

SPECIAL USE AGREEMENT

THIS SPECIAL USE AGREEMENT ("Agreement" or "License") is entered into as of June 7, 2011, by and between East Bay Regional Park District ("District") whose address is 2950 Peralta Oaks Ct., Oakland CA 94605-0381, and Golden Gate Live Steamers, Inc. ("Licensee") a California non-profit corporation, 2501 Grizzly Peak Blvd at Loma Cantadas, Tilden Park, Berkeley, CA.

FOR AND IN CONSIDERATION of the mutual terms, covenants and conditions herein, District grants to Licensee, pursuant to the authority of Section 5540 of the Public Resources Code of the State of California, the exclusive License to operate a 7.5 inch gauge model railroad and related activities in Tilden Regional Park subject to the following terms and conditions.

1. **LOCATION.** This License shall be limited to the areas ("Premises") at Tilden Regional Park as generally shown in Exhibit A, the boundaries and location of which are established in accordance with the map attached and made a part hereof. Notwithstanding the areas shown in Exhibit "A", District shall have the right to designate and specify exact locations on the ground within such generalized locations.
2. **USE.** The Premises shall be used by Licensee for the purposes and times listed in Exhibit "B" which is attached hereto and made a part hereof, for Licensee's own use and for use of the public on a nonprofit, noncommercial basis under rules established by Licensee and approved by the District.
3. **TERM.** This License is granted, per Resolution #2011-6-124, for a term of five years beginning February 1, 2011 and terminating January 31, 2016, based on satisfactory performance of Licensee by adhering to all terms of Agreement and a determination that Licensee's operations remain a compatible use at Tilden Regional Park. Licensee shall have the conditional right to renew the license for one (5) five-year option period ending January 31, 2021, by giving District written notice thereof not less than twelve months (365 days) prior to the expiration of the term. The decision to renew for the option period is in the sole discretion of District's Board of Directors.
4. **FACILITIES AND SERVICES TO BE PROVIDED BY LICENSEE.** Licensee agrees to maintain the track and operate 7.5-inch gauge model trains for the general public to ride from noon to 3:00 p.m. every Sunday, weather, equipment, and staff permitting, as well as to educate people in railroad history and lore at Tilden Regional Park.
5. **SPECIAL USE FEE.** Licensee agrees to pay on or before February 1, 2012, an annual License Fee of \$1,500. The amount of Special Use Fees payable hereunder shall be increased annually by \$50, the "Adjustment Date," commencing on February 1, 2013 and thereafter on each anniversary date during the Initial Term or any extensions thereof as shown in Exhibit "C".
6. **RETAIL SALES FEE.** For any products sold by Licensee on the premises, Licensee shall pay to District without demand, five (5) percent of gross receipts. The term "gross receipts" herein shall include the total aggregate amount of the business done, sales made, and services performed by Licensee in, on, or from the Premises for cash. In addition, gross receipts shall also include the total aggregate amount received by Licensee from the operating of vending machines. Gross receipts shall not include the amount of any tax on sales from the Premises where such taxes are added to the selling price, stated separately, and paid by Licensee's customers, and remitted directly to the taxing authorities by Licensee.

Fees shall be paid once per year by December 31 of each year of the Agreement to the District's Finance Department located at 2950 Peralta Oaks Court, Oakland CA 94605. An annual report, in reasonable detail as shown in Exhibit "D", shall accompany each annual payment.

7. **LICENSEE SPECIAL EVENTS.** Licensee may have three Special Events per year. Special Event fees are waived for three Special Events. Any Special Events beyond the three allowed under this agreement will pay the regular District fees as detailed in the East Bay Regional Park District's Special Event Permit. All Special Events are subject to approval by District in its sole discretion and shall require Licensee to obtain a Special Use Permit from District. Licensee shall apply for a Special Use Permit at least ninety (90) days in advance of the event.
8. **ALCOHOLIC BEVERAGES and FOOD.** Licensee expressly understands that the sale or handling of food, alcoholic beverages, including beer and wine by the Licensee, will not be permitted under this Agreement and that Licensee shall not provide bar service, nor engage in the sale of mixers, glasses, ice or labor in connection with the preparation of drinks containing alcoholic beverages. This prohibition shall not apply to the occasional private events or special events hosted by Licensee for Licensee's invited guests and employees so long as no payment is received in consideration of hosting the event and there is no charge to guests for the provision of food or drink. An outside vendor may sell food, not including alcohol, as long as the vendor has all appropriate governmental permits for food vending and is listed on the Special Event Permit.
9. **RECORDS.** Licensee shall keep true and accurate books and records showing all of its income and expenses and business transactions in connection with this Agreement in separate records of account in a manner reasonably acceptable to District. District shall have the right through its representatives, and at all reasonable times, including any time during the three year period following the termination of the Agreement, to inspect such books and records including State of California sales tax return records and Federal and State income tax returns.

Licensee shall keep copies of all records relating to regulatory agencies. Copies of all inspection reports, notices of violation or citations concerning Licensee's facilities, equipment or the Premises shall be provided to District no later than seven (7) days after receipt by Licensee of same.
10. **CONSTRUCTION OF NEW FACILITIES.** Any proposed alterations, additions or improvements to the Premises shall be at Licensee's sole cost and expense and without reimbursement of any kind from District. Any new facilities must be consistent with Tilden's Master Plan and approved by District in its sole discretion in advance. Licensee shall be required to obtain all required permits and comply with all applicable law. No work shall commence unless Licensee can demonstrate to the satisfaction of District that there are sufficient funds available to fully complete the construction within a reasonable construction period. The District may require, in its discretion, the posting of a performance bond, letters of credit, or a segregated construction account, etc. as deemed necessary to ensure that all work is completed in a prompt and workmanlike manner. All contractors must be licensed and meet District's insurance requirements. All work will be of high quality, compatible with the purposes of this Agreement, and compatible in finish, color, and design with the existing structures in Tilden Regional Park and the park environment.

11. SAFETY. Licensee shall maintain all equipment and conduct all operations in a safe and orderly manner and shall withdraw from use any equipment or cease any operations deemed to be unsafe or detrimental to the public upon request of any authorized representative of District.
12. ORDINANCE 38. All Licensees' sponsored activities and participating individuals are subject to the provisions of the East Bay Regional Park District's Ordinance No. 38 and Licensee agrees to abide by all rules and regulations therein.
13. HAZARDOUS MATERIALS. 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 unless approved in advance by District. Any fuels or flammable materials permitted to be stored at the Premises must be stored in accordance with all applicable laws and regulations with all appropriate safety precautions. No offensive or dangerous trade, business or occupation shall be carried on therein or thereon by Licensee.
14. EMPLOYEES/VOLUNTEERS - PERSONNEL STANDARDS. All persons employed or utilized in connection with the operation of the Premises, including relatives and volunteers, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees/volunteers of Licensee. If in the reasonable judgment of District, any such person is incompetent, disorderly, discourteous, or otherwise objectionable, such person, including relatives, shall be discharged upon Licensee's receipt of written notice from District's General Manager as such.

Licensee shall insure that all employees/volunteers that have direct supervision over or conduct programs with minors meet the provisions of the Public Resources Code, Section 5164, Exhibit "E" which is attached hereto and made a part hereof, that Licensee will require such employees/volunteers be fingerprinted.

15. CONDITION OF PREMISES. The taking of possession of the Premises by 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 District shall not be obligated to make any alterations, additions, improvements, or repairs.
16. RULES. In order to insure the safety of employees and the public, the following rules will be followed at all times:
 - Licensee acknowledges that it does not have exclusive use of the Premises.
 - Dogs must be on leash at all times when on the premises.
 - Smoking is permitted only in the club parking lot away from buildings and shared public areas.
 - Licensee will be responsible for picking up all litter and repairing damage it causes.
 - All injury accidents shall be properly recorded and reported immediately to the Public Safety Department 510-881-1121, and the Park Supervisor or his/her designated representative.
17. 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 term of this Agreement. Licensee shall perform, at Licensee's own expense, any required maintenance and repairs. Licensee shall keep work areas safe and in good repair. Should Licensee fail, neglect, or refuse to do so, District shall have the right, but not the

obligation, to perform such maintenance or repairs for Licensee's account and Licensee agrees to promptly reimburse District for the cost thereof, provided, however, that District shall first give Licensee a seven (7) day 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 Premises unless 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.

