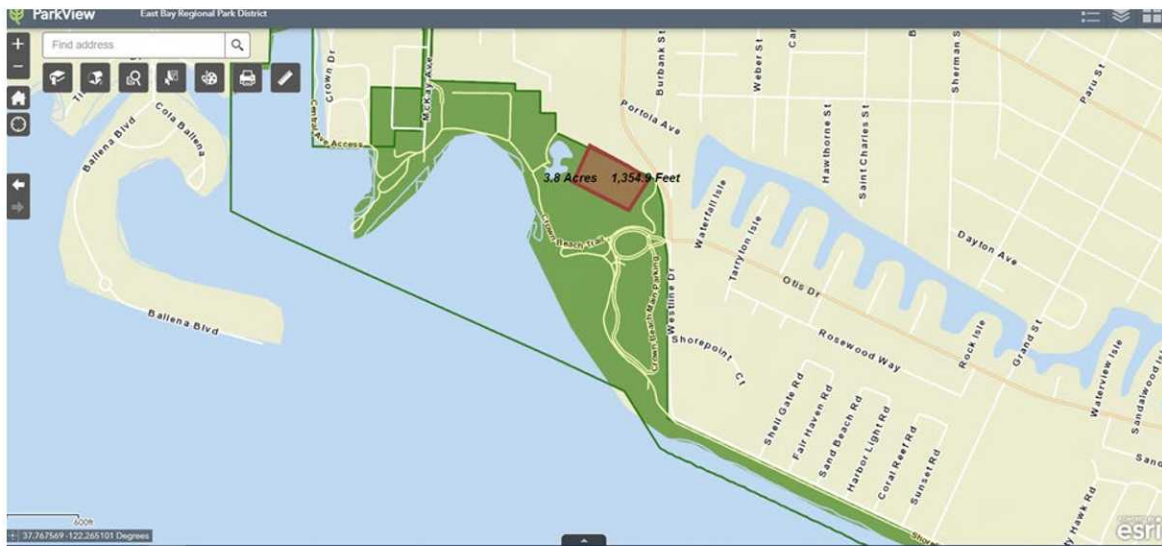


EXHIBIT B

#ÖJ+m+finSTATE OF CALIFORNIA - RESOURCES AGENCY
Gray Davis, Governor

DEPARTMENT OF PARKS AND RECREATION
Bay Area District
250 Executive Park Blvd., Suite 4900
San Francisco, Calif. 94134-3306
(415) 330-6300

February 2, 2000

Steve Jones, Chief, Park Operations
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605-0381

Dear Mr. Jones,

I have reviewed the proposal to allow a Dog Exercise Area at Robert Crown Memorial State Beach. While this is not a facility we would normally consider for a State Beach, it does appear to meet a latent urban recreational need and will serve the local community.

I will approve this request on the condition that it remain a temporary facility and, that, if for any reason, East Bay Regional Park District ceases operating Robert Crown Memorial State Beach, the Dog Exercise Facility is to be removed.

These conditions must be clearly reflected in the Special Use Agreement between EBRPD and the City of Alameda.

Sincerely,

Ron P. Schafer
District Superintendent

Cc: Core Staff

EXHIBIT C

Hours of Operation – Sunrise to Sunset

Dog Park Rules and Regulations

PUBLISHED GUIDELINES FOR USE



EMERGENCY: DIAL 9-1-1

NON-EMERGENCY:

Call ARPD at (510)747-7529

or Alameda Police Department's Non-Emergency line at
(510)337-8340

DOG EXERCISE AREA RULES

1. Hours of operation are from sunrise to sunsetⁱ
2. Dogs must be legally licensed and vaccinatedⁱⁱ
3. Dogs shall wear a visible dog license at all timesⁱⁱⁱ
4. Dogs must be accompanied at all times by a handler who is at least 15 years old
5. Children under 8 years old are not permitted in the off-leash dog area – children ages 9 to 15 should be accompanied by an adult
6. A person may bring no more than three dogs per visit^{iv}
7. Dogs in heat are not permitted in the dog park^v
8. Dogs must be under the control of their handler at all times – dogs that are out of control or that show aggression must be leashed and removed from the dog park
9. Handlers must clean up after their dogs^{vi}
10. Dogs must be leashed when outside the dog park^{vii}
11. Violation of these rules may constitute a misdemeanor and may result in citation and/or expulsion from the dog park^{viii}
12. Dog handlers should self-police and use the dog park at their own risk – The City of Alameda is not responsible for injuries or illnesses of dogs or their handlers

ⁱ Alameda Municipal Code (AMC) Sec. 23-1.5

ⁱⁱ AMC Sec. 7-3.2 and 7-3.4

ⁱⁱⁱ AMC Sec. 7-3.2

^{iv} AMC Sec. 7-3.7

^v AMC Sec. 7-3.11

^{vi} AMC Sec. 7-3.9

^{vii} AMC Sec. 7-3.8

^{viii} AMC Sec. 1-5, 7-3.17, and 23-1.5

Contacts

East Bay Regional Operations:
Crown Beach Park Supervisor
Dave Mecchi
510-544-3171

Dog Park Operations
City of Alameda Park Manager
Matt Nowlen
510-747-7529

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

5163.

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

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

5164.

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

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

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

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

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that

person's criminal background.

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

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

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

ATTACHMENT A - INSURANCE REQUIREMENTS

Licensee acknowledges that the District operates Crown Beach pursuant to agreement with the State of California, Department of Parks and Recreation. Whenever the term "District" is used in sections 10, 11, 12, and 13, the term "District" specifically includes the State of California, the Department of Parks and Recreation and all their offices, employees, and/or agents. Licensee will procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Licensee, his/her agents, representatives, employees or sub-Licensees.

I. MINIMUM SCOPE OF INSURANCE

Coverage will be at least as broad as:

A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit will be twice the required occurrence limit.

B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Licensee has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

C. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the District requires and will be entitled to the broader coverage and/or higher limits maintained by the Licensee.

II. OTHER INSURANCE REQUIREMENTS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status

The District, its officers, directors, officials, agents, employees, and volunteers and the State of California, its officers, directors, officials, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

2. Primary Coverage

For any claims related to this contract, the **Licensee's insurance coverage will be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the District, its officers,

officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, directors, officials, agents, employees, or volunteers will be excess of the Licensee's insurance and will not contribute with it.

3. Notice of Cancellation

Each of the above policies must contain a provision that the policy will not be cancelled or the terms or conditions thereof materially changed without **thirty (30) days' prior written notice to District**. No cancellation provision in any insurance policy will be construed in derogation of the continuous duty of Licensee to furnish the required insurance during the term of this Agreement.

4. Waiver of Subrogation

Licensee hereby grants to District a waiver of any right to subrogation which any insurer of said Licensee may acquire against the District by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

B. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the District. The District may require the Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. If Licensee is self-insured, Licensee may satisfy any of District's insurance requirements by providing proof of its self-insurance and excess liability coverage.

C. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

D. Verification of Coverage

Licensee will furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning will not waive the Licensee's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

E. Special Risks or Circumstances

District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.