

EXHIBIT 4: SAMPLE CONTRACT



**SAMPLE CONTRACT**

**Use Management Agreement**

**Between**

**Maricopa County**

**And**

\_\_\_\_\_

**For the** \_\_\_\_\_

**#C** \_\_\_\_\_

This Use Management Agreement (hereinafter referred to as "Agreement") is entered into between Maricopa County, a political subdivision of the State of Arizona (hereinafter referred to as "County") and \_\_\_\_\_, an Arizona \_\_\_\_\_ (hereinafter referred to as "Concessionaire"). The County and the Concessionaire are collectively referred to as "Parties" or individually as a "Party."

**RECITALS**

**WHEREAS**, Maricopa County Parks and Recreation Department (hereinafter referred to as "MCPRD") is authorized to administer this Agreement and the County is authorized to enter into this Agreement pursuant to A.R.S. §§ 11-201, 11-251, and 11-933 et seq.; and

**WHEREAS**, the County (land patent information); and

**WHEREAS**, Concessionaire is authorized to construct, install, operate and maintain recreational facilities and amenities within \_\_\_\_\_ ("Park"), which comprises a portion of the Maricopa County Regional Parks System, located in the County of Maricopa, State of Arizona; and

**WHEREAS**, this Agreement is the result of a solicitation, Serial # ITN-\_\_\_\_\_ released by County on \_\_\_\_\_ ("ITN"); and

**WHEREAS**, Concessionaire submitted a response to the ITN and desires to redevelop and/or improve \_\_\_\_\_ up to approximately \_\_\_\_\_ acres at the Park as described in Concessionaire's ITN's response ("ITN Response") and in this Agreement; and

**WHEREAS**, it is in the public interest for the County to arrange contract operation of a \_\_\_\_\_ at the Park as illustrated in **Exhibit 1 Site Plan / Map of the Complex** as attached hereto and made a part hereof; and

**WHEREAS**, performance under this Agreement is contingent upon Concessionaire acquiring funding as required under this Agreement; and

**WHEREAS**, the recreational facility shall be known as \_\_\_\_\_, and is hereinafter referred to as "Complex" or "Project" or "Projects"; and

**WHEREAS**, the Parties agree that the intent of this Agreement is solely for the development, operation, maintenance, management, and improvement of the Complex and does not convey any interests in land or any property rights.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual representations, warranties, covenants, and agreements herein contained and other good and valuable consideration, the sufficiency and adequacy of which the Parties acknowledge, the Parties agree as follows:

1. **Recitals.** The Recitals, by this reference, shall be incorporated herein and made a part of this Agreement.

