



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Awarding Lodi Lake Park Boat House Concession to Headwaters Kayak Shop of Lodi and Authorize the Parks, Recreation and Cultural Services Director to Execute the Concession Agreement on Behalf of the City

MEETING DATE: February 5, 2014

PREPARED BY: Parks, Recreation and Cultural Services Director

RECOMMENDED ACTION: Adopt resolution awarding Lodi Lake Park Boat House concession to Headwaters Kayak Shop of Lodi and authorize the Parks, Recreation and Cultural Services Director to execute the concession agreement on behalf of the City.

BACKGROUND INFORMATION: The City has rented canoes, kayaks and pedal boats to visitors at Lodi Lake for many years. The equipment is more than a decade old and, while functional, often fails to meet the expectations of our customers. Meanwhile, kayaking and a relatively new sport – paddle boarding -- are increasingly popular at Lodi Lake and on the Mokelumne River.

Parks, Recreation and Cultural Services strives to meet the recreational needs of the community. One way to accomplish that at the Boat House is through a public-private partnership. On September 3, 2013, the Recreation Commission endorsed issuing a Request for Proposals to determine if an outside concessionaire would be interested in operating the Boat House in a manner that would benefit the public and the Department. The RFP was issued on October 11, and proposals were due on November 14. More than a dozen boating businesses were contacted to inform them of the opportunity. Two potential concessionaires expressed interest, through their participation at Recreation Commission meetings and by attending a walk-through at the Boat House on October 28. Lodi-based Headwaters Kayak Shop submitted the only proposal.

A committee composed of two Recreation Commissioners and three staff members reviewed the Headwaters' proposal and agree a concession agreement implementing the proposal has the potential to increase tourism to Lodi, increase visits to Lodi Lake Park, and generate additional revenue for PRCS while increasing recreational opportunities at Lodi Lake. On December 10, 2013, the Recreation Commission voted 4-0 to recommend the City Council approve a concession agreement with the Headwaters, a rapidly growing business that has more rental revenue from its Cluff Avenue location than the City has at the Boat House.

The benefits of having a concessionaire operate the Boat House include:

- A new rental fleet of kayaks, canoes, paddle boards and pedal boats, including the ability to take kayaks/canoes outside the lake (not permitted in City-owned kayaks/canoes).
- Additional marketing for Lodi Lake.
- Reduced City liability
- Potential for increased revenue

Potential downsides include loss of direct control, and a need to replace the boat fleet in the event the concessionaire fails.

APPROVED:

Konradt Bartlam, City Manager

The Headwaters will pay the City 15 percent of gross revenue or \$5,000, whichever is greater. The term will be for one year, starting April 1, 2014, with two one-year renewal options.

Proposed rental rates:

	Hourly	Half-day	Full-day
Basic single kayak	\$10	\$25	\$40
Premium single kayak	\$15	\$30	\$45
Tandem kayak	\$20	\$40	\$65
Canoe	\$25	\$45	\$70
Stand-up paddle board	\$10	\$25	\$40
Pedal boat (lake only)	\$20	\$40	\$65

Other proposal highlights:

- The Boat House will have 15 single kayaks, 5 tandem kayaks, 2 canoes, 15 stand-up paddle boards, 4 pedal boats and 45 life preservers.
- Hours:
 - Spring season, April 1-Memorial Day: 11 a.m. to 6 p.m., Saturday and Sunday.
 - Summer season, Memorial Day-Labor Day: 11 a.m. to 6 p.m., Wednesday through Friday (and Labor Day); 11 a.m. to 7 p.m., Saturday and Sunday.
 - Fall season, after Labor Day-Oct 15: 11 a.m. to 6 p.m., Saturday and Sunday.
- Guided tours: One two-hour tour on weekdays, one two-hour tour on weekends.
- Marketing: Social media, redesigned website, business cards/pamphlets, visitors center, Street Faire, etc.

The Headwaters has substantial support from the local paddling community to operate the Boat House. In addition, business and credit references were contacted -- including out-of-state suppliers -- and each were strongly supportive of Headwaters on a professional and personal basis. The fact Headwaters is located in Lodi makes its proposal to operate the Boat House even more compelling.

Staff will continue using the Boat House to store and maintain motorized boats, and will continue providing Mokelumne River tours from the same location. The City will maintain ownership of the Boat House.

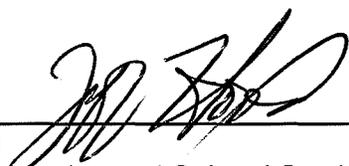
FUNDING CONSIDERATION OR IMPACT:

City revenue from Boat House is approximately \$6,000 a year. Annual revenue under the concession agreement is expected to exceed the \$5,000 minimum required.

FISCAL IMPACT:

Staff anticipates a slight increase in Boat House and park revenue, while avoiding the expense of upgrading and replacing boats, lifejackets and paddles.

FUNDING AVAILABLE: Not applicable.



Jeff Hood
Parks, Recreation and Cultural Services Director

JH:tl

Attachment: Headwaters proposal, Agreement

Cc: City Attorney

**CITY OF LODI
NON-MOTORIZED BOAT CONCESSION AGREEMENT**

THIS CITY OF LODI CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF LODI, a California municipal corporation ("CITY"), and Headwaters Kayak Shop ("CONCESSIONAIRE"), to be effective upon execution by the parties (the "Effective Date"), as follows:

1. Incorporated Documents. This Agreement is created pursuant to CITY's REQUEST FOR PROPOSAL ("RFP") for Non-Motorized Boat Concessions issued by the CITY on October 7, 2013, and CONCESSIONAIRE's proposal in response to the RFP in response to the RFP, dated Nov. 14, 2013. Attached and incorporated herein are the following documents: Site Map (Exhibit A) and Non-Motorized Boat Concession Requirements (Exhibit B). The Operating Plan submitted by CONCESSIONAIRE as part of its proposal is also attached hereto as Exhibit C and incorporated herein. In addition to the terms and conditions set forth in this Agreement, CONCESSIONAIRE agrees to fully abide by the Non-Motorized Boat Concessions Requirements (Exhibit B) and the Operating Plan (Exhibit C).
2. Right to Enter. Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, and agents to operate a non-motorized boat concession ("Concession") as defined in section 3 below at the Lodi Lake Boat House, as depicted on Exhibit A hereinafter referred to as the "Site".
3. Use of Site. This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate a non-motorized boat concession of kayaks, canoes, paddle boards and pedal boats, hereinafter referred to as "Concession." Concession means an operation involving the conducting of non-motorized boat rentals (and tours, if included in Operating Plan), delivering and removing non-motorized rental and tour boats, and serving the general public under the terms and conditions of this Agreement. There shall be no commercial use of any other areas of Lodi Lake Park by CONCESSIONAIRE without approval of the CITY's Parks, Recreation and Cultural Services Director ("DIRECTOR"). Renting or selling of equipment or any other merchandise unrelated to non-motorized boating is not allowed under this Agreement. CONCESSIONAIRE shall not infringe the right of the public to use the dock and kayak launch free of charge for their personal non-motorized boats during normal business hours. Any use other than as a Concession as described herein shall constitute good cause for immediate termination of this Agreement.
4. Maximum Days and Hours of Operation. CONCESSIONAIRE shall not conduct any Concession prior to Lodi Lake Park ("Park") opening on days the park is open to the public. All non-motorized boats must be removed from outdoor storage areas before sunset. All non-motorized boat tours are to be completed and out of the water fifteen (15) minutes before sunset daily, unless authorized by DIRECTOR. All Concession operations are permitted seven days a week with the following exceptions:
 - a. CITY reserves the right to limit or prohibit Concession operations on the Fourth of July.
 - b. Special Events. Unless otherwise authorized by DIRECTOR, CONCESSIONAIRE may not operate on days designated by CITY for Special Events when general public access to the Park is restricted. CITY shall give CONCESSIONAIRE advance written notice of any such Special Events.

5. **Competent Management.** Throughout the term of this Agreement, CONCESSIONAIRE shall provide competent management of the Concession and the Site for the permitted uses to the satisfaction of the City Manager or designee. CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concession to maximize gross revenue.
6. **Term.** The term of this Agreement (“Term”) shall be one year commencing April 1, 2014 (“Commencement Date”), with two one-year renewal options. “Agreement Year” as used in this Agreement shall mean the twelve-month period during the Term commencing on the Commencement Date and each twelve-month renewal as may be exercised by CITY. Renewals options may be exercised at the discretion of CITY based on the performance of CONCESSIONAIRE and adherence to the terms and conditions set forth herein. CITY retains the sole right to determine if the renewal option shall be granted.
7. **Termination.** This Agreement may be terminated at any time by either party upon ninety (90) days prior written notice to the other party. Any written notice to this effect shall be served in accordance with Section 43 of this Agreement.
8. **Revocable License.** This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion, at any time. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of termination or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY’S termination or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.b that conflict with or prohibit CONCESSIONAIRE’S use of the Site.
9. **Special Provisions**
 - a. **Operating Plan.** The Operating Plan(s) for April 1, 2014 through March 31, 2015 submitted with CONCESSIONAIRE’S response to the CITY’S RFP shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY’S approval, and the final CITY approved Operating Plan(s) shall be incorporated into this Agreement as Attachment C. Beginning April 1, 2014, and for every 12 months thereafter during the Term, the CONCESSIONAIRE shall provide CITY with an Operating Plan for the upcoming twelve month term for CITY’S approval no later than February 1 beginning in 2015. All Operating Plans submitted to CITY should be consistent with the format and content of the Operating Plans included as Attachment C. CITY in its sole discretion shall have the right to approve or disapprove the proposed Operating Plan. Once approved, CONCESSIONAIRE shall not make any changes to the Operating Plan without prior written approval of CITY. CONCESSIONAIRE shall not operate the Concession at any time during the Term without an Operating Plan fully approved by the City valid for the time period of operation.
 - b. **Operations.** CITY reserves the right to make changes at any time to CONCESSIONAIRE’S tour schedule (if applicable) and/or the number of individual non-motorized boat rentals permitted at any given time, based on operational and safety considerations. **At all times, the CONCESSIONAIRE shall ensure that all permitted operations comply with the Non-Motorized Boat Concession Requirements incorporated herein as Exhibit B.**

- c. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a respectable and courteous manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other park users, and otherwise comply with all of the Non-Motorized Boat Concession Requirements set forth as Exhibit B to this Agreement. CONCESSIONAIRE, its employees and agents are required to be fingerprinted and background checked in a manner authorized by the Department of Justice. CONCESSIONAIRE shall assume all expenses associated with the fingerprinting and background checks. CONCESSIONAIRE shall not permit any employee or agent to work at the Site who has been convicted of any offense identified in Penal Code section 11105.3 and shall immediately remove any employee from the Site who has been arrested for any offense identified in Penal Code section 11105.3, until such time as CITY can conduct an investigation into the circumstances of the arrest. Expunged convictions shall be considered convictions for purposes of this section except where the expungement is based on a finding of factual innocence.
- d. Exclusiveness of Agreement and Unauthorized Vending. CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Site shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- e. CONCESSIONAIRE's Storefront address is:
 - Headwater Kayak Shop
 - 847 N. Cluff Ave., Suite A-6
 - Lodi, CA 95240
- f. Site. CONCESSIONAIRE shall erect no improvements on the Site without prior written approval by CITY. The Site must be maintained so as to present a neat and attractive appearance to the satisfaction of DIRECTOR. Any items or improvements brought on the Site by CONCESSIONAIRE must be approved in writing by CITY and shall not remain at the site after permitted hours of operation, unless prior written approval of CITY is obtained.
- g. Improvements to the Site. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Site now existing or constructed on the Site by CONCESSIONAIRE shall be deemed to be part of the Site and shall become CITY's property free of all liens and claims. All personal property remaining on the Site after expiration or termination shall also become the property of CITY. Alternatively, CITY, at its option, may require CONCESSIONAIRE to immediately remove any and all improvements, trade fixtures, structures, installations and additions to the Site at CONCESSIONAIRE's sole cost and expense.
- h. Maintenance of Site. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance at the site, to keep the Site clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about the site to the satisfaction of CITY and at CONCESSIONAIRE's sole cost and expense. Site must be cleaned up by CONCESSIONAIRE each day, CONCESSIONAIRE is operating at the Site and CONCESSIONAIRE shall promptly inform CITY of any safety concerns related to CITY property.

- i. CITY Boats. CONCESSIONAIRE shall allow CITY to store motorized boats on the water within the Boat House, provide other space as needed to store CITY equipment and supplies used specifically for motor boat operations, and allow CITY staff to access the Site as needed. Customers of CITY motorized boat tours shall be allowed in the dock area, but not within the Boat House.

10. Fees.

- a. Percentage Fee. The Percentage Fee shall be calculated on a calendar month basis and shall consist of fifteen percent (15.00%) of the total Gross Revenue (as defined in Section 10.f of this Agreement) of CONCESSIONAIRE resulting from rentals and all activities associated with the CONCESSIONAIRE's activities as permitted under this Agreement. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Site, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Site without the prior written approval of the City Manager shall be subject to the provisions of Section 10.e Unauthorized Use Charge.
- b. Minimum Fee. The annual Minimum Fee established for the first two Agreement Years following the effective date of this Agreement is Five Thousand Dollars (\$5,000.00), or Four Hundred Sixteen Dollars and 67 Cents (\$416.67) on a monthly installment basis ("Monthly Minimum Fee").

The Monthly Minimum Fee is to be paid in monthly installments on or before the day of the calendar month when the percentage fee is due pursuant to Section 10.j. Time and Place of Payment. The first payment is due May 31, 2014. In the event that the combined total amount of fees paid by CONCESSIONAIRE (consisting of the percentage fee payments and the Monthly Minimum Fee paid) during any Agreement Year equal or exceed the required annual Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying the Monthly Minimum Fee until the beginning of the next Agreement Year and shall only pay the Percentage Fee until such time.

- c. Minimum Fee Adjustment. Effective at the beginning of the first day of the third Agreement Year ("Adjustment Date"), the annual Minimum Fee shall be set at eighty percent (80.00%) of the annual average of the Total Fees Paid under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment Date. The annual average of the Total Fees Paid shall then be divided by twelve (12) to establish the new Monthly Minimum Fee. It is recognized that the adjustments shall be calculated by CITY upon completion of payments due for the two (2) preceding Agreement Years in order to determine the amount of the Minimum Fee for the remaining Term. Until such calculations are completed, CONCESSIONAIRE shall continue paying the Monthly Minimum Fee at the then existing rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice provided pursuant to Section 43 of this Agreement. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the Adjustment Date. In the event that the Total Fees Paid prior to the Adjustment Date do not exceed the current annual Minimum Fee, the annual Minimum Fee shall be increased to one-hundred five percent (105.00%) of the annual Minimum Fee most recently in effect.

- d. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any Concession fees when due, CONCESSIONAIRE shall pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to delinquent fee. The parties agree that such delinquent fees are appropriate to compensate CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- e. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue (as defined in Section 10.f) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in this Agreement for fee payments and the provisions for delinquent or unpaid fee. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not be waiver of any of the CITY'S rights under this Agreement.
- f. Gross Revenue. "Gross Revenue," as used in this Agreement shall include all income resulting from the Concession whether received or to become due; provided, however, that Gross Revenue shall not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenues shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.
- g. Payment Procedure.

On or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned, CONCESSIONAIRE shall provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Revenue in a form selected by CITY. The statement shall be signed by CONCESSIONAIRE or its authorized agent attesting to the accuracy of the income statement. Each statement will include:

- i. Total Gross Revenue for the subject month itemized as to business categories for which the separate Percentage Fee is established.

- ii. The Percentage Fee due CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current term year.
- iv. Payments in the greater of the two following amounts: The Monthly Minimum Fee or the total Percentage Fee due CITY computed as described in this Section 10.

h. Inspection of Records.

- i. Records. CONCESSIONAIRE shall at all times during the Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession fees, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY in writing.
- ii. Financial Statements. Within sixty (60) days after the end of the each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid CITY for the year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.h.i., shall be kept for at least five (5) years and made available to CITY in one location within the City of Lodi. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of Concession fees due CITY in compliance with the requirements of this Agreement. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply will all requirements

of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):
 - A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) on an annual basis for any Agreement Year or more than \$1,500, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
 - B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this Agreement. Any fee deficiency determined by the audit shall be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement section 10.d. CITY shall credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.
- i. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with the covenants of this Agreement, a material breach of this Agreement and good cause for termination.
- j. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City of Lodi and mailed to Lodi Parks, Recreation & Cultural Services, 125 N. Stockton St., Lodi, CA 95240, or delivered to the Office of the City Treasurer, Lodi City Hall, 221 W. Pine St., Lodi, CA 95240. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- k. Reporting relationship. CONCESSIONAIRE reports directly to the DIRECTOR or DIRECTOR's designee.
- l. Security Deposit. CONCESSIONAIRE shall deliver to CITY, with the executed copies of this Agreement, a good faith security deposit in the amount of one thousand dollars (\$1,000.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this

Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the security deposit or any remaining balance shall be returned to CONCESSIONAIRE without interest. CITY on thirty (30) days prior written notice to CONCESSIONAIRE may request the security deposit may be increased proportionate to any increase in the Minimum Fee. CONCESSIONAIRE shall maintain the security deposit throughout the Term of this Agreement.

Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of its property, if any, from the Site.

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
 - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Agreement.
 - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.
11. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval shall mean the written consent or approval of the DIRECTOR, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the DIRECTOR's sole and absolute discretion, unless otherwise expressly provided herein.
12. Acceptance of Site. CONCESSIONAIRE represents and warrants that it has independently inspected the Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Site is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Site and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Site, including without limitation the presence of any hazardous substances. By entering into this Agreement, CONCESSIONAIRE acknowledges that the CITY does not routinely control water levels at Lodi Lake or the Mokelumne River, that controlling entity Woodbridge Irrigation District reserves the right to change levels at its discretion, and that Woodbridge Irrigation District lowers river levels for several weeks each year, typically during the winter that results in the emptying of Lodi Lake.
13. Maintenance of the Site.

- a. Except for the obligations of CONCESSIONAIRE described in the following section b, City shall provide all customary and usual maintenance to the site and improvements, consisting of the Boat House and adjoining dock.
 - b. CONCESSIONAIRE shall be responsible for all janitorial and cleaning services, repairs and maintenance of the interior surfaces of the Boat House, and responsible for cleaning the adjoining dock, except to the extent caused by a failure of CITY to perform its maintenance obligations under paragraph 13(a). To assure notification of necessary repairs of the leased space, CONCESSIONAIRE shall notify CITY of all interior repairs performed by CONCESSIONAIRE. By way of explanation and not by way of limitation, (i) CONCESSIONAIRE shall be liable for such items as (a) maintaining storage areas and boat racks of the interior of the Boat House, (b) replacing light fixtures within the Boat House, (c) sweeping, mopping and litter pick up in and around the Boat House, including the dock; and (ii) CITY shall be responsible for (a) electrical systems and wiring inside the walls of the Boat House, (b) roofing and siding of the Boat House, (c) integrity of dock structure, and (d) wear and tear arising from normal use. Damages resulting from CONCESSIONAIRE's failure to maintain the facilities as described will be withheld from the security deposit described in Section 10.e.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Site in a respectable and courteous manner.
 15. Inspection. CITY may, at all times, enter and inspect the Site.
 16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate(s) of insurance for:
 - a. Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of Six Million Dollars (\$6,000,000). Higher insurance limits may be required by the CITY's Risk Management Department depending on the nature of the activity.
 - (i) The \$5,000,000 limit is to be designated strictly for the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers.
 - b. CONCESSIONAIRE must maintain current workers compensation coverage which meets statutory requirements for all employees. One Million Dollars (\$1,000,000) of employers' liability coverage is also required. A waiver of subrogation is required for workers' compensation.
 - c. Automobile Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.

- d. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its own cost and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- e. CONCESSIONAIRE must maintain a (marine) protection and indemnity policy, with limits of not less than One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000), UNLESS proof is submitted that CONCESSIONAIRE's non-motorized boat operations are under the commercial general liability insurance policy. A certified copy of the CGL policy will be sufficient to meet this requirement.
- f. The following must be provided on all insurance endorsements:
 - i. Additional Insureds. Pursuant to a separate endorsement [ISO form CG 2010 (11/85) or equivalent form], "The City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers" shall be named as additional insureds in all policies.
 - ii. Primary & Non-Contributory. Additional insured coverage under CONCESSIONAIRE's policy shall be "primary and non-contributory" and will not seek contribution from CITY' insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.
 - iii. The limits of insurance coverage required under this Agreement, may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of CONCESSIONAIRE shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY (if agreed to in a written contract or agreement) before the CITY's own insurance or self-insurance shall be called upon to protect CITY as a named insured.
 - iv. The street address of the City of Lodi must be shown along with (i) and (ii) above: 221 West Pine Street, Lodi, California, 95240-1910; and the insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.
- g. Insurance Policies. CONCESSIONAIRE's insurance policies shall be kept in force for the term this Agreement and any extension thereof. The certificate(s) of insurance shall be filed with CITY'S Risk Manager upon execution of this Agreement. CITY reserves the right to obtain a full certified copy of any insurance policy or endorsements required under this Agreement. Failure to exercise this right shall not constitute a waiver of CITY's right to exercise after the Effective Date.
- h. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- i. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - i. All self-insured retentions (SIR) must be disclosed to CITY's Risk Manager for approval and shall not reduce the limits of liability set forth hereinabove.
 - ii. Insurance policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the Named Insured(s) or CITY.
 - iii. CITY reserves the right to obtain a full certified copy of any insurance policy or endorsements required under this Agreement. Failure to exercise this right shall not constitute a waiver of CITY's right to exercise after the Effective Date.
- j. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance on at least an annual basis during the Term. If CONCESSIONAIRE's insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify the CITY and immediately obtain replacement insurance.
- k. Modification. To assure protection from and against the kind and extent of risk existing on the Site, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to CONCESSIONAIRE'S use of the Site in order to meet the requirements of this Agreement.
- l. Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or person engaged in the activities permitted under this Agreement. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- m. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest on the premium paid by the CITY at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY's notice. **Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the**

Site and commence and diligently pursue the removal of any and all of its personal property from the Site.

- n. Insurance Coverage. It is required under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth above, shall be available to CITY as an additional insured. Furthermore, the requirements for coverage and limits shall be (i) the minimum coverage and limits specified in this Agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to CONCESSIONAIRE; whichever is greater.
- 17. Indemnification. To the fullest extent allowed by law, CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. The defense and indemnification obligations required by this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations set forth herein.
 - 18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE's use of the Site, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
 - 19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
 - 20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and

- b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace:
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- 21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
- 22. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's occupancy, use, development and maintenance of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
- 23. No Nuisance. CONCESSIONAIRE shall not use the Site in any manner which, in DIRECTOR'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
- 24. No Assignment. CONCESSIONAIRE shall not assign or sublicense any rights granted by this Agreement or any interest in this Agreement without CITY'S prior written consent, which may be withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.
- 25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Site, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.
- 26. Advertisement and Marketing. Any advertising or marketing which reference the City of Lodi may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of Lodi name or logo in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE shall be considered to be in default.
- 27. Encumbrances. CONCESSIONAIRE shall keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Site. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Site, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

28. Defaults and Remedies.

- a. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection b below) which are grounds for immediate termination, in the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided however, in the event that any default described in Paragraph 28.a.i of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- b. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection (a) above, in the event CONCESSIONAIRE defaults in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan that, in the CITY's sole discretion, relate to public safety ("Safety Violations"), CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or revoke this Agreement.
- c. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement shall continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the Percentage Fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
 - ii. The appointment of a receiver upon initiative of CITY to protect CITY's interest under this Agreement.
29. Damages. CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover any outstanding fees (as set forth in paragraph 10) due for the remaining term of this Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Site.
31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Site, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
32. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Site in a manner which aids in the protection of the City of Lodi and San Joaquin County's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to Lodi Lake or the Mokelumne River.
33. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Site. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Site without CITY's prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances.
 - a. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - b. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities

resulting from CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

- c. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Site, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Site.
 - d. Environmental Assessment. At CITY's option upon expiration or termination of this Agreement, an environmental assessment of the Site shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Site, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.
34. Waiver. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Site is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
35. Applicable Law, Jurisdiction, Severability, and Attorney's Fees. This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null and void in so far as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.
36. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.

37. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
38. Terms of Agreement Prevail. All exhibits to this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.
39. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
40. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
41. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
42. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties, agreements and permits between them and pertaining to this Agreement and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Site, whether oral or written. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by both parties.
43. Notices. Any notice required or permitted to be given under this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed as follows:
- CITY:
City of Lodi
Parks, Recreation & Cultural Services Department
Attention: Director
125 N. Stockton St.
Lodi, CA 95240
- CONCESSIONAIRE:
Headwaters Kayak Shop
Attention: Daniel J. Arbuckle
847 N. Cluff Ave., Suite A-6
Lodi, CA 95240
44. City Business License Required. CONCESSIONAIRE acknowledges that Lodi Municipal Code section 3.01.020 requires CONCESSIONAIRE to have a city business license and CONCESSIONAIRE agrees to secure such license and pay the appropriate fees prior to performing any work under this Agreement.

- 45. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site.
- 46. City's Not-Liable. CITY shall not be liable to CONCESSIONAIRE, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures,, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, governmental delays, epidemics, causes beyond the reasonable control of CITY, or in CITY's performance of any act related to protecting the public health and safety.
- 47. Subcontracts. Unless prior written approval of CITY is obtained, CONCESSIONAIRE shall not enter into any subcontract with any other party for purposes of providing any work or services covered under this Agreement.
- 48. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Upon request, each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: _____

CITY OF LODI, a California municipal corporation

By: _____
KONRADT BARTLAM, City Manager

"CONCESSIONAIRE"
HEADWATERS KAYAK SHOP, LLC

Date: _____

By: _____
DANIEL J. ARBUCKLE, Owner

APPROVED AS TO FORM:
D. Stephen Schwabauer, City Attorney

By: _____
JANICE D. MAGDICH
Deputy City Attorney 

- Attachment A - Site Map
- Attachment B – Non-Motorized Boat Concession Requirements
- Attachment C - Operating Plan

Exhibit A



N Loma Dr

W Turner Rd

W Turner Rd

W Turner Rd

Lodi Lake

Boat House

EXHIBIT B
Non-Motorized Boat Concession Requirements

The following requirements are subject to revision at any time by the CITY:

A commercial non-motorized boat operator issued a Concession by the CITY shall maintain continual adherence to all terms and conditions included herein and all applicable laws and shall take the necessary safety precautions to ensure that the public and beach are protected.

1. Mokelumne River and Safety

Concessionaire must check the Department of Water Resources, California Data Exchange Center each day for Camanche Reservoir outflows (http://cdec.water.ca.gov/river/res_CMN.html) . Concessionaire must provide information to clients of daily conditions and/or hazards and the dangers inherent in kayaking, paddle boarding or other non-motorized boating in Lodi Lake and the Mokelumne River. Concessionaire and its employees, agents and/or affiliates must adhere to all directions provided by lifeguards, other representatives of the CITY of Lodi, or any other officer with authority to enforce local, state or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of lifeguards regarding any particular matter on a given day is final.

City staff reserves the right to close the Boat House, dock, kayak launch and/or terminate any boat tours and/or rentals based on safety considerations.

2. Identifying Markers

Concessionaire (owner), its employees and/or agents must be readily identifiable, a company shirt or rash guard with a logo in clear view, as authorized employees and/or agents of the company. All non-motorized boats used in Concessionaire's commercial operations shall be marked with the name or logo of the licensee's and an individual, non-duplicated number. The markings shall be plainly visible and legible from a distance of fifty (50) feet.

3. Concession Site/Location

All business transactions must be conducted within Concessionaire's storefront address or the Lodi Lake Park Boat House. Concessionaire will meet tour participants inside of store or in the area designated by the CITY. Concessionaire's violation of this provision shall be considered a breach of this Permit and may be cause for termination.

4. Boat Launch/Operator Vehicles

Concessionaire's vehicles and trailers used for the transport and delivery of non-motorized boats and/or equipment, utilizing the Lodi Lake dock or kayak launch:

Must possess current registration, and drivers a valid California driver's license.

Vehicles and trailers must be clearly marked with the company's name by either permanent or magnetic signs, and plainly visible and legible from a distance of one hundred (100) feet.

The boat launch area must be kept clear at all times. Boats must not be left in a position that obstructs free use of the launch area.

5. Concession Site - Regulations

All outfitting and rigging of non-motorized boats and training of clients will be conducted on dry land at a designated site. The boat launch area must be kept clear at all times. Non-motorized boats and equipment must not be left in a position that obstructs free use of the kayak launch area.

6. Maximum number of tour participants/ Student to instructor ratios

Kayak tours will never exceed twelve (12) kayaks total (ten (10) client kayaks and two (2) kayak guide kayaks), and must adhere to the following criteria:

One (1) kayak guide for every five (5) client kayaks, should a kayak tour exceed five (5) client kayaks an additional kayak guide will be required.

Ratio of clients to kayak guides will never exceed ten (10) clients to one (1) kayak guide (10:1), regardless of the number of kayaks.

7. Water Activity Zones

Kayak tours will adhere to Boating/Waterways laws.

8. Equipment:

At least one (1) kayak guide must have a cell phone for emergency purposes. Concessionaire shall maintain all non-motorized boats and operational equipment in sound working order and condition. Rental boats may not be deposited at the designated rental storage area prior to 7 a.m. and must be removed before 8:30 p.m.

The concessionaire must provide an employee to monitor the rental kayak storage area at all times during operation.

Non-motorized boat storage area will be maintained in a neat and orderly manner at all times. Rental boats and equipment will be stored in a manner as to not to impede any and/or all other activities within the Boat House or adjoining dock.

9. Waivers

The Concessionaire must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

10. Safety Precautions/Emergency Response Plan

Concessionaire must maintain a record of the client's name, local contact number and boat identification number to aid with locating the client should they go missing.

Rental kayak clients shall be provided with a waterproof map of the adjacent water area, clearly depicting the Mokelumne River from the Woodbridge Dam to Highway 99, known hazards and off-limits areas.

Concessionaire must make clients aware of know hazards and off-limits areas, preferably by referencing the provided map, and that any violations may result in a citation and/or injury.

Concessionaire shall provide a properly fitting U.S. Coast Guard approved Type II or Type III personal flotation device to each client.

If a client reports an injury to licensee or the Concessionaire is aware of an injury or accident that requires medical services and the injury occurs during the performance of a licensee's services from launch to return, in addition to alerting the local emergency services the licensee shall file an accident report with the manager.

Concessionaire shall keep a file on record of all accident reports for three (3) years after each event.

11. Minimum Requirements for Guides

Must be at least eighteen (18) years old.

All non-motorized boat guides are responsible for completing and maintaining the minimum qualifications as outlined:

A valid Basic First Aid certification from the American Red Cross or the equivalent.

A valid CPR certification by either the American Red Cross as a Professional Rescuer or American Heart Association as a Healthcare Provider or the equivalent.

A valid Canoeing Safety Test star rating certification from the British Canoe Union.

Supervise and instruct clients and be capable of giving a suitable orientation talk to all clients in his or her boat on relative subjects which may include, but not limited to, overall safety, personal flotation devices, emergency signaling devices, paddling/maneuvering skills.

Possess a general knowledge of emergency access and evacuation routes, and summon and assist, when requested, any emergency response personnel.

Concessionaire may request variations from the kayak guide qualifications set forth in this section. Requests for variations must be made in writing to the Park and Recreation Department and the request shall substantiate that the variation does not reduce the intent of the qualification set forth in this rule. Documents relating to the requirements of this section shall be kept at the Concessionaire's storefront for inspection by the manager or representative.

Keeping patrons safe while engaged in non-motorized boat tours and rentals will be the highest priority of the operator. Should the manager or representative, Lodi Parks, Recreation & Cultural Services staff or other official CITY personnel find violations or a pattern of violations of any requirement of this permit then a "Violation of Permit/Safety Notice" will be issued.

12. Violations/Safety Notice

The CITY reserves the right to perform inspections and/or reviews with or without advanced notice. These inspections and/or reviews may be for any or all aspects related to the Concession Agreement and its exhibits, including but not limited to certificates and qualifications of tour guides; other safety issues; records pertaining to renters. Violation of any aspect of the Concession Agreement may result in suspension or revocation of the Agreement. With regard to safety, the CITY or any other officer with authority to enforce local, state or federal law, has the right to terminate any tour or individual kayak rental if there is a violation of safety requirements.

As a guideline, when a licensee or licensee's agent is issued a "Violation of Permit/Safety Notice" or convicted for any violation related to their non-motorized boat operations, in addition to any penalty assessed by the courts, the following actions will occur:

First Notice or conviction in a one year period - no additional action taken against the licensee or licensee's agent

Additional notices or convictions shall be evaluated by the CITY for an appropriate and reasonable sanction, up to and including suspension or revocation of the permit.

Third Notice or conviction in a one (1) year period - the licensee's permit may be revoked.

13. Non-Motorized Boat rentals -- additional stipulations for weekends during the peak summer season

In addition to designated tours, each licensee will be permitted to rent no more than twenty (20) kayaks to other individuals (non-tour) at any one time.

14. Additional Concession Stipulations

Concessionaire must have a valid license to do business within the City of Lodi, as well as a storefront, as stated in the Agreement, where business will be conducted.

EXHIBIT C



TECHNICAL PROPOSAL

FOR

NON-MOTORIZED BOATING CONCESSIONS

AT

LODI LAKE PARK BOAT HOUSE

SUBMITTED TO

CITY OF LODI

PARKS, RECREATION & CULTURAL SERVICES DEPT.

125 N. STOCKTON STREET

LODI, CA 94240

ATTENTION: TERRI LOVELL

ON

NOVEMBER 14, 2013

INTRODUCTION

Headwaters Kayak Shop was started in Lodi, California in 2010. We are a customer-centered shop and are striving to make kayaking more accessible for everyone in the central valley and beyond. The business is currently located at 847 North Cluff Avenue, Suite A-6, Lodi, California.

We provide customers with quality merchandise and most importantly, the expert instruction and skill that they will need to get the most out of their investments and their experiences on the water. We strive to meet each customer wherever they are in their skill set and help them advance to achieve the goals that they have set for themselves.

Headwaters Kayak maintains local, courteous, and well-trained staff with experience on the local water ways. Groups like the Sand Hill Crane Festival, Boy Scouts of America, and Hero's on the Water call Headwaters Kayak year after year for professional and safe tours.

This proposal is intended to present Headwaters Kayak's operational and technical procedures for operating the Lodi Lake Park Boat House, located at 1101 West Turner Road in Lodi, California, for a period of one year with two one-year renewal options beginning April 1, 2014 and continuing through March 31, 2015.

Understanding the City's current arrangement, the current boat house location, and the condition of the existing non-motorized boat fleet, consideration has been given to each item from a technical standpoint in this proposal and each item – in addition to those requested in the City's request for proposal (RFP) – is addressed hereafter. In addition, reviewers will find Headwaters Kayak's marketing approach included as well.

A pricing proposal has been submitted alongside this technical proposal to the City Of Lodi Parks, Recreation & Cultural Services Department at 125 North Stockton Street, Lodi, California with attention to Terri Lovell.

This technical proposal has been formatted in sections as follows:

- Exhibit 'E', Technical Proposal Form from the City RFP
- Proposed Agreement Term
- Description of Proposed Operations
- Resume & Summary of Experience
- References – Business, Banking, Customer
- Employee Qualifications
- Emergency Response Plan
- Community Service

Exhibit E

Technical Proposal

Technical Proposal – RFP Non-Motorized Boat Concession

Lodi Lake Park Boat House Concession

This form and accompanying materials must be completed and placed in a separate sealed envelope marked Technical Proposal – RFP Non-Motorized Boat Concession

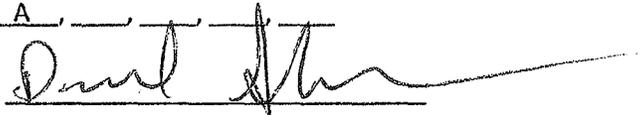
Name of Firm or Individual Submitting Proposal: Headwaters Kayak
(Please Print Clearly)

Address: 847 North Cluff Avenue
Suite A-6
Lodi, California 95240

Telephone / FAX #: (209) 224-8367 / (209)224-8451

E-mail Address: HeadwatersKayak@gmail.com

Proposer acknowledges the following Addendum: A

Signature of Non-Motorized Boat Management Firm: 

Name of Non-Motorized Boat Management Firm: Headwaters Kayak

Date: 11/14/13

END OF SECTION

PROPOSED AGREEMENT TERM

This proposal is for an agreement term of one year beginning on April 1, 2014 and ending on March 31, 2015 with two one-year renewal options.

DESCRIPTION OF PROPOSED OPERATIONS

Fleet size and makeup

Headwaters Kayak shall maintain the following fleet:

- 15 single kayaks and associated paddles
- 5 tandem kayaks and associated paddles
- 2 canoes and associated paddles
- 15 standup pedal boards and associated paddles
- 4 Pedal Boats
- 45 type III life preservers (3 infant, 7 youth small, 7 youth large, 10 adult small/medium, 10 adult large/extra-large, 8 universal plus)

The fleet and equipment shall be adjusted as needed to support needs of the Boat House at the discretion of Headwaters Kayak in agreement with the City.

Operating Days & Hours of Operation

The Boat House days and hours of operation will vary based on weather conditions, lake conditions, and customer demand. It is understood that during special events closing Lodi Lake Park to the public may impact days and/or hours of operation.

Spring Season for the purpose of this proposal shall be considered to be April 1st through Memorial Day. During this season the Boat House shall be open Saturdays and Sundays 11:00am-6:00pm.

Summer Season for the purpose of this proposal shall be considered to be within the holidays Memorial Day and Labor Day. During this season the Boat House shall be open and operating Wednesday through Friday and on Mondays that are holidays 11:00am-6:00pm, Saturdays and Sundays 11:00-7:00pm.

Fall Season for the purpose of this proposal shall be considered to be Labor Day through October 15th. During this season the Boat House shall be open Saturdays and Sundays 11:00am-6:00pm.

Headwaters Kayak reserves the right to modify the above schedule based on client demand. For example, if it is found during the summer season operating hours that there is higher

demand for rentals than is being accommodated with the above schedule, Headwaters Kayak will adjust the schedule to address the needs of the clientele. Conversely, if it is found that demand is not high enough to warrant being open both days of the weekend during the fall season, Headwaters Kayak will adjust the operating schedule at its own discretion.

Proposed Rental Fee Schedule

Headwaters Kayak will implement this fee schedule for the term of this agreement and shall be allowed to revisit this schedule prior to entering each of the one-year renewal options. All prices listed below include vessel, personal floatation device(s), and paddle(s):

GUIDED TOURS

Basic Bi-weekly Tour \$25 per person
 - Children under 10 years old free with accompanying paid adult
 - Free for those with their own equipment

INDIVIDUAL RENTALS

	Hourly	Half Day	Full Day
Basic Single Kayak	\$10	\$25	\$40
Premium Single Kayak	\$15	\$30	\$45
Tandem Kayak	\$20	\$40	\$65
Canoe	\$25	\$45	\$70
Stand-Up Paddle Board	\$10	\$25	\$40
Pedal Boat (Lake only)	\$20	\$40	\$65

Upon approval of the transaction, clients will be handed first and foremost an appropriately fitting type III personal floatation device, then an appropriate paddle, and finally will be shown to their vessel. If assistance with launching is needed, it will be provided by the employee.

Guided Tours

Guided tours will be offered from the Boat House once during the week and once during the weekend, and will last approximately two hours. Weekday tours will be offered in the evening, departing from the Boat House at a point in time that will allow tours to be off of the water at least 15 minutes prior to sunset. Weekend tours will be offered in the mornings. Regularly scheduled tours will consist of a minimum of four clients and a maximum of thirty clients. The client-to-guide ratio shall be ten clients to one guide. For example, a single guide will accommodate up to ten clients. A tour of eleven clients will be accompanied by two guides; one lead, one assistant. The ratio is based on clients, not vessels.

Headwaters Kayak will offer the above tours at a minimum, and will increase the offering of tours at its own discretion based on volume and client demand.

Special guided tours will be sold from Headwaters Kayak's storefront on Cluff Avenue that include but are not limited to personal guided tours, corporate tours, and other special events. The client-to-guide ratio mentioned above will not apply to special guided tours sold from Headwaters Kayak's storefront.

During guided tours, clients will be educated on the following aspects of Lodi Lake and the Mokelumne River:

- Water fowl
- Fish inhabitants and annual salmon run
- Mokelumne River point of origination
- Mokelumne River support of agriculture, Woodbridge Irrigation District
- Lodi Lake and Lodi Lake Special Events (July 4th Celebration, Wine Stroll)

Tours will begin with a 10-minute presentation on safety, proper use of equipment, and the tour's planned route from departure of the Boat House dock to the return of the same. Clients will be instructed on basic paddling stroke, technique and skills.

Individual Non-Motorized Boat & Stand-Up Paddle Board Rentals

Vessels will be available for individual non-guided rental during the regular operating hours mentioned above. The maximum number of rented vessels will coincide with the number of employees on-hand at any given time. The ratio of employees to rented vessels will be one employee to twenty rented vessels. Employees on-hand will include tour guides that may or may not be currently guiding a tour.

Prior to rental, clients will be presented a map of the waterway showing access boundaries for the period of their rental. After verbally acknowledging the geographical limits of their rental, clients will be presented with a standard waiver and release of liability which will indemnify and hold harmless the City (as well as its agents and affiliates) and Headwaters Kayak for any incident related to misuse or neglect of Headwaters Kayak equipment or instruction. The waiver will furthermore identify common obstructions and hazards found on waterways and will warn clients of such. Prior to putting into effect the waiver, Headwaters Kayak will submit a sample waiver and release of liability form to the City Attorney's office for review and comment or approval. The waiver will not be implemented until approval from the City Attorney has been received.

After signing the abovementioned waiver, a brief presentation on boating safety and common hazards will be delivered to clients. A more detailed explanation of a pre-tour presentation is provided later in this proposal. Following the presentation, clients will be given the opportunity to ask questions of employees.

Once the boundaries have been set, the waiver has been signed, and the safety presentation has been delivered to clients, rental fees based on the fee schedule below will be collected in the form of cash, debit, or credit.

Retail Products

In addition to non-motorized boat rentals, Headwaters Kayak will offer goods for retail sale that pertain to non-motorized boating and general use of the lake. Making items available such as, but not limited to, bottled water, dry bags, sunscreen, and lip balm will enhance the experience of rental clientele and will also provide a resource for those using the beach or park area.

MOKELUMNE RIVER AND SAFETY

Prior to opening, the current condition of Lodi Lake and the Mokelumne River will be assessed by a managing member of Headwaters Kayak by both personal review and internet research. A managing member will then post current conditions on a clearly visible sign located at the Boat House and at its storefront notifying clients of the conditions. Headwaters Kayak and associated staff members agree to adhere to directions from lifeguards, the City, and local, state, or federal law enforcement. In addition, Headwaters Kayak and the City will reserve the right to cancel any rentals or tours if conditions are deemed by either party to be unsafe for clients. Fees that have been accepted for tours canceled due to conditions will be fully refunded to clients.

IDENTIFYING MARKERS

All employees associated with rentals and tours will be identifiable by means of matching apparel and personal floatation devices that will clearly show a difference between employees and clients. The clothing will be marked 'STAFF', 'HEADWATERS', or other verbiage that identifies employees as a point of contact for Headwaters Kayak.

All non-motorized vessels will be identified with Headwaters Kayak's logo or name as well as an individual identifying marker. Identifiers will be maintained in good condition and will be plainly visible from a distance of 50 feet.

CONSESSION SITE/LOCATION

Business transactions as they relate to guided tours will originate from the Boat House, Headwaters Kayak's storefront. Tour participants shall meet Headwaters' staff at the Boat House or at Headwaters Kayak's store. All orientation training will occur at Headwaters Kayak's storefront and/or at the training area designated by the City of Lodi.

BOAT LAUNCH/OPERATING VEHICLES

Vehicles and/or trailers transporting boats and equipment will be current on registration and insurance, as well as operated by licensed and insured drivers. Vehicles will be clearly identified and recognizable as vehicles of Headwaters Kayak by means of markings that are identifiable from a distance of 100 feet.

Launch areas will be kept clear at all times, and non-motorized vessels will not be left in a position that obstructs free use of the launch area.

CONSESSION SITE-REGULATIONS

Outfitting and rigging of non-motorized boats and training of clients will occur on the boat dock or at a location near to the Boat House. Launch areas, as mentioned above, will be maintained in an open and clear condition and will be kept clean at all times.

ADHERANCE TO LAWS, REGULATIONS

Operations will abide by local, state, and federal law and regulations. In the event that regulations are conflicting, the most restrictive regulations shall govern. In addition, operations will be in accordance with this proposal and the terms of the agreement with the City.

EQUIPMENT

All non-motorized boats shall be kept clean, well-maintained, and in working order. The equipment will be up-to-date and current. Rental fleet shall be managed within park operating hours. The Boathouse will be staffed appropriately during hours of operation as stated above. Equipment will be stored in an orderly fashion as to facilitate other activities in the Boat House and/or dock.

WAIVERS

As mentioned above, Headwaters Kayak will collect waivers from each participant (or legal guardian if participant is under the age of 18 years) of individual rentals and/or guided tours that indemnifies and holds harmless the City of Lodi and its agents, officers, and employees from any damages resulting from the activities of Headwaters Kayak operations as detailed in this proposal. Waiver will additionally include a photograph release to permit sharing of photos taken on tours, individual rentals, and the like on social media and other marketing media. Waivers shall be kept on file and available for review.

SAFETY PRECAUTIONS/EMERGENCY RESPONSE PLAN

A log will be maintained for each individual rental and guided tour of each client's name, emergency contact name and phone number, and identification number of the non-motorized vessel they are assigned to. As stated above, prior to individual rentals and guided tours clients will be informed of lake and river conditions as well as advised of hazards and boundaries. Clients will be made aware that failure to comply may result in termination of tour/rental, citation, injury, and/or death.

As mentioned above, each client will be fitted with the appropriate U.S. Coastguard approved Type III personal floatation device. Clients will be advised to wear the personal floatation device properly at all times while on the water, and will be made aware that failure to comply may result in termination of tour/rental, citation, injury, and/or death. Any client refusing to use personal floatation device properly will be refused service.

Accidents and/or injuries that occur during any of the services provided shall be handled in accordance with our Emergency Policy & Procedure (see below). The injured party will be returned to the Boat House if possible, or to land, and Emergency Medical Services will be called. Headwaters Kayak owner(s) will be notified as will the City as soon as safety allows. An Accident Report will be completed, kept on file for a minimum of 3 years, and a copy will be given to the City.

MINIMUM REQUIREMENTS FOR GUIDES

Client safety is the top priority while providing guided tours and individual rentals on Lodi Lake and on the Mokelumne River. Therefore the staff will be held to the following minimum qualifications:

- 18 years of age or older

- Current Basic First Aid certified or equivalent
- Current CPR certified as a Professional Rescuer/Healthcare Provider or equivalent
- Knowledgeable of basic paddle strokes, rescues, overall safety, personal floatation device fitting, emergency signals, Lodi Lake, the Mokelumne River, water safety, and about all equipment being used
- Capable to teach clients information including but not limited to: basic paddling skills, emergency responses, overall safety, personal floatation devices, important information about the lake and river including hazards and boundary waters
- Possess understanding of Headwaters Safety/Emergency Policy & Procedures, including but not limited to: evacuation routes, when to activate emergency medical services, and provide first aid and CPR as trained
- Exceptional communication skills, public relations skills, and problem solving skills

Headwaters Kayak may request variations from the non-motorized guide qualifications set forth in writing to the Parks, Recreation, and Culture Services Director. The request shall substantiate that the variation does not reduce the intent of the qualification set forth in this rule.

Documents and/or copies of certificates to support the above requirements will be kept in the Boat House and/or the Headwaters Kayak storefront, available for review.

VIOLATIONS/SAFETY NOTICE

It is understood that the City has the right to perform inspections and/or reviews with or without advanced notification. These inspections and/or reviews may be for any or all aspects related to the Concession Agreement and its Exhibits. Violations of an aspect of the Concession Agreement may result in suspension or revocation of the Agreement. The City or any local, state, or federal law enforcement officer has the right to terminate any individual rental or tour if a violation of safety requirements is discovered.

It is understood that a "Violation of Permit/Safety Notice" will be issued, if at any time, violations or a pattern of violations of any requirement of this permit are found.

As a guideline, when a licensee or licensee's agent is issued a "Violation of Permit/Safety Notice" or convicted for any violation related to their non-motorized boat operations, in addition to any penalty assessed by the courts, the following actions will occur:

- First Notice or conviction in a one year period - no additional action taken against the licensee or licensee's agent
- Additional notices or convictions shall be evaluated by the CITY for an appropriate and reasonable sanction, up to and including suspension or revocation of the permit.
- Third Notice or conviction in a one (1) year period - the licensee's permit may be revoked.

ADDITIONAL CONCESSION STIPULATIONS

Headwaters Kayak will maintain a valid business license for the City of Lodi as well as the storefront to conduct business as stated in the Agreement.

NOTIFICATION REQUIREMENTS

Headwaters Kayak will notify the City in a timely manner of any repair and/or safety issues with the Boat House and/or the adjacent dock.

Community Impact & Boat House Utilization

Headwaters Kayak strives to serve the local community. By partnering with local businesses Headwaters Kayak offers multidimensional tours that display what Lodi has to offer. Tours such as these will be advertised at places such as local hotels, bed and breakfasts, Lodi Wine and Visitors Center, where tourists can learn of services available at the Lodi Lake Boat House.

Headwaters Kayak looks forward to coordinating some events at the Boat House to draw in customers from Lodi and surrounding areas. Some of the ideas are as follows; each would allow opportunity for local businesses to participate:

- *Annual Lodi Lake Boat House Pre-Season Kick-Off:* A demo day where rentals would be staged along the Lodi Lake Beach so that clients could try out and be educated on the equipment. Music, food, and industry Vendors and local businesses, would be invited to set up booths for additional demonstrations, education, and fun.
- *Triathlon:* Bicycle, Run, Kayak event could attract visitors from many facets and locations increasing exposure of Lodi Lake. Vendors and local businesses would be invited to set up booths for additional demonstrations, education, and fun. Proceeds from an event such as this could be donated towards a local charity.
- *Kayak/Surf-Ski Races:* Qualified entrants race a designated course established on Lodi Lake, attracting participants and spectators from all over Northern California and beyond. Vendors and local businesses would be invited to set up booths.

Individual rentals, events, and tours will attract traffic to Lodi Lake Park, increasing revenue from park entrance fees. Clients will be expected to park within parking lot parameters and to follow park speed limits as posted to respect other park-goers. Employees of Headwaters Kayak are encouraged to use alternative transportation in an effort to decrease impact on traffic and

the environment. However, employees will not be required to park offsite or to be dropped off. Rather, they will be allowed to park a vehicle similarly to other standard places of employment.

The Boat House space will be reserved for Headwaters Kayak and City of Lodi staff members and storage of equipment. Headwaters Kayak understands that City of Lodi employees will have access to the Boat House as needed where their motorized boats are stored. Typically clients will not be entering the Boat House space. Payment and waiver details will be taken care of through the roll-up window near the South-East corner of the Boat-House. Staff will then walk with clients down the ramp to the dock where client instructions will be given and clients will be assisted into assigned vessel.

Equipment storage will be similar to current storage, additional storage for stand-up paddle boards, canoes, and pedal boats will be found through reconfiguration. Stand-up paddle board storage racks will be added along the South wall between the large roll-up door and the man door. We will use the fenced storage area on the west side of the building for larger equipment like pedal boats and canoes. A wheeled kayak rack will hold additional rental kayaks, and will be rolled out the large roll-up door in the morning and will be stored back inside the boat house at night. Any additional equipment needed to run the boat house will be brought in from our storefront location on Cluff Avenue and will be transported out at the end of the day. All equipment storage will remain within the Boat House and/or fenced in storage area on the West side of the Boat House, unless Headwaters Kayak and the City of Lodi come to another agreement.

Marketing Plan

Over the past three years that Headwaters Kayak credits social media to be the key to our substantial growth and we plan to continue to utilize it for future marketing. Social media including Facebook, Twitter, Instagram, Meet-Up, Blogger, and YouTube are currently being used for Headwaters Kayak. Some of Headwaters Kayak social media statistics are: Facebook having over 1,500 fans, Blogger gets approximately 30,000 hits per year, the Lodi Paddle Club Meet-Up Group currently has over 360 active members. Effectively utilizing these tools leads to establishing and growing a community that stays involved, keeping their attention by allowing Headwaters Kayak to remain relevant.

Facebook allows for daily posts, photos, surveys and to advertise events. Twitter and Instagram allow short news blurbs and photos to be shared with people who may or may not be followers; by tagging posts with #LodiLake or #Mokelumneriver, people looking for things to do in Lodi will see our posts and become aware of our services. Meet-Up is a place where Lodi Paddle Club members can see tours planned by Headwaters Kayak, they can RSVP, ask questions, and invite

friends. Blogger is where trip reports, photos, and reviews are posted, it will often come up in Google searches, so someone looking for kayaking Lodi or for kayak fishing for instance will be directed to our Blogger site. YouTube is utilized by the Headwaters to make video tutorials on new products and summaries of tours highlighting the local waterways.

Traditional forms of marketing will also continue to be utilized by Headwaters Kayak. High-quality business cards and pamphlets will be available at key local shops, hotels, visitor's centers highlighting services and the beauty of Lodi Lake and Mokelumne River. Participation in local events such as the Lodi Street Faire helps to gain publicity. Donations to local fundraisers increase exposure, especially gift certificates for tours allowing the recipient to experience our services. Word-of-mouth and customer recommendations have proved to be most powerful in generating business, which is one of the many reasons we work very hard to ensure customers get more than what they expect. Currently Headwaters Kayak is working with an outside firm to rebuild the website with a goal of tying all avenues of social media into one home. These changes will drive traffic to our online location and give tourist a way to learn about paddling the Mokelumne River. The new website would have a sub page to promote the Lodi Lake Boat House rentals and Mokelumne river tours. Additionally Headwaters Kayak would like to work with local hotels and/or restaurants to offer exclusive deals for trips out of the Boat House and meals or discounted rates for hotel guests.

RESUME & SUMMARY OF PROPOSER'S EXPERIENCE

DANIEL JAMES ARBUCKLE, PROPRIETOR

647 North Cluff Avenue, Suite A-6, Lodi, CA 95240 | (209)224-8367 | HeadwatersKayak@gmail.com

Summary

Innovative customer service professional with over seven years in the kayak, canoe, and stand-up paddle board field, specializing in rentals, guided tours, customer education and sales. Proficient in social media marketing to foster customer awareness and increased business. Offering a unique combination of passionate, experienced kayaker and successful entrepreneur to create the ability to offer desired services while growing a prosperous business. A Native Lodian who is vested in the local community who has unrivaled experience with Lodi Lake and the Mokelumne River.

Professional Experience

November 2010-Present

*Headwaters Kayak, Proprietor
Lodi, CA*

- Plan, organize, and advertise sales, trips, classes, and tours
- Supervise and train quality staff, knowledgeable and skilled instructors/guides
- Maintain current rental/demonstration fleet to ensure each client has access to the best equipment to meet their individual needs
- Daily management of inventory, bills, customer relations
- Educate customers on equipment, paddling technique and skills

February 2009-October 2010

*Penguin Paddlers, Store Manager
Rocklin, CA*

- Managed all aspects of business for absentee owner, 175 miles away
- Handled all customer relation issues in a gracious manner and in accordance with company policy
- Conducted point of sales transactions, opening and closing procedures
- Preserved perfect attendance record

July 2006-November 2007

*Sierra Adventure Outfitters, Store Manager
Lodi, CA*

- Educated customers on equipment, paddling technique and skills
- Coordinated and guided tours of the Mokelumne River weekly of up to 30 customers
- Conducted point of sales transactions, opening and closing procedures
- Taught kayak Eskimo roll classes at Hutchins Street Square Pool

Achievements & Qualifications

2013	Number one retail store for Eddyline Kayak sales in the United States
2010-2013	Instructor for the Golden Gate Sea Kayak Symposium
2008-Present	Swift Water Rescue Certified
2007-Present	Lodi Paddle Club co-founder, member, support person; currently 360+ members

REFERENCES

Business References

Sean Morley, President of the California Paddle Sports Council

Ethan Ebersold, West Coast Sales Representative for Eddyline Kayaks, Emotion Kayaks, & Bending Branches Paddles

Dan Crandall, Owner of The River Store & Current Adventures Kayak School

Kim Grandfield, Owner of Sunrise Mountain Sports

Business & Credit References

Tom & Lisa Derrer, Owners of Eddyline Kayaks

Sterling Donaldson, Owner of Sterlings Kayaks

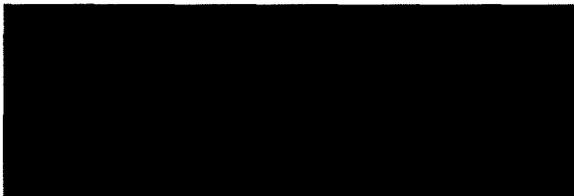
Margaret Jensen, Customer Service Team Leader, Bending Branches, LLC

Client References

Mamie Starr, Tour Sub-Committee Co-Chair Lodi Sand Hill Crane Festival

James Jones, Senior Assistant Scoutmaster, Boy Scouts of America Troop 199

Bank Reference



SUMMARY OF EMPLOYEES' QUALIFICATIONS

Headwaters Kayak strives to maintain well trained, hard working, and courteous staff members. Qualifications required by any potential staff member of the Boat House and thus Headwaters Kayak are as follows but not limited to:

- Strong swimming skills
- Fundamental knowledge of kayaks, canoes, stand-up paddle boards and the like
- Intermediate to advanced knowledge of paddling skills, rescues, and water safety
- Exceptional customer service and people skills
- Honest, detail-oriented, self-motivated, courteous, and active

A potential Boat House Manager has been chosen, has been made aware of the impending opportunity and is in agreement. William Beckett has been a member of the Headwaters Kayak Fishing Team since 2011. He is currently transitioning from his position at Cramer Fish Sciences to Full-Time Headwaters Kayak Staff. He is an avid outdoorsman with extensive knowledge of environmental science and wildlife, managerial experience, and customer service skills. Please find his current resume below. If he does not fulfill this position, an employee with similar qualifications as noted above will be sought out.

WILLIAM BECKETT

Education

Bachelor's Degree in Wildlife Fisheries and Conservation; Specialized in Wildlife Biology
Graduated 12-17-06 University of California, Davis Davis, CA

Professional Experience

Cramer Fish Sciences Technician

Current Position Supervisor: Clark Watry (209) 614-4072

Identify all common fish that occur in the central valley. Developed protocol. Trained other employees. Followed protocols to conduct mammal and avian surveys.

Department of Fish and Game Scientific Aid

10-01-06 to 4-01-10 Supervisor: Jason Dubois (209) 932-2395

Tagged, assessed, collected samples, and tracked multiple species of fish. Acted as field lead. Collected vitals data from tranquilized tule elk. Contacted private land management program participants. Answered calls from the public.

California Waterfowl Survey Technician

4-01-08 to 10-16-08 Supervisor: Jake Messerli (916) 648-1406 ext.125

Conducted elevation surveys with a Trimble GPS system to generate a topographic map. Ensured that grades at construction sites met plan specifications. Trained other employees.

Professional Dog Trainer (Self-employed)

3-01-07 to 3-31-08

Facilitated proper canine behavior in a one-on-one environment. Taught owners skills necessary to achieve alpha status.

CWA Youth Educator

4-01-06 to 7-21-06 Supervisor: George Oberstadt (916) 648-1406 ext. 142

Presented waterfowl identification techniques at youth hunter education camps. Conducted orienteering workshops.

City of Davis Summer Camp Nature Educator

6-01-05 to 9-01-05

Gave presentations to elementary school aged children about different animals. Led group trail tours identifying animals, teaching them the identification characteristics and habits of each.

Wildlife Biology Intern

6-01-04 to 9-1-04 Supervisor: Barbara Larson (925) 294-2567

Monitored nesting birds in riparian and grassland areas. Monitored for mammals with motion activated trail cameras, performed night surveys. Conducted surveys per USFWS protocol

Volunteer Experience

California Waterfowl Association Volunteer

1-01-06 to Present - Performed conservation and wildlife identification presentations at youth hunter education camps. Assisted a Biologist in banding Northern Pintails using rocket nets.

Entomology Intern

7-21-06 to 9-01-06 - Captured and prepared specimens. Classified the beetles using an insect dichotomous key.

USGS Volunteer

5-01-06 to 7-21-06 - Counted, noted data, banded, and collected samples of various birds. Sorted and organized data.

Wood Duck Intern

4-01-05 to 6-17-05 and 4-01-06 to 6-17-06 - Worked on Wood Duck research project. Monitored Wood Duck traps, conducted behavior studies in the field, and monitored nest boxes. Led a field crew. Surveyed raptors and owls to determine their density.

East Bay Regional Parks Wildlife Volunteer

9-01-01 to 9-01-04 - Volunteered for habitat restoration. Performed nesting bird surveys by birdsong. Conducted research. Trapped, tattooed, measured, and collected data of lizards and small mammals prior to releasing them.

EMERGENCY RESPONSE PLAN

Objective: To provide the safest environment possible for customers and staff by being prepared and trained to act quickly during an emergency.

Notify owner(s) of any safety concerns or emergencies as soon as safety is established:
Dan Arbuckle (530) 351-4572 and/or Ashlie Arbuckle (209) 482-3132

SAFETY GUIDELINES

1. Instructors/Guides Qualifications:

- CPR for the Professional Rescuer/Healthcare Provider certified
- First Aid certified
- Strong swimmer
- Experienced kayaker
- Knowledgeable and skilled in rescues
- Familiar with waterways being paddled

2. Instructors/Guides will carry on their person/kayak during all trips, classes, and events at a minimum:

- Personal Floatation Device (PFD)*
- Cell phone in a dry case
- Whistle
- Knife
- Tow Line
- First Aid Kit

3. Pre-Trip Procedure for Rentals, Tours, and/or Classes

- Allow customer to read waiver and ask questions prior to signing waiver
- Ask customer to disclose any physical and/or health conditions relevant
- Enter into log: customer name, emergency name and contact info, boat identification number
- Collect fees due
- Fit customer in appropriate Personal Floatation Device (PFD)*
- Basic paddling instructions
- Orient customer to water where paddling including boundaries of off-limit areas, any potential hazards, and point of turn around if applicable
- Complete Customer safety presentation (See 3A)
- Fit customer to kayak

Count and note number of customers on the trip
Count customers at any stop, at turn around, and at end of the trip

A. Customer safety presentation guidelines:

In case of emergency blow whistle to notify instructor/guide
Get to land as quickly as possible or idle in position whichever provide more safety in the given situation
Call for help if able

*All PFDs shall be U.S. Coast Guard approved and shall have whistle attached to be used in an emergency. All customers shall be required to wear PFD at all times while in the on the water.

EMERGENCY GUIDELINES

1. Medical Emergency and/or Injury Plan

Only trained responders should provide first aid and/or CPR assistance.

Contact Emergency Services by calling 9-1-1 and provide the following information:

- Number and location of victim(s)
- Nature of injury or illness
- Hazards involved
- Nearest emergency access point
- Name of person reporting
- Telephone number for return call

Do not move the victim unless the victim's location is unsafe; if appropriate get victim(s) to land as soon as possible

Take "universal precautions" to prevent contact with body fluids and exposure to bloodborne pathogens.

Direct Emergency Response Team to victim(s)

Assist emergency personnel as directed

Complete an Accident Report** (see Exhibit A for preliminary draft)

**All accident reports shall be kept on file for a minimum of 3 years; A copy shall be provided to the City.

Exhibit A:

Headwaters Kayak Accident Report

Personnel Details

Name: _____ Contact Number _____

Address: _____

Incident Details

Date, location and time of accident:

Name and contact information of injured person(s):

Describe the incident in detail (Continue on the back of this form as needed):

Actions Taken

What actions have been taken?

Witness Details

List the name, contact number and address of witness(es):

All of the above facts are a true and accurate record of the accident.

Signature: _____ DATE: _____

**All accident reports shall be kept on file for a minimum of 3 years

COMMUNITY SERVICE (150 words)

Headwaters Kayak is dedicated to the Lodi community as demonstrated by volunteering time to Boys Scouts of America as Merit Badge Counselor for kayaking and canoeing, providing free use of kayaks during the Coastal Cleanup Day at Lodi Lake and on the Mokelumne River, as well as donating time, instruction and kayak use during Heroes on the Water events for wounded veterans. Also, donations have been given to several fundraisers including for Lodi schools, churches, and the Lodi Police Department K-9 Unit.

Headwaters Kayak hosts weekly tours of the Mokelumne River, free to those with their own equipment and children under 10. This tour includes a paddling lesson and a guided paddle.

We hope to expand our community service efforts in the future by providing low-cost or no-cost trips for youth in the Lodi Boys and Girls Club, discounted tours for senior citizens, and adaptive paddling for those with disabilities.

RESOLUTION NO. 2014-14

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING
LODI LAKE PARK BOAT HOUSE CONCESSION TO
HEADWATERS KAYAK SHOP, OF LODI, AND FURTHER
AUTHORIZING THE PARKS, RECREATION, AND
CULTURAL SERVICES DIRECTOR TO EXECUTE
CONCESSION AGREEMENT ON BEHALF OF THE CITY

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WHEREAS, the City has rented canoes, kayaks, and pedal boats to visitors at Lodi Lake for many years; and

WHEREAS, the equipment is more than a decade old and, while functional, often fails to meet the expectations of our customers; and

WHEREAS, on September 3, 2013, the Recreation Commission endorsed issuing a Request for Proposal to determine if an outside concessionaire would be interested in operating the Boat House in a manner that would benefit the public and the Department; and

WHEREAS, Request for Proposals were issued on October 11, 2013, and received back on November 1, 2013. More than a dozen boating businesses were contacted to inform them of the opportunity; and

WHEREAS, two potential concessionaires expressed interest through their participation at Recreation Commission meetings and by attending a walk-through at the Boat House on October 28; and

WHEREAS, Lodi-based Headwaters Kayak Shop submitted the only proposal; and

WHEREAS, Headwaters will provide the greater of 15% of gross revenue annually or payment of \$5,000 to the City.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the Lodi Lake Park Boat House Concession to Headwaters Kayak Shop, of Lodi; and

BE IT FURTHER RESOLVED that the Parks, Recreation, and Cultural Services Director is hereby authorized to execute the Concession Agreement on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that the term of the Concession Agreement shall be for the period of one year, beginning April 1, 2014, with 2 one-year renewal options.

Dated: February 5, 2014

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I hereby certify that Resolution No. 2014-14 was passed and adopted by the Lodi City Council in a regular meeting held February 5, 2014, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Nakanishi, and
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON
City Clerk