

# CONCESSION AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2015, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and DELTA CHARTERS, a sole proprietor, hereinafter referred to as "CONCESSIONAIRE."

## RECITALS

WHEREAS, COUNTY Department of Regional Parks desires to provide unique recreational opportunities within its park system; and

WHEREAS, CONCESSIONAIRE provides a personal watercraft operation ("OPERATION") which include instruction, rentals, and tours; and

WHEREAS, CONCESSIONAIRE desires to utilize the areas of Discovery Park boat launch; and

WHEREAS, COUNTY finds CONCESSIONAIRE'S OPERATION to promote the beneficial use of park facilities for recreational purposes; and

WHEREAS, COUNTY and CONCESSIONAIRE desire to enter into this Agreement on the terms and conditions set forth, herein.

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CONCESSIONAIRE agree as follows:

### **I. SCOPE OF SERVICES**

CONCESSIONAIRE shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

### **II. TERM**

This Agreement shall be effective and commence as of the date first written above and shall end on Oct 1, 2015, with the option for COUNTY to extend the agreement in writing for two additional one-year terms.

### **III. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY

Jeff Leatherman, Director  
Department of Regional Parks  
County of Sacramento  
4040 Bradshaw Rd  
Sacramento CA, 95827

TO CONCESSIONAIRE

Brian Carroll, Owner  
DELTA CHARTERS  
2848 La Colina Way  
Carmichael, CA 95608

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**IV. COMPLIANCE WITH LAWS**

CONCESSIONAIRE shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**V. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**VI. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING**

- A. CONCESSIONAIRE shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.
- B. CONCESSIONAIRE further certifies to COUNTY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts.

**VII. STATUS OF CONCESSIONAIRE**

- A. It is understood and agreed that CONCESSIONAIRE (including concessionaire's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONCESSIONAIRE'S assigned personnel shall not be entitled to any benefits payable to employees of County.

Concessionaire hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

- B. If any third persons are employed by CONCESSIONAIRE, such person shall be entirely and exclusively under the direction, supervision, and control of Concessionaire. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Concessionaire, and the County shall have no right or authority over such persons or the terms of such employment.
- C. It is further understood and agreed that as an independent concessionaire and not an employee of County, neither the Concessionaire nor Concessionaire's assigned personnel shall have any entitlement as a County employee, right to act on behalf of County in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever. Concessionaire shall not be covered by worker's compensation; nor shall Concessionaire be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the County to employees of the County.
- D. It is further understood and agreed that Concessionaire must issue W-2 and 941 Forms for income and employment tax purposes, for all of concession-assigned personnel under the terms and conditions of this agreement.

**VIII. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS**

- A. CONCESSIONAIRE'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a concessionaire's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONCESSIONAIRE'S failure to cure such default within 90 days of notice by COUNTY shall be grounds for termination of this Agreement.
- C. If CONCESSIONAIRE has a Principal Owner, Concessionaire shall provide Principal Owner information to the COUNTY upon request. Principal Owner is defined for purposes of this agreement as a person who owns an interest of 25% or more in the CONCESSIONAIRE. Information required may include the Principal Owner's name, address, and social security number. Failure to provide requested information about a Principal Owner within 60 days of request shall be deemed a material breach of this contract and may be grounds for termination.

**IX. BENEFITS WAIVER**

If CONCESSIONAIRE is unincorporated, CONCESSIONAIRE acknowledges and agrees that CONCESSIONAIRE is not entitled to receive the following benefits and/or compensation from COUNTY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COUNTY and its employee organizations. Should CONCESSIONAIRE or any employee or agent of CONCESSIONAIRE seek to obtain such benefits from COUNTY, CONCESSIONAIRE agrees to indemnify and hold harmless COUNTY from any and all claims that may be made against COUNTY for such benefits.

**X. CONFLICT OF INTEREST**

CONCESSIONAIRE and CONCESSIONAIRE'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**XI. GOOD NEIGHBOR POLICY – AMERICAN RIVER PARKWAY PLAN**

- A. CONCESSIONAIRE'S OPERATION shall comply with COUNTY'S Good Neighbor Policy and shall comply with the rules and policies found in the American River Parkway Plan. CONCESSIONAIRE shall establish good neighbor practices for its OPERATION including, but not limited to:
1. Litter control around the areas of OPERATION during operational hours;
  2. Removal of any litter around the areas of OPERATION at the end of operational hours;
  3. Active care, stewardship, and protection of the areas of OPERATION;
  4. Participation in area crime prevention and reporting;
  5. Undertake such other good neighbor practices as determined appropriate by COUNTY based on COUNTY'S individualized assessment of

CONCESSIONAIRE'S OPERATION and actual impacts on the American River Parkway.

- B. CONCESSIONAIRE shall identify, either by sign or other method as approved by the DIRECTOR, a named representative who shall be responsible for responding to any complaints relating to CONCESSIONAIRE compliance with the required good neighbor practices specified in this Section. CONCESSIONAIRE shall post the name and telephone number of such contact person on the outside of the OPERATION, unless otherwise advised by DIRECTOR.
- C. CONCESSIONAIRE shall comply with all applicable public nuisance ordinances.
- D. If COUNTY finds that CONCESSIONAIRE has failed to comply with the Good Neighbor Policy or the American River Parkway Plan, COUNTY shall notify CONCESSIONAIRE in writing that corrective action must be taken by CONCESSIONAIRE within a specified time frame. CONCESSIONAIRE'S continued non-compliance with the Good Neighbor Policy or the American River Parkway Plan shall be grounds for termination of this Agreement and may also result in ineligibility for additional or future contracts with COUNTY.

**XII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONCESSIONAIRE agrees and assures COUNTY that CONCESSIONAIRE and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONCESSIONAIRE shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONCESSIONAIRE represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

- C. CONCESSIONAIRE agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

**XIII. INDEMNIFICATION**

CONCESSIONAIRE shall indemnify, defend, and hold harmless COUNTY, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder.

**XIV. INSURANCE**

Without limiting CONCESSIONAIRE'S indemnification, CONCESSIONAIRE shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONCESSIONAIRE to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

**XV. PAYMENT**

- A. Payment to the COUNTY under this Agreement shall be in accordance with the Concession Fees & Charges set forth in Exhibit C, or exhibit C as modified by the COUNTY in accordance with express provisions in this Agreement.
- B. CONCESSIONAIRE shall maintain for four years following the termination of this agreement full and complete documentation of all services rendered in performance of its OPERATION. Services shall include, but not be limited to: rental fees, number of rentals, registration fees, class and tour numbers, and class sizes.

**XVI. SUBCONTRACTS, ASSIGNMENT**

CONCESSIONAIRE shall not subcontract or assign any of its OPERATION provided by this Agreement without the express, written, permission of the COUNTY. CONCESSIONAIRE remains legally responsible for the performance of all contract terms, including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONCESSIONAIRE shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

**XVII. SUCCESSORS**

This Agreement shall bind the successors of COUNTY and CONCESSIONAIRE in the same manner as if they were expressly named.

**XVIII. TIME**

Time is of the essence of this Agreement.

**XIX. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**XX. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by DIRECTOR and counsel for COUNTY.

**XXI. DIRECTOR**

As used in this Agreement, "Director" shall mean the Director of the Department of Regional Parks, or his designee.

**XXII. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, CONCESSIONAIRE agrees to immediately suspend its OPERATION and either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

### **XXIII. TERMINATION**

- A. COUNTY or CONCESSIONAIRE may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing.
- B. COUNTY may terminate this Agreement for cause immediately upon giving written notice to CONCESSIONAIRE should CONCESSIONAIRE materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. If notice of termination for cause is given by COUNTY to CONCESSIONAIRE and it is later determined that CONCESSIONAIRE was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

### **XXIV. AUDITS AND RECORDS**

Upon COUNTY's request, COUNTY or its designee shall have the right at reasonable times and intervals to audit, at CONCESSIONAIRE's premises, CONCESSIONAIRE's financial and program records as COUNTY deems necessary to determine CONCESSIONAIRE's compliance with legal and contractual requirements and the correctness of payments submitted by CONCESSIONAIRE. CONCESSIONAIRE shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon COUNTY's request at COUNTY's expense.

### **XXV. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between COUNTY and CONCESSIONAIRE regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CONCESSIONAIRE regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

### **XXVI. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

### **XXVII. FORCE MAJEURE**

Neither CONCESSIONAIRE nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events



shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**XXVIII. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**XXVIX. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

**XXX. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO, a  
political subdivision of the State  
of California**

**DELTA CHARTERS**

By \_\_\_\_\_  
Jeffrey R. Leatherman, Director  
Department of Regional Parks

By \_\_\_\_\_  
Brian Carroll, Owner  
DELTA CHARTERS

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CONTRACT REVIEWED AND APPROVED BY COUNTY COUNSEL

By: \_\_\_\_\_ Date: \_\_\_\_\_

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## **EXHIBIT A to Concession Agreement**

**between the COUNTY OF SACRAMENTO,  
hereinafter referred to as "COUNTY," and  
DELTA CHARTERS, hereinafter referred to as "CONCESSIONAIRE"**

### **SCOPE OF SERVICES**

#### **I. SERVICE LOCATION(S)**

CONCESSIONAIRE's OPERATION shall take place along the American River Parkway at Discovery Park Boat Launch, with actual riding of the personal watercrafts in the Sacramento River. ("Areas of Operation")

CONCESSIONAIRE acknowledges and agrees that all vehicles used in the commission of OPERATION remain subject to normal parking fees in accordance with the COUNTY'S adopted Regional Parks Fee Schedule for the year(s) of OPERATION.

CONCESSIONAIRE acknowledges that equipment may only be launched and recovered from designated boat launch points at Discovery Park identified in the American River Parkway Plan. And vehicles may only be parked in designated parking spaces.

#### **II. DESCRIPTION OF SERVICES**

CONCESSIONAIRE's OPERATION shall provide personal watercraft rentals, tours and instruction training classes rentals as described in the Delta Charters proposal, attached as Attachment 1 to this Exhibit and incorporated, herein.

Additionally, CONCESSIONAIRE agrees that, with the exception of those provide personal watercraft rentals, tours and instruction training classes rentals as described in the Delta Charters proposal, CONCESSIONAIRE shall not sell or rent any other items in the course of its OPERATION.

CONCESSIONAIRE acknowledges that the COUNTY may, at its discretion, close sections of the Areas of Operation to the public for special events. COUNTY shall provide CONCESSIONAIRE thirty (30) days advanced written notice of these special events and parkway closures that affect CONCESSIONAIRE's Areas of Operation. CONCESSIONAIRE agrees that it will not conduct its OPERATION during the dates and times specified in the notice while the special event is being conducted.

### **III. SAFETY CONSIDERATIONS**

CONCESSIONAIRE agrees to the items as described in the “Safety and Limitations” section of the Delta Charters proposal, attached as Attachment 1 to this Exhibit and incorporated, herein. Additionally, CONCESSIONAIRE agrees as follows:

#### **A. BACKGROUND CHECKS**

CONCESSIONAIRE agrees to the provisions of Section 5164 of the Public Resources Code and shall not employ, hire, or allow volunteer any person in a position of supervisory or disciplinary authority over a minor, if that person has been convicted of criminal offenses as described and incorporated by Section 5164.

CONCESSIONAIRE shall require each owner, employee, volunteer, or prospective employee or volunteer who will have supervisory or disciplinary authority over a minor to submit one set of fingerprints and request a criminal background check to the California Department of Justice (DOJ) in order to verify whether the individual has been convicted of an offense specified in Section 5164 of the Public Resources Code. CONCESSIONAIRE agrees to maintain a copy of the results of the fingerprinting and criminal background check for each owner, employee, or volunteer on file throughout the term of the Agreement.

CONCESSIONAIRE shall be solely responsible for any costs associated and/or incurred in order to comply with this provision.

#### **B. PERSONAL FLOATATION DEVICES**

CONCESSIONAIRE agrees that any individual involved in the OPERATION, including, but not limited to: participants, instructors, employees, subcontractors, or volunteers shall wear a Coast Guard-approved type I, II, III or V Personal Flotation Device (PFD) at all times while on or within 10 feet of any waterway where the OPERATION takes place.

#### **C. TRANSPORTATION OF EQUIPMENT**

CONCESSIONAIRE agrees that only employees or subcontractors of CONCESSIONAIRE shall launch and/or transport personal watercrafts and related equipment and that the participants of CONCESSIONAIRE’s OPERATION shall not be permitted to launch and/or transport any personal watercrafts or related equipment.

#### **D. WAIVER OF LIABILITY**

CONCESSIONAIRE agrees that all customers of the OPERATION shall complete and sign an “Understanding of Risk/Waiver of Liability” form that indemnifies the COUNTY for any loss or injury. The form shall be submitted

to COUNTY prior to the commencement of OPERATION for approval by COUNTY legal staff. Failure to have each participant in CONCESSIONAIRE's OPERATION to fill out an "Understanding of Risk/Waiver of Liability" form shall place this Agreement into Default and subject to termination.

**IV. Marketing and Advertising**

CONCESSIONAIRE is allowed to display advertising materials on any vehicles, uniforms, personal watercrafts, or related equipment used in service of the OPERATION. CONCESSIONAIRE is allowed to have a rental table and 10x10 pop-up tent set up on the grass during operation hours, but everything will be brought in on a daily basis and removed at the end of the day. No additional, stand-alone, signage is allowed on the Parkway.

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**EXHIBIT B to Concession Agreement**  
**between the COUNTY OF SACRAMENTO,**  
**hereinafter referred to as "COUNTY," and**  
**DELTA CHARTERS, hereinafter referred to as "CONCESSIONAIRE"**

**INSURANCE REQUIREMENTS FOR CONCESSIONAIRES**

Without limiting CONCESSIONAIRE's indemnification, CONCESSIONAIRE shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONCESSIONAIRE, its agents, representatives or employees. COUNTY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the County Risk Manager, insurance provisions in these requirements do not provide adequate protection for COUNTY and for members of the public, COUNTY may require CONCESSIONAIRE to obtain insurance sufficient in coverage, form and amount to provide adequate protection. COUNTY's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

**I. VERIFICATION OF COVERAGE**

CONCESSIONAIRE shall furnish the COUNTY with certificates evidencing coverage required below. **Copies of required endorsements must be attached to provided certificates.** The County Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the COUNTY and the general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by the County before performance commences. The COUNTY reserves the right to require that CONCESSIONAIRE provide complete, certified copies of any policy of insurance offered in compliance with these specifications.

**II. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the County Risk Manager.
- B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial

Automobile Liability coverage form CA 0001.

1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to the CONCESSIONAIRE's profession.
- E. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

### III. **MINIMUM LIMITS OF INSURANCE**

CONCESSIONAIRE shall maintain limits no less than:

- A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

Building Trades General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

CONCESSIONAIRES and CONCESSIONAIRES engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project).

- B. AUTOMOBILE LIABILITY:
  1. Commercial Automobile Liability for Corporate/business owned vehicles

including non-owned and hired, \$1,000,000 Combined Single Limit.

2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.
- C. WORKERS' COMPENSATION: Statutory.
- D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.
- E. PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS LIABILITY: \$1,000,000 per claim and aggregate.

#### IV. **DEDUCTIBLES AND SELF-INSURED RETENTION**

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by the COUNTY.

#### V. **CLAIMS MADE PROFESSIONAL LIABILITY INSURANCE**

If professional liability coverage is written on a Claims Made form:

- A. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONCESSIONAIRE.
- B. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- C. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the CONCESSIONAIRE must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

#### VI. **OTHER INSURANCE PROVISIONS**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provision:

- A. All Policies:
  1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. The County Risk Manager may waive or alter this requirement, or accept self-



insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the COUNTY and the general public are adequately protected.

2. MAINTENANCE OF INSURANCE COVERAGE: The CONCESSIONAIRE shall maintain all insurance coverages and limits in place at all times and provide the County with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

CONCESSIONAIRE is required by this Agreement to immediately notify County if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed.

CONCESSIONAIRE shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

## **VII. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY**

- A. ADDITIONAL INSURED STATUS: The COUNTY, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONCESSIONAIRE; products and completed operations of the CONCESSIONAIRE; premises owned, occupied or used by the CONCESSIONAIRE; or automobiles owned, leased, hired or borrowed by the CONCESSIONAIRE. The coverage shall contain no endorsed limitations on the scope of protection afforded to the COUNTY, its officers, directors, officials, employees, or volunteers.
- B. CIVIL CODE PROVISION: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- C. PRIMARY INSURANCE: For any claims related to this Agreement, the CONCESSIONAIRE's insurance coverage shall be endorsed to be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, directors, officials, employees, or volunteers shall be excess of the CONCESSIONAIRE's insurance and shall not contribute with it.

- D. SEVERABILITY OF INTEREST: The CONCESSIONAIRE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- E. SUBCONTRACTORS: CONCESSIONAIRE shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONCESSIONAIRES subcontractor.

#### **VIII. WORKERS' COMPENSATION**

Workers' Compensation Waiver of Subrogation: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the COUNTY, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by the CONCESSIONAIRE. Should CONCESSIONAIRE be self-insured for workers' compensation, CONCESSIONAIRE hereby agrees to waive its right of subrogation against COUNTY, its officers, directors, officials, employees, agents or volunteers.

#### **IX. PROPERTY**

Course of Construction (COC) Waiver of Subrogation: Any Course of Construction (COC) policies maintained by the CONCESSIONAIRE in performance of the Agreement shall contain the following provisions:

1. The COUNTY shall be named as loss payee.
2. The Insurer shall waive all rights of subrogation against the COUNTY.

Inland Marine Waiver of Subrogation: Any Inland Marine insurance policies maintained by the CONCESSIONAIRE in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against the COUNTY.

#### **X. NOTIFICATION OF CLAIM**

If any claim for damages is filed with CONCESSIONAIRE or if any lawsuit is instituted against CONCESSIONAIRE, that arise out of or are in any way connected with CONCESSIONAIRE's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect COUNTY, CONCESSIONAIRE shall give prompt and timely notice thereof to COUNTY. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

**EXHIBIT C to Concession Agreement**  
**between the COUNTY OF SACRAMENTO,**  
**hereinafter referred to as "COUNTY," and**  
**DELTA CHARTERS, hereinafter referred to as "CONCESSIONAIRE"**

**Concession Payments**

CONCESSIONAIRE agrees to the following payment terms to the COUNTY in accordance with the terms and conditions of the Agreement:

1. CONCESSIONAIRE shall pay COUNTY \$5 per rental of any equipment rented in the course of its OPERATION.
2. CONCESSIONAIRE shall pay 10% of all registration fees for any program in the course of its OPERATION, including, but not limited to: classes, private instruction, or tours.
3. CONCESSIONAIRE shall submit to the COUNTY no later than the fifteenth (15<sup>th</sup>) day of the month, an invoice reflecting the number of equipment rentals and paid program registrations and tours incurred on a daily basis for the preceding month.
4. At the time invoices are submitted, CONCESSIONAIRE shall remit payment to the COUNTY in the amounts agreed upon above and in accordance with the terms and conditions of this Exhibit.
5. Invoices and Payments shall be made to the COUNTY in care of the DIRECTOR and delivered to the address identified in Article III of the Agreement.