In addition to the general maintenance required above, Licensee shall make and observe the following in a prompt manner:

- Post hours of operations
 - Clean the Facility and other buildings used by Licensee
 - Maintain landscaping around the Premises
 - Repair fencing as needed
 - Monitor pest problems - ground squirrels, flies, noxious weeds
 - Maintain vegetation, as well as the control of invasive vegetation, around structures and other improvements in compliance with state and local fire regulations and ordinances and by reasonable request by Park Supervisor.
- a. Repair and Replacement by District. District shall have the obligation to repair or replace to the extent the damage or destruction to the premises is caused by the sole active negligence of District.
- b. Repair and Replacement by Licensee. Licensee shall have the obligation to repair or replace any facilities or improvements to the extent damage or destruction is caused by Licensee, its agents, employees, members and invitees, or to the extent insurance proceeds are received by Licensee (which shall be held in trust for such purposes), or to the extent that proceeds would have been obtained by Licensee if Licensee had been carrying the insurance required by this Agreement. If Licensee does not repair or replace the facilities, Licensee shall at its sole cost, demolish any improvements and facilities and remove them and all debris from the Premises.
18. UTILITIES. District shall provide access to vault or chemical toilets and running, potable water at the Premises (provided it is readily available) and adequate sewage pump-out service. Licensee shall be responsible for the costs of any excess disposals incurred.
19. WEED CONTROL. Licensee shall use only District approved herbicides for weed control in storage areas, work areas, along the railroad right-of-way, at station platforms, around railroad cars, and to form safety fields-of-vision. Licensee is responsible for controlling ground squirrels burrowing under and around railroad right-of-way, platforms, and material storage areas. All work will be coordinated with District staff annually and follow District's Integrated Pest Management Program.

20. **INSPECTION.** 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 Tilden Regional 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.
21. **SIGNS.** All promotional materials and signs to be placed at the premises must be submitted to the Park Supervisor for prior written approval. Application for such consent shall show in reasonable detail the type, character, and size of any such sign Licensee desires to display, contain the reference "Tilden Regional Park an East Bay Regional Park District Facility", and the District's leaf logo. District agrees not to withhold nor delay approval of reasonable requests for promotional materials or signs.
22. **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 agrees to indemnify and hold District harmless from all taxes whatsoever arising out of or in any way connected to the operations conducted by Licensee upon the Premises.
23. **DESTRUCTION.** In the event of destruction, loss or damage by fire or other causality of any improvements or facilities at the Premises, whether insured or uninsured, which in the reasonable opinion of District cannot be repaired or restored in one hundred eighty (180) working days, District may terminate this Agreement by providing Licensee written notice. In the event of such termination, all insurance proceeds shall be used to demolish and clear the damaged improvements and the balance shall be paid to Licensee if the damaged improvement was installed by Licensee, otherwise the balance shall be paid to District. If the Agreement is not terminated by District, any buildings, improvements or fixtures constructed or used by Licensee shall be replaced to the satisfaction of District at Licensee's sole cost and expense with reasonable promptness and diligence.
24. **INDEMNITY.** The provisions of this Section (including all subsections) shall survive the termination or expiration of this Agreement.
 - a. Licensee hereby waives all claims and recourse against District, including the right to contribution for loss or 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.
 - b. Licensee shall indemnify, hold harmless, and defend District its officers, directors, agents, employees and volunteers (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, facilities, or any operations or activities occurring under this Agreement, including events occurring on or off the Premises 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.

- c. 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 Licensee, or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death), personal injury or property damage or loss.
- d. 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 attorneys' fees in undertaking to represent itself.
- e. Notwithstanding any apportionment of liability between District and Licensee, Licensee shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless a 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.

25. **INSURANCE.** Licensee shall carry during the term of this License at its own cost and expense, the following insurance:

- a. General Liability (Bodily Injury and Property Damage) including Premises and Operations (including off-site operations), Blanket Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, and Owners and Contractors Protective Liability in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, which amount may be satisfied through an umbrella policy.
- b. Standard Fire Insurance with extended coverage and vandalism and malicious mischief endorsements thereon, on all improvements owned by the Licensee, placed or constructed on building or upon the Premises by Licensee, in an amount equal to 90 percent of the full replacement cost thereof, and insuring the interests of the District and the Licensee as same shall appear. Licensee and District agree, to extent permissible, that they will waive their right to subrogate fire damage. The policy shall contain a special endorsement that such proceeds shall be disbursed and used to repair or rebuild any such improvements so damaged or destroyed (if such course of action is required by this Agreement).
- c. Automobile Liability (Bodily Injury and Property Damage) extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under the License in an amount not less than \$1,000,000 per occurrence.
- d. Worker's Compensation as required by law and Employer's Liability with limits of \$1,000,000 per occurrence. The insurer will waive all rights of subrogation against District, its officials, directors, employees, agents and volunteers.
- e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by District.
- f. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

- i. Licensee shall name District, its officials, directors, employees, agents and volunteers as additional insured in its General Liability and Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to District, its officials, directors, employees, agents or volunteers.
- ii. Licensee's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to District, its officials, directors, employees, agents or volunteers.
- iii. All endorsements to policies shall be executed by an authorized representative of the insurer.
- iv. Each insurance policy required by this clause shall be endorsed to state that District will be provided thirty days written notice of cancellation or material change in the policy language or terms.
- v. Insurance is to be placed with insurers with an A.M. Best's rating of no less than A- or better.
- vi. Licensee shall furnish District with certificates of insurance and endorsements to the policies evidencing coverage required by this License prior to the start of operations at the Premises. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Licensee's insurer in its normal course of business and shall be received and approved by District prior to execution of this License by District. District reserves the right to require complete, certified copies of all required insurance policies in the event of an insurance claim. Licensee shall provide proof that any expiring coverage has been renewed or replaced at least two weeks prior to the expiration of the coverage.

26. **WAIVER OF CLAIMS.** Licensee hereby waives any claim against 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.

27. **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 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 Licensee shall be required to restore or revive time as of the essence after the waiver by 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 District by this Agreement shall be deemed cumulative.

28. **EARLY TERMINATION.** This Agreement shall be subject to early termination by either party as follows:

- a. Upon at least ninety (90) days prior written notice to such effect by Licensee to District.
 - b. By District upon determination by its Board of Directors in the Board's sole discretion that the Facility is an incompatible use of Tilden Regional Park or constitutes a nuisance or public safety hazard to other park users. Upon such a determination, Licensee shall be given 180 days notice to conclude its operations and to remove its property as provided in Section 31 below.
29. DEFAULT. The occurrence of any one or more of the following events shall constitute a material default of this License by Licensee.
- a. The abandonment, vacation, or discontinuance of operations on the Premises for more than ninety days.
 - 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 District of non-payment.
 - c. The interest of Licensee in the Agreement is assigned, transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm, or corporation.
 - d. The failure of Licensee to operate in the manner required by this Agreement, where such failure continues for more than thirty days after written notice from District to correct the condition specified.
 - e. The failure of Licensee to keep, observe and perform all other promises, covenants, conditions and agreements set forth in this Agreement including compliance with local, state and federal law, where such failure continues for more than thirty days after written notice from District for correction thereof.
 - f. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, safe condition, where such failure continues for more than thirty days after written notice from District for correction thereof.
 - g. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Licensee under the Agreement which is not corrected within thirty days after written notice from District for correction thereof; and the failure to maintain service standards thereafter.
 - h. The filing of a voluntary petition in bankruptcy by Licensee, the adjudication of Licensee as a bankrupt, the appointment of any receiver of Licensee's assets, the making of a general assignment for the benefit of creditors, and or a petition or answer seeking a reorganization of Licensee under the federal bankruptcy laws or any other federal or state laws.
 - i. Licensee's material misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of Licensee to perform the services under this Agreement.

- j. The filing of any lien or stop notice on account of Licensee where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten days.
30. **REMEDIES.** In the event of a material default by Licensee, District may:
- a. Terminate this License in which case Licensee shall surrender possession of the Premises to District within 30 days of termination.
 - 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 agreement 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 District shall not release Licensee from the full and strict compliance with all of the terms, conditions and covenants of this agreement on Licensee's part and Licensee shall pay any deficiency that may exist after deducting any fees received, if any.
 - c. Pursue any other remedies provided by law. It is expressly understood that the remedies herein provided for District in case of a violation of the terms of this agreement by Licensee are not exclusive, but are in addition to the remedies provided by law or at equity, and any of which remedies District shall have the right to use at its option.
31. **REMOVAL OF LICENSEE'S FACILITIES ON TERMINATION.** Upon termination of this Agreement for any reason, Licensee shall have the right to remove all of its own personal property and any improvements it paid for and installed on the Premises, provided it restores the ground surface of the Premises to a reasonable condition and/or repairs any damage caused by the removal of such property. Licensee shall complete the removal of all facilities within sixty (60) days following termination of this Agreement. Licensee agrees to leave the Premises in a neat and clean and natural condition following any such removal. Should Licensee fail to remove the facilities then the work may be performed by District and Licensee agrees to pay District all of District costs incurred, inclusive of a fifteen (15) percent administrative overhead for such work, promptly upon demand. Any structures not removed by Licensee or District, at Licensee's cost, shall become the property of District.
32. **NON-DISCRIMINATION.** In the performance of this License, Licensee will not discriminate against any members of the public, its members, employees or applicants for employment because of disability, race, color, religion, ancestry, gender, sexual orientation, age or national origin. Nor shall Licensee publicize or offer the accommodations, facilities, services, or privileges hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of disability, race, color, religion, ancestry, gender, sexual orientation, age or national origin or any other legally protected status.
33. **NO ASSIGNMENT.** Licensee has been granted this License due to its unique qualifications and interest in providing the services provided hereunder. Licensee shall neither assign, sublease nor convey any interest in this Agreement to any person or persons or entity. Any attempt to assign or sublet shall be void.
34. **HOLD OVER.** Any holding over after the expiration of the term of this License, with the consent of District, shall be construed to be a tenancy from month to month on the same terms and conditions specified herein so far as applicable. District may terminate any hold over tenancy on thirty days written notice to Licensee.

36. 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.
37. 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.
38. MISCELLANEOUS. Headings are for convenience only and shall not be considered in the interpretation of this Agreement. This Agreement shall benefit and bind the authorized successors and assigns of the respective parties hereto.
39. MODIFICATION OF AGREEMENT. This Agreement may only be modified by the parties by an agreement in writing which is signed by both parties to this Agreement. 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.
40. GOVERNING LAW. This Agreement shall be interpreted and construed according to and governed by the laws of California, excluding any such laws that might direct the application of the laws of another jurisdiction.
41. SEVERABILITY. The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.
42. ENTIRE AGREEMENT. This License Agreement is comprised of this Agreement and Exhibits A, B, C, D and E which constitutes the entire agreement between the parties and supersedes all prior or contemporaneous written and verbal representations or understandings between the parties.

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

Golden Gate Live Steamers, Inc.

By: Mark W. West
 Mark W. West, President

Dated: 9-11-12

East Bay Regional Park District

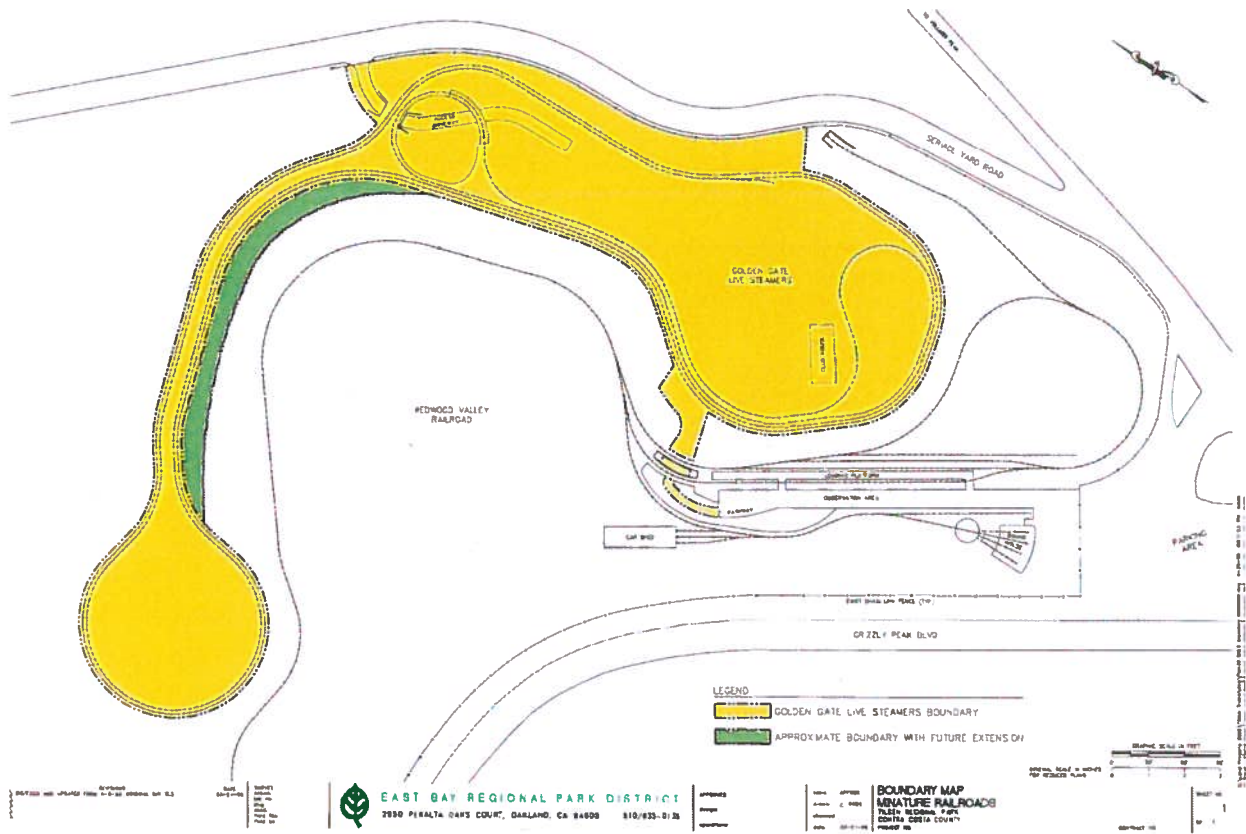
By: [Signature]
 Robert E. Doyle, General Manager

Dated: 9/17/12

Approved as to Form:

[Signature]
District Counsel, EBRPD

EXHIBIT A MAP OF PREMISES



**EXHIBIT B
OPERATION AND USE OF PREMISES
HOURS OF OPERATION**

Licensee's club members may have access any time during the daylight hours seven days a week. Public may have access to observation area when Redwood Valley Railway is operating. Licensee shall install an answering machine that will inform the public of days of operation plus current club activities occurring on the Premises.

Licensee shall be limited to the specific uses described below not include any other uses without first obtaining prior written approval from District, including without limitation:

- a. Sales and Rentals. Licensee has the right to maintain rental storage space for members. Licensee has the right to sell or market any items related to the concession, such as souvenirs and memorabilia, posters, pins, cups, bumper stickers, sweat shirts, hats, tee shirts, photographs etc. promoting Tilden Regional Park or Licensee. These items are subject to approval by District and may be sold in an area designated by District. District reserves the right to prohibit the sale, rental, or use by Licensee of any article or item which District regards as objectionable or beyond the scope of merchandise or equipment deemed necessary for proper services to the public or of inferior quality.
- b. Licensee has the right to accept donations from spectators.
- c. Licensee is permitted to have overnight camping on the Premises for a limited number of members and their guests for special events not to exceed three (3) days per year. The Park Supervisor must be notified in advance when the Licensee plans to have members stay overnight on the Premises.
- d. Licensee has the right to sell food or beverages to members and their guests on special events.
- e. Containers. Beverages in air-tight containers under pressure of carbonation sold from the Premises shall be marked for identification. Licensee and District shall from time to time review items sold and containers used or dispensed by Licensee and, whenever possible, Licensee shall eliminate the use of non-returnable containers, plastics, etc.
- f. Waste Reduction. District prohibits the sale or use of non-recyclable containers or plastics. No Styrofoam or pull-top cans with removable tabs are to be used or sold by Licensee. Licensee must maintain a recycling program or make arrangements with park staff to utilize the park's recycling containers for various materials - beverage containers, mixed paper, cardboard as well as green waste.
- g. Chemicals. No pesticides, herbicides or fungicides may be used or sold by Licensee on the Premises that are not approved in writing by District in advance of proposed use or sale.
- h. Storage. Licensee shall not store food, supplies, equipment or other items outside of a structure on the Premises, except as specifically approved in writing by District in advance of such storage.
- i. Private Vehicles and Large Equipment. Licensee's personnel may drive private vehicles into areas of the Park restricted to non-District vehicles only as required for loading and unloading items used to operate the Premises. Operation of such vehicles shall be subject to regulations established by District from time to time. All private vehicles and large equipment shall be removed from the Premises at the end of the day. Standard Automobile Liability coverage required, see section 25c.

- j. Noise. Licensee shall not install, use, or permit to be operated or used on the Premises any public address equipment, television equipment, juke box, radios, loudspeaker, or other equipment producing noises that can be heard outside the Premises, except as approved in writing by District in advance of such operation and use. Systems to announce emergencies or to facilitate closing the premises are permissible as long as noise level is restricted to that necessary for public convenience.

EXHIBIT C

GOLDEN GATE LIVE STEAMERS			
Special Use Agreement 2/1/2011 - 1/31/2021			
Fee for 1 st year of agreement is covered by credit for work done.			
increasing by \$50 each year			
Year	Special Use Fee	Payments & Credits	Balance
2/1/2012 - 1/31/2013	\$1,500.00	\$0.00	\$1,500.00
2/1/2013 - 1/31/2014	\$1,550.00	\$0.00	\$3,050.00
2/1/2014 - 1/31/2015	\$1,600.00	\$0.00	\$4,650.00
2/1/2015 - 1/31/2016	\$1,650.00	\$0.00	\$6,300.00
2/1/2016 - 1/31/2017	\$1,700.00	\$0.00	\$8,000.00
2/1/2017 - 1/31/2018	\$1,750.00	\$0.00	\$9,750.00
2/1/2018 - 1/31/2019	\$1,800.00	\$0.00	\$11,550.00
2/1/2019 - 1/31/2020	\$1,850.00	\$0.00	\$13,400.00
2/1/2020 - 1/31/2021	\$1,900.00	\$0.00	\$15,300.00

EXHIBIT D

SAMPLE

GOLDEN GATE LIVE STEAMERS Monthly Gross Receipts and Annual Fee for 2011				
Month	Taxable Retail (t- shirts, etc.)	Snacks (Non- taxable)	Tax	Total (not including tax)
JANUARY	40.00	10.00	3.90	50.00
FEBRUARY	5.00	20.00	0.49	25.00
MARCH	0.00	20.00	0.00	20.00
APRIL	0.00	10.00	0.00	10.00
MAY	50.00	35.00	4.88	85.00
JUNE	25.00	20.00	2.44	45.00
JULY	5.00	15.00	0.49	20.00
AUGUST	30.00	10.00	2.93	40.00
SEPTEMBER	10.00	40.00	0.98	50.00
OCTOBER	50.00	20.00	4.88	70.00
NOVEMBER	20.00	10.00	1.95	30.00
DECEMBER	20.00	5.00	1.95	25.00
	<hr/>	<hr/>	<hr/>	<hr/>
	255.00	215.00	24.86	470.00
	5 % RETAIL SALES FEE =			23.50

EXHIBIT E

SB 5164

(a)

(1) A county or city or city and county or **special district** shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or 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 any minor, if that person has been convicted of any offense specified in paragraph (2).

(2)

(A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any 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) Any felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) Any 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 any of the offenses 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, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall 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 or city 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 any offense specified in subdivision (a). The county or city 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 any minor, for that person's criminal background.

(2) Any local agency requests 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. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.