2. **Definitions.**
  - A. **Additional Percentage Fee:** An annual payment owed by the Concessionaire to the County, calculated as a percentage of Adjusted Gross Revenue (as defined below) that exceeds the Annual Minimum Fee (as defined below), as outlined in this Agreement (see Exhibit 8 – Accounting and Fees).
  - B. **Adjusted Gross Revenue:** All Gross Revenue (as defined below) generated by a concession adjusted downward for limited MCPRD allowable deductions. The allowable deductions are set forth in this Agreement (**Exhibit 8 – Accounting and Fees**).
  - C. **Annual Minimum Fee:** The base concession fee that the Concessionaire must pay to the County each year (or in monthly increments), determined in accordance with the payment schedule set forth in this Agreement (see Exhibit 8 – Accounting and Fees). The fee is calculated based on Adjusted Gross Revenue (as defined above).
  - D. **Annual Management Plan (AMP):** The AMP is an annual review conducted jointly by the Parties to review the present and the following year's plan for development and/or operations of the Complex, as fully described in **Exhibits 1 through 10** of this Agreement, all of which are attached hereto and incorporated herein by this reference.
  - E. **Concession Fees:** The amounts payable by the Concessionaire to the County, consisting of (i) an Annual Minimum Fee (as defined above) and (ii) an Additional Percentage Fee (as defined above), determined in accordance with the payment schedule set forth in this Agreement (see Exhibit 8 – Accounting and Fees).
  - F. **Contract Year:** A Contract Year is from January 1<sup>st</sup> through December 31<sup>st</sup>, except the first Contract Year of this Agreement, which will be from the Effective Date, through December 31.
  - G. **Effective Date:** The date this Agreement is executed by the Maricopa County Board of Supervisors.
  - H. **Gross Revenue:** The total amount of all revenues, receipts, and income of every kind, nature, and description, whether in cash, credit, barter, or otherwise, derived by Concessionaire from or in connection with the operation of the Complex (see Exhibit 8 – Accounting and Fees).
  - I. **Market Value:** Market Value is the value of improvements constructed by Concessionaire as shall be determined by a certified real estate appraiser, as defined per A.R.S §32-3601, who is experienced at appraising recreational facilities and is agreed upon by the County and Concessionaire unless otherwise noted in this Agreement.
  - J. **Opening Date:** The Opening Date is the date the Complex, or a portion thereof, opens to the public.
3. **Scope of the Complex.**
  - A. Not later than one hundred twenty (120) days of the date of full execution of this Agreement, as determined in County's sole discretion, the Concessionaire shall provide County with proof indicating that the financing and funds will be available to Concessionaire for construction of the Complex in accordance with **Exhibit 2 – Complex Activities and Parameters** and **Exhibit 3 – Development of the Complex** in the amount in the amount to reasonably complete the Complex, which is estimated to be \_\_\_\_\_.
  - B. After the Effective Date, the County grants the Concessionaire the right to design, develop, expand, manage, and operate the Complex with the improvements as illustrated in **Exhibit 2 - Complex Activities and Parameters**.
  - C. The Complex shall conform, at a minimum, to each of the descriptions, terms, and conditions set forth in **Exhibits 1 through 10** of this Agreement and shall comply with the requirements of the pertinent land patent(s), the Park's master plan and/or updated master plan, as well as any approved amendments or revisions thereto.
  - D. The Concessionaire shall not use the Complex for purposes other than uses permitted under the terms of this Agreement without express written consent and approval of the County.
  - E. The Concessionaire, at its sole cost and expense, shall obtain all applicable permits, environmental compliances, taxes, assessments, fees, and other expenses of any nature associated with the management, operation, maintenance, or improvement of the Complex as more fully described in **Exhibits 1 through 10**. Notwithstanding the foregoing, the Concessionaire shall not be liable for any expenses for or associated with improvements initiated by the County for its purposes and unrelated to Concessionaire activities.
  - F. If new construction, the Concessionaire shall complete the initial design and development of the Complex in accordance with **Exhibit 2 – Complex Activities and Parameters** and **Exhibit 3 – Development of the Complex** within two (2) years from the Effective Date.
  - G. If the Concessionaire concludes, in its reasonable judgment, that it will be unable to build all of the improvements set forth as proposed on **Exhibit 1 Site Plan / Map of the Complex** and **Exhibit 2 - Complex Activities and Parameters**, and/or develop and use a significant portion of the land due to development impediments as noted in **Exhibit 3 - Development of the Complex**, then the Concessionaire shall immediately notify County and in the County's sole discretion, either: (i) the Concessionaire shall immediately cease to use the portion of the land that cannot be developed and, within sixty (60) calendar days of Concessionaire's notification to the County that the land cannot be developed as set forth in this Agreement, the Parties shall amend this Agreement to reflect the reduction in the size of the Complex and the revised Exhibits as required, the County will, in its sole discretion, make the decision(s) pertaining to whether development may deviate from the ITN Response and the Agreement, and such decision(s) cannot be appealed; or (ii) the County may, but is not required to, grant a reasonable extension of the construction completion year, not to exceed two (2) years; or (iii) the County may terminate the Agreement in accordance with **Section 7** and **Section 8** of this Agreement.
  - H. If any of the proposed improvements to the Complex require a new or modified Occupancy Permit or Partial Occupancy Permit, the Concessionaire shall not occupy the Complex or that portion of the Complex until an Occupancy Permit or Partial Occupancy Permit is issued by the jurisdictional authorities, along with the written consent and approval of the County. Concessionaire shall commence operations and maintenance of each new improvement within the Complex within six (6) months from receipt of the Occupancy Permit or Partial Occupancy Permit and the written consent of the County.
  - I. The Concessionaire shall not commence any construction or improvements on or after the Effective Date, without the prior written consent of the County, in accordance with **Exhibit 3 – Development of the Complex**.
4. **Assurance of Performance**
  - A. No improvements shall be commenced upon the Complex by Concessionaire until Concessionaire has secured, at its own expense, and submitted to the County a performance, labor, and material bond for the construction, in

the amount of the total estimated construction cost of improvements to be constructed by Concessionaire. In lieu of said performance and labor and material bonds for the construction, the County may, at its sole discretion, accept the performance and labor and material bonds supplied by Concessionaire's contractor or subcontractors, or performance guarantees, or other satisfactory evidence to assure said construction will be timely completed; and

- B. The Concessionaire shall obtain and maintain during the term of this Agreement, at its own expense, an assurance of performance in the amount of no less than one year of debt service repayment that shall secure full and faithful performance by Concessionaire of all its obligations under this Agreement. Said assurance shall be renewed annually during the Term and Renewal Term (defined below) of this Agreement and shall be renewed not fewer than thirty (30) days before the expiration of the then-applicable assurance period. Evidence of said bond renewal shall be furnished to the County. The County retains sole discretion to determine if any presented assurance is acceptable to the County, including each proposed annual renewal, as to form and amount; and
- C. Assurance of performance, as identified in this **Section 5**, must be issued by a company qualified to do business in the State of Arizona and be in a form acceptable to the County. Any irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the County as trustee for Concessionaire, shall have all interest distributed to the County.

5. **Term and Fees.**

- A. The term of this Agreement shall be from the Effective Date through \_\_\_\_\_ ("Term").
- B. Upon Concessionaire's request, the County may agree to renew this Agreement ("Renewal Term") subject to the following:
  - 1) The Concessionaire shall provide written notice of a request to renew not later than one hundred and eighty (180) calendar days prior to the date the Term is scheduled to expire; and
  - 2) The Renewal Term shall be upon the same terms and conditions as the final year of the Term, except that the Parties shall negotiate a reasonable adjustment to the Annual Percentage Fee and Annual Minimum Fee, as defined and administered in **Exhibit 8 - Accounting and Fees**, upon the start of the Renewal Term. The reasonable adjustments shall be based on, but not limited to, Market Value of the Complex, Concessionaire's investment of capital improvements and ongoing maintenance costs, revenue generation, and sustainability of Concessionaire's recreational activity(ies).
- C. Fees. The Concessionaire shall pay the County Annual Percentage Fees and Annual Minimum Fee as shown in the fee payment schedule and as administered in **Exhibit 8 - Accounting and Fees**.

6. **Termination.**

- A. This Agreement may be terminated for cause in whole or in part, at any time, by the County, upon forty-five (45) calendar days' prior notice to the Concessionaire without any penalty or liability to the County. Concessionaire and its employees, agents, officers, directors, members, successors, or assigns hereby waive any and all rights to bring any claim against the County or its employees, agents, officers, directors, members, successors, or assigns from or relating in any way to the County's termination of this Agreement. Representative reasons for "cause" include but are not limited to: (i) the real property, or a portion thereof, reverts to the agency from which any patent was received; (ii) the real property is no longer useful for a recreational purpose; and/or (iii) new requirements imposed upon the County make a continuation of the Agreement unreasonable.
- B. The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- C. This Agreement may be terminated without cause with the mutual agreement of the Parties. The Party requesting the termination must submit its request in writing, at least one hundred eighty (180) calendar days in advance of the requested termination date. Notice of the request for termination shall be sent to the other Party pursuant to the notice provisions set forth in **Section 16** of this Agreement. If the Concessionaire initiates the request for termination, the County may select an interim operator (or may choose to become the interim operator) to act as the Concessionaire until a replacement concessionaire has been selected. Within forty-five (45) calendar days of the date the interim operator commences operations, or sooner if the Parties agree, the Concessionaire shall prorate any membership fees, fees paid for future services, or other fees and shall pay such prorated amount to the interim operator. The Concessionaire shall pay to the interim operator all security deposits received by the Concessionaire for tournaments, events, or functions to be held at the Complex scheduled after the termination date of this Agreement.
- D. In the event the Concessionaire, with the consent of the County, continues to provide the services described hereinafter the expiration of the Term and/or the Renewal Term, without having entered into a subsequent agreement of like nature and content to this Agreement, this shall be deemed a holdover of the Complex on a month-to-month basis, not to exceed a period of twelve (12) months, with all of the terms and conditions of this Agreement, except as provided in this paragraph, to continue in full force and effect. If the County has consented to a holdover but the Parties have not entered into a new agreement by the end of the twelve (12) month period, the prior consent by the County shall be deemed to be revoked, and the Concessionaire is required to vacate and may no longer holdover.

7. **Default.**

- A. It shall be a default and breach of this Agreement by Concessionaire if any of the following shall occur at any time during the Term or Renewal Term:
  - 1) Failure to make payment of any monetary sums specified to be paid by the Concessionaire under this Agreement on or before the date the same shall become due, and such failure continues for a period of thirty (30) calendar days after notice of such default is given to the Concessionaire.
  - 2) Failure to provide insurance as required (see **Section 11**).
  - 3) Failure of the Concessionaire to make satisfactory progress, in the County's sole discretion, to meet the mutually agreed-upon development timeline per **Section 4.F.**, or an extension thereof per **Section 4.G**.
  - 4) Failure to operate and maintain the Complex, as more fully described in **Exhibits 1 through 10**, pursuant to the terms and conditions of this Agreement, where such failure continues for a period of thirty (30) calendar

days after notice of such default is given to the Concessionaire, provided, however, that if such default is of a nature that it cannot reasonably be cured within said thirty (30) calendar days, then the cure period may be extended by the County, in writing, for such longer time as may be reasonably necessary, so long as the Concessionaire commences to cure the failure within said thirty (30) day period, in good faith and with due diligence, and thereafter diligently and continuously pursues the same to completion.

- 5) A breach of Concessionaire's representations and warranties set forth in **Section 14** of this Agreement.
- 6) Institution or filing by or against the Concessionaire of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Concessionaire's debts and not dismissed within ninety (90) calendar days from the date of such filing or institution.
- 7) Appointment of a receiver, guardian, conservator, trustee, or assignee, or any other similar officer or person to take charge of all of the property or businesses of the Concessionaire, and such appointment is not vacated within ninety (90) calendar days after the date of appointment.
- 8) Any general assignment for the benefit of creditors by Concessionaire.
- 9) All of the Concessionaire's assets located at the Complex, or interests in the Complex, being subjected to attachment, execution, or other judicial seizure.
- 10) Insolvency of the Concessionaire.
- 11) Concessionaire's dissolution or ceasing to do business.

B. Upon determination by the County that the Concessionaire is in default, the County shall be entitled, at its sole discretion and selection, to exercise any and all of the following remedies:

- 1) Terminate this Agreement, without penalty or liability to the County, by giving the Concessionaire notice of termination. Upon the issuance of the notice of termination, all of the Concessionaire's rights in the Complex and under this Agreement shall terminate immediately. Within the notice of termination, the County, in its sole discretion, shall direct the Concessionaire to (i) surrender and vacate the Complex, and the County may enter and take possession of the Complex and eject all parties in possession, or eject some and not others, or eject none; and, in the alternative; (ii) the County may at the Concessionaire's sole cost and expense:
  - a. Demolish and/or remove all, or a portion of, improvements on the Complex and return the property, or a portion of the property, to a condition as similar as possible to the condition of the property at the time of execution of this Agreement; and
  - b. Remove all personal property, trade fixtures, equipment, and inventory owned by Concessionaire and repair any damage caused to the Complex; and
  - c. Remove all garbage and debris, to include inoperable or obsolete equipment, from the Complex.
- 2) Concessionaire shall pay all costs incurred by the County to perform the work as stated herein, in any manner it may deem desirable, within thirty (30) calendar days of receipt of an invoice from the County.
- 3) Termination under **Section 7**, shall not relieve the Concessionaire of the obligation for payment of any sums then due to the County or from any claim for damages previously accrued or then accruing against the Concessionaire.
- 4) If the Agreement is terminated for default, the Concessionaire shall, and hereby covenants to, peaceably and quietly surrender the Complex to the County and to execute and deliver to the County such instruments as shall be required by the County, to evidence termination of the Concessionaire's rights hereunder, its interest herein, and to certify that the Concessionaire has not encumbered the Complex.
- 5) If the Agreement is terminated for default, Concessionaire shall immediately transfer any funds in the Maintenance Account Fund and the Capital Improvement Project Fund (see Exhibit 5 Preventive Maintenance and Capital Improvements) to the County.
- 6) The County may exercise any other remedy available at law or in equity.

C. It shall be a default and breach of this Agreement by the County if the County fails to perform any of its material obligations hereunder and such failure to perform continues for a period of thirty (30) calendar days after written notice thereof from the Concessionaire to the County, unless such failure cannot reasonably be cured within thirty (30) calendar days. In this event, the County shall have commenced curing said breach or failure within said thirty (30) calendar day period and shall diligently pursue the cure of the failure or breach to completion to avoid being in default. Should the County continue to be in default without the pursuit of a cure, the Concessionaire may terminate this Agreement with a ninety (90) calendar day written notice to the County.

8. **Surrender.**

Upon the expiration date or termination date, the Concessionaire shall, unless otherwise approved by the County, within sixty (60) calendar days from the expiration date or termination date of this Agreement, at the County's sole discretion, conduct the following tasks:

- A. Execute a Certificate of Acknowledgement that the Concessionaire has vacated and relinquished all possessory rights to the Complex to the County, as well as represent and warrant that the Concessionaire has not encumbered the Complex; and
- B. Demolish and/or remove obsolete improvements on the Complex as specified by the County and return the property to a condition as similar as possible to the condition of the property at the time of execution of this Agreement; and
- C. Remove personal property, trade fixtures, equipment, and inventory owned by Concessionaire from the Complex and repair any damage caused to the Complex. Any such items not removed within the specified timeframe shall be deemed to be abandoned by Concessionaire. Concessionaire shall pay all costs incurred by the County to remove and dispose of such property in any manner it may deem desirable, within thirty (30) calendar days of receipt of an invoice from the County; and
- D. Remove all garbage and debris, including inoperable or obsolete equipment, from the Complex.

If Concessionaire fails to comply with and perform the work as stated herein within such timeframe, Concessionaire shall pay all costs incurred by the County to perform the work as stated herein, in any manner it may deem desirable, within thirty (30) calendar days of receipt of an invoice from the County.

9. **Financing.**

- A. The Concessionaire may not mortgage or encumber any improvements that are permanently affixed to the land or any lands upon which the Complex lies. Improvements that can be disassembled and removed without damage to the underlying real estate are not considered permanently affixed (e.g., above-groundwater storage tank).
- B. The Concessionaire or any of its sub-concessionaires, contractors, or subcontractors shall not have any authority to create any lien against the County for labor, materials, or services furnished by the Concessionaire, its contractors, or subcontractors. If, because of any act or omission (or alleged act or omission) of the Concessionaire, any mechanic's, materialmen or other liens, charge, or order for the payment of money shall be filed or recorded against the County (whether or not such lien, charge or order is valid or enforceable as such), the Concessionaire shall immediately notify the County. The Concessionaire will, at its own expense, cause the same to be canceled and discharged of record.

10. **Indemnification and Insurance.**

- A. The Concessionaire, for itself, its agents, officers, directors, partners, vendors, contractors, employees, assignees, sub-concessionaires, licensees, invitees, or any and all other persons claiming rights through the Concessionaire, shall, to the fullest extent permissible by law, indemnify, defend and hold harmless the County, including their agents, officers, directors, and employees thereof, from and against any and all loss or expense of any nature whatsoever, incurred as a result of any claim or suit of any nature whatsoever, which arises in any way whatsoever pursuant to this Agreement. The Concessionaire shall be liable and responsible for, including but not limited to, reasonable attorneys' fees, court costs, awards, and other expenses relating to the defense against claims or litigation incurred by the County. This clause shall, in all instances, be interpreted to find that the obligation to defend, indemnify, and hold harmless does fall to Concessionaire. The scope of this indemnification does not extend to the sole negligence of the County.
- B. The Concessionaire shall secure and maintain the following insurance coverage within five (5) business days of the Effective Date:
  - 1) Public liability insurance, including bodily injury/property damage, auto liability, products and completed operations liability, liquor liability, and contractual liability, providing limits of no less than two million dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) aggregate limits, or evidence of self-insurance acceptable to the County, for injuries or damage received or sustained by any person(s), or property at the Complex.
  - 2) Endorsement for sexual molestation for the limits of one million dollars (\$1,000,000) general liability and two million dollars (\$2,000,000) aggregate.
  - 3) Waiver of Subrogation/recovery against the County shall be included in all policies.
  - 4) Environmental cleanup and pesticide/herbicide coverage shall be included unless the Concessionaire provides that this is not available or feasible.
  - 5) Worker's Compensation, if applicable, with limits not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.
  - 6) Property insurance in an amount sufficient to rebuild the improvements in case of a casualty loss. Concessionaire shall notify the MCPRD's Contract Administrator immediately upon any property insurance claim submission. The County will be an "additional payee" pursuant to such policy. The Concessionaire will be entitled to receive and shall be obligated to apply insurance proceeds to repair or reconstruct damaged improvements. Insurance proceeds shall be disbursed pursuant to customary construction lending practices in the Phoenix, Arizona area, as such repair and restoration are being made, and subject to such procedures as the County may reasonably require, monitoring the application of such proceeds.
  - 7) The insurance coverages will be reviewed annually, no later than December 31 of each year, as part of the AMP pursuant to the terms of the Agreement. The County reserves the right to request copies of all claims (including, but not limited to, incident reports and damages).
  - 8) The County reserves the right to revise the minimum required limits of insurance during the term of this Agreement, provided the changes are consistent with market conditions, prudent business judgment, and industry standards.
- C. The County will be named as "additional insured" under all policies of insurance. Copies of all insurance policies or certificates thereof will be made available to the County upon request. Copies of the Certificate of Insurance will be furnished to the County annually. The County will be given thirty (30) calendar days' advance written notice of cancellation, non-renewal, or change in coverage or limits of a policy.
- D. The Concessionaire assumes all risk of loss and shall be responsible for any and all losses to the Complex and all improvements. The loss to the Complex may result from, but is not limited to, theft, vandalism, fire, and any fire-fighting activities (including prescribed burns), floods, droughts, landslides, rising waters, winds, falling limbs or trees, and acts of God. If, prior to commencement of, or during, the Term or Renewal Term of this Agreement, any property, real or personal, under the control of the Concessionaire or any buildings or improvements or such fixtures or equipment on, below, above, or appurtenant to the Complex at the commencement of the Term or Renewal Term or hereafter erected, installed or placed thereon shall be destroyed or damaged in whole or in part by any cause except condemnation, the Concessionaire will notify the County immediately. The Concessionaire will immediately secure the area to prevent injury, vandalism, or further damage to persons, improvements, and contents thereof, and direct its insurer to make any payment to the appropriate Party.
- E. If the destroyed or damaged buildings, improvements, fixtures, or equipment under the control of the Concessionaire are capable of restoration, in the reasonable judgment of the County and Concessionaire, this Agreement shall continue in full force and effect, except that established fee payable to the County by the Concessionaire, to the extent not covered by insurance, shall be abated to the extent that the damage or restoration interferes with the Concessionaire's operations. The Concessionaire agrees to cooperate in the determination of the abatement or other relief to be provided by furnishing all information requested relative to its operations, permitting examination, and audit of all accounting records kept in connection with the conduct thereof. The abatement of fees may be negotiated based on the percentage of damage. Fee abatement(s) may

be granted for a period of not more than one hundred eighty (180) calendar days. The Concessionaire will, as soon after the damage as reasonably possible, apply for all required permits to restore damaged improvements, and complete restorations within a date mutually agreeable to the Parties. Should such damage or destruction occur within thirty-six (36) months of this Agreement's scheduled termination date or if the damage destroys in excess of fifty percent (50%) of the appraised value of the Complex on the date of loss (as determined by an independent appraiser), then the Concessionaire or the County shall have the option to terminate this Agreement in whole or in part. If this Agreement is terminated pursuant to this provision, any insurance proceeds shall be applied first to remove any damaged or destroyed improvements and second to pay any loans to the Concessionaire secured by its interest in this Agreement or any property covered hereby. The balance of the proceeds shall be divided by the County and the Concessionaire in equal proportions.

11. **Assignment.**

- A. The Concessionaire shall not transfer, sell, or assign, or subcontract, in whole or in part, the Concessionaire's rights or interests in the Agreement without the prior written approval of the County.
- B. The Concessionaire shall provide at least ninety (90) calendar days prior to the date of the proposed transfer, written notice of a sale, transfer, or assignment of this Agreement, so any requested analysis, study, and subsequent County approval can be completed prior to the effective date of the transfer, sale, or assignment.
  - 1) The Concessionaire shall deposit with the County a minimum nonrefundable administrative transfer fee ("Administrative Fee") of five thousand dollars (\$5,000.00) upon notification of a potential sale, transfer, or assignment to reimburse the County for administrative costs associated with the transaction.
  - 2) In connection with a full transfer, sale, or assignment to a designated assignee, the Concessionaire shall provide the County, for review, any information requested by the County for purposes of transfer, sale, or assignment of this type of business operation, including, but not limited to, the following:
    - a. Business and management capability of the designated assignee; and
    - b. A financial analysis of the Complex operation, including an appraisal of real property improvements and/or furniture, fixtures, and equipment that are included in the transaction, shall be conducted before approving a transfer, sale, or assignment; and
    - c. A background check may be required, including financial profile and criminal history of the key individuals of the designated assignee.
- C. The Concessionaire, upon no less than thirty (30) calendar days' prior written notice to the County, may partner or subcontract with other entity(ies) to operate units of the Complex, provided that all Gross Revenue from partners, subcontractors, vendors, and events shall be included in revenue reporting as per **Exhibit 8 - Accounting and Fees**. Concessionaire is responsible for all actions, liabilities, and damages of partners, subcontractors, or other entity(ies).

12. **Compliance Requirements.**

- A. The Concessionaire, for itself and all subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, handicap, disability, color, religion, sex, sexual orientation, or national origin. The Concessionaire shall comply with Title VI and Title VII of the Federal Civil Rights Act, the Federal Rehabilitation Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act of 1990, A.R.S. §41-1461 et seq., A.R.S. §41-1492 et seq., 29 U.S.C. §721 (Section 504). The Concessionaire agrees to comply with all provisions and requirements of the Arizona Executive Order 2009-09, including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Concessionaire shall not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin. (Arizona Executive Order 2009-09 can be viewed at: [https://apps.azsos.gov/public\\_services/register/2009/46/governor.pdf](https://apps.azsos.gov/public_services/register/2009/46/governor.pdf))
- B. The Concessionaire, for itself and all subcontractors, if any, agrees to comply with the Immigration Reform and Control Act (I.R.C.A.) and Arizona statutes, in the performance of this Agreement and, upon request, permit the County to inspect personnel records to verify such compliance.
- C. The Concessionaire, for itself and all subcontractors, if any, shall comply and warrants full compliance with all federal immigration laws and regulations that relate to their employees, and their compliance with A.R.S. §23-214 et seq. A breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of this Agreement. The County retains the right to inspect the papers of Concessionaire or subcontractors' employee(s) who work on the Complex to ensure that the Concessionaire or subcontractor is complying with the warranty provided above. The Concessionaire shall make all papers and employment records of the said employee(s) available during normal working hours in order to facilitate such an inspection. Nothing herein shall make any Concessionaire or subcontractor an agent or employee of the County.
- D. The Concessionaire for itself and all subcontractors, if any, warrants that it complies with verification of employment eligibility and the E-Verify Program.
- E. If Concessionaire engages in for-profit activity and has ten (10) or more employees, and if this Agreement has a value of one hundred thousand dollars (\$100,000) or more, Concessionaire certifies it is not currently engaged in and agrees for the duration of this Agreement to not engage in a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- F. Concessionaire warrants and certifies that it does not currently, and agrees for the duration of the contract that it will not use:
  - 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
  - 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
  - 3) Any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If Concessionaire becomes aware during the term of the Agreement that the Concessionaire is not in compliance with this paragraph, the Concessionaire shall notify the County within five business days after becoming aware of the noncompliance. Failure of Concessionaire to provide a written certification that the Concessionaire has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Agreement shall terminate unless the Term of this Agreement shall end prior to said one hundred eighty (180) day period.

13. **Concessionaire's Representations.** Concessionaire represents and warrants to the County that the following statements are true and correct:

- A. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, the Concessionaire is responsible for payment of any commission, and County shall have the right to recover the full amount of such commission, percentage, brokerage, or contingency fee.
- B. This Agreement is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or partnership or formal business organization of any kind between the County and the Concessionaire, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
- C. No person(s) supplied by the Concessionaire in the performance of obligations under the Agreement is/are considered to be the County's employees, and no rights of the County's civil service, retirement, or personnel rules apply to such person(s).
- D. The Concessionaire has total responsibility for determining employee eligibility, all salaries, wages, insurance of any type, bonuses, retirement withholdings, workers' compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the County harmless with respect thereto.
- E. The Concessionaire will ensure full compliance with all applicable terms and conditions of this Agreement by its agents, employees, vendors, and contractors (including subcontractors of any tier) and their respective employees. Failure or refusal of the Concessionaire or its agents, employees, vendors, contractors, sub-contractors, or their employees to comply with these terms and conditions will be deemed a breach of this Agreement.
- F. The Concessionaire has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- G. The Concessionaire has not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- H. The Concessionaire is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with the commission of any of the offenses enumerated in paragraph 13(G) of this certification.
- I. The Concessionaire has not, within a three (3) year period preceding this Agreement, had transactions terminated for default.
- J. The Concessionaire shall include, without modification, **Sections 13.F** through **13.I** above in all lower-tier covered transactions (e.g., transactions with vendors, contractors) and in all solicitations for lower-tier covered transactions related to this Agreement.

14. **Representation and Warranties of the County.**

The County represents and warrants to the Concessionaire that the existing land and improvements are being presented "as-is, where-is" as of the Effective Date of this Agreement. The County does not imply or provide any warranty with respect to the physical aspects of the Complex except as set forth herein.

15. **Notices.**

All notices required under this Agreement shall be in writing and given by email delivery with read receipt, United States Post Office certified mail with return receipt requested, by commercial courier served with a receipt, or by hand delivery with a receipt, to each Party's following address, or to such other address as either Party may notify the other in writing as provided herein. Notice given in compliance with this **Section 15** is deemed received (i) on the day it is personally served, (ii) on the day it is sent by email, (iii) five (5) days after it is sent by certified mail, or (iv) two (2) days after it is delivered to any commercial courier service.

For the County:

Maricopa County Parks & Recreation Department  
Attn: Contract Administrator  
41835 N. Castle Hot Springs Road  
Morristown, AZ 85342  
Email: [maricopacountyparks@maricopa.gov](mailto:maricopacountyparks@maricopa.gov)  
Phone: (602) 506-9500

For the Concessionaire:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_, AZ \_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_

16. **General Provisions.**

- A. The waiver by either Party of any breach of any one or more of the covenants, conditions, or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of said covenants, conditions, or provisions of this Agreement. Any failure on the part of either Party to require or exact full and complete compliance with any of the covenants, conditions, or provisions of the Agreement shall not be construed to, in any manner, change the terms hereof or preclude such Party from enforcing the full provisions of this Agreement.
- B. The paragraph or section headings used in this Agreement are for convenience or reference only. They shall not be construed in any manner, or to any extent, to limit or to extend the effect or meaning of the terms and provisions contained thereunder.
- C. The Parties intend for this Agreement to comply with applicable laws. If any provision of this Agreement is determined to be invalid, void, or illegal, then such determination shall not affect, impair, or invalidate any other provision hereof, and the remaining provisions shall remain in full force and effect, and the Parties shall use their commercially reasonable efforts to restate the invalid provision to the end that it complies with applicable laws.
- D. The Parties agree to act in good faith and with fair dealing with one another in the execution, performance, and implementation of the terms and provisions of this Agreement. Whenever the consent, approval or other action of a Party is required under any provision of this Agreement, such consent, approval or other action shall not be unreasonably withheld, delayed or conditioned by a Party unless the provision in question expressly authorizes such Party to withhold or deny consent or approval or decline to take action in accordance with a different standard, in which case the consent or approval or the decision not to take action may be withheld, delayed or conditioned in accordance with the different standard.
- E. Except as may be otherwise expressly and specifically set forth in this Agreement, no person or entity shall be deemed a third-party beneficiary of any of the provisions of this Agreement.
- F. The Concessionaire agrees to collect data related to recreation uses occurring within the Complex. The County, or its designated representative, will provide the forms for collecting the data. The Concessionaire will not be required to collect or release data to the County that violates any privacy statutes, regardless of the originator, or is of a nature that identifies specific individuals as users of the Complex.
- G. There is reserved to the County and their successors or agents, the right of the officers, agents, employees, licensees, and permittees, or the designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of the said lands of the Complex, to exercise, enforce, and protecting their rights and the terms and conditions described in and reserved by this Agreement, including the right of physical entry to the area for inspection, monitoring, or any other purpose consistent with any right or obligation of the County under any law or regulation, or to survey Park users and customers at the Complex. Unless there is an emergency, the County's right of entry must be coordinated with the Concessionaire to ensure safe entry and a reasonable flow of business.
- H. The Concessionaire shall not commit or permit any illegal, morally questionable nuisance or unsafe conditions to be created or maintained on the Complex. The Concessionaire shall not operate or knowingly permit the operation of any illegal acts upon the Complex.
- I. The Concessionaire hereby agrees and shall provide, obtain and maintain, at its sole cost and expense, all operating permits and licenses and shall comply with all applicable federal, state, county, local and city statutes, laws, ordinances, rules, regulations, and instructions, including the MCPRD's rules and regulations, in effect now or as may be amended or added, which apply to the development, management, operation and maintenance of the Complex, as more fully described in **Exhibits 1 through 10**, and to keep fully informed of, and in compliance with, any changes or revisions thereto. Upon the securing of appropriate permits and licenses to sell liquor, the Concessionaire shall provide, at its sole cost and expense, all insurance required for liquor sales. In addition to compliance with legal requirements, the Concessionaire shall exercise prudent, responsible, and experienced judgment in the serving of liquor for consumption in designated areas at the Complex.
- J. This Agreement shall be deemed to be made under, and shall be construed in accordance with and shall be governed, interpreted and regulated by, the laws of the State of Arizona, and arbitration proceedings, if applicable, or suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto may be brought in the Superior Court of the State of Arizona, Maricopa County, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction of said Court.
- K. If suit or action is commenced to enforce compliance with any term, covenant, or condition of this Agreement, including any action undertaken in the context of bankruptcy proceedings, the Party not prevailing shall pay to the prevailing Party a sum which the trial judge determines is reasonable as attorney fees to be allowed in the suit or action and court costs. If an appeal is taken from any judgment or decree in the suit or action, the Party not prevailing on the appeal shall pay the prevailing Party such further sum as the appellate court shall adjudge reasonable as attorney fees on appeal and court costs.
- L. The occurrence of any of the following events shall excuse performance of such obligations of a Party as are rendered impossible or reasonably impracticable to perform while such continues: strikes; lockouts; acts of God; governmental restrictions; enemy or hostile governmental action; fire or other casualties; and other causes beyond the reasonable control of the Party obligated to perform (each an event of "Force Majeure").
- M. Concessionaire covenants and warrants that the person executing this Agreement on behalf of the Concessionaire is duly authorized to sign this Agreement and agrees to provide proof of such authorization, for example, bylaws or a resolution, prior to the execution of this Agreement.
- N. This Agreement does not create a leasehold estate, and the County shall at all times remain the title holder of the real property.
- O. The MCPRD Director and/or his/her delegate shall administer this Agreement.
- P. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Electronic signatures shall have the same force and effect as original signatures.



- Q. Time is of the essence of this Agreement. If the date for performance of any obligation hereunder or the last day of any period provided herein shall fall on a Saturday, Sunday, or legal holiday, then said date for performance or period shall expire on the first day thereafter which is not a Saturday, Sunday, or legal holiday.
- R. This Agreement, together with any amendments and exhibits attached hereto, constitutes the entire Agreement between the Parties, and sets forth all of the covenants, promises, agreements, conditions, or understandings, either oral or written, between the Concessionaire and the County, and those agreements that are executed contemporaneously herewith. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by the Concessionaire and the County. The Concessionaire and the County have reviewed this Agreement and have had it reviewed by legal counsel.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the last date indicated below.

**CONCESSIONAIRE**

**BY:**

\_\_\_\_\_  
Date

**RECOMMENDED BY:**

\_\_\_\_\_  
Director  
Maricopa County Parks & Recreation Dept.      Date

**MARICOPA COUNTY**

\_\_\_\_\_  
Chairman  
Board of Supervisors      Date

**ATTEST**

\_\_\_\_\_  
Clerk of the Board      Date

Approved as to Form:

\_\_\_\_\_  
Deputy County Attorney

**Exhibits: The following exhibits are provided by title only for reference:**

<b>Exhibit 1</b>	Site Plan / Map of the Complex
<b>Exhibit 2</b>	Complex Activities and Parameters
<b>Exhibit 3</b>	Development of the Complex
<b>Exhibit 4</b>	Resource Management
<b>Exhibit 5</b>	Preventive Maintenance and Capital Improvements
<b>Exhibit 6</b>	Marketing and Media
<b>Exhibit 7</b>	Administrative Functions Sample – Complex Annual Visual Evaluations
<b>Exhibit 8</b>	Accounting and Fees Sample - Monthly Income and Attendance Statement
<b>Exhibit 9</b>	Safety
<b>Exhibit 10</b>	Data Collection Forms / Reporting Templates

Final versions of these exhibits are subject to the sole discretion of the County and may be modified, adapted, or replaced as necessary to align with the recreation amenity and operational needs. Final terms will be negotiated with the Successful Respondent.