November 17, 2020

SUBJECT: Request for Proposals – Boat Rental Concession at Leo Ryan Park

Dear Contractor,

You are invited to submit a proposal to provide Boat Rental Concession at Leo Ryan Park, in Foster City, as outlined and delineated on the enclosed Scope of Services. Proposals are due to the Recreation Center, 650 Shell Boulevard, Foster City, CA 94404, before 4:00 PM on Thursday, December 3, 2020. Please note that the Recreation Center is currently closed to the public so submissions need to either be mailed or dropped off in the blue Drop-off Box located at the South Entrance. Mailed proposals must be received prior to 4:00 P.M. on December 3, 2020 to be considered.

CONTRACT

The concession agreement grants exclusive right to a single vendor to use Leo Ryan Park for Boat Rental for the general public during the contract term. The proposed contract period shall be from January 1, 2021 through June 30, 2026 with optional extensions through June 30, 2030.

The successful proposer will be required to enter into and abide by the terms of the City’s Concession Agreement for Boat Rental Concession at Leo Ryan Park including all insurance requirements. A draft of this document is included as an attachment to the Request for Proposals.

PROPOSALS

Each proposer must submit two (2) hard copies of the completed Proposer Response Form. Proposers may optionally submit an additional cover letter of up to one page with supplemental information relevant to their proposal.

This concession operates out of Leo Ryan Park and, as such, has a significant interface with the public and with the City in both daily operations and at planned events hosted on the site. The City is looking for a concessionaire who has extensive experience with this type of concession and a willingness to act as a community partner in the provision of services.

For this reason, financial terms alone will not be the sole determining factor in the selection of the concessionaire. Proposals will be evaluated on the following criteria based on the information provided by the proposer:
- Proposed concession fee and contract terms
- Safety experience
- Number/variety of services proposed
- Proposer’s plan to integrate concession into the fabric of Foster City
- Organization’s reputation, service capabilities and quality
- Overall completeness and quality of proposal

The City will evaluate qualifications and references and may conduct interviews with the proposers to provide an opportunity for proposers to demonstrate their qualifications for the services. From these processes, the City will select a concessionaire and negotiate final terms. The terms in the Request for Proposals, with modifications based on Proposer’s submittal, will be incorporated into the exhibits to the final agreement with the successful proposer.

The concessionaire must be prepared to execute a Concessions Agreement within ten (10) days of award of the contract.

REQUESTS FOR ADDITIONAL INFORMATION

The City reserves the right to seek clarification or additional information from any proposer throughout the solicitation process. The City may require a proposer’s representative to answer questions during the evaluation process with regard to the proposal. Failure of a proposer to demonstrate that the claims made in its proposal are accurate may be sufficient cause for deeming a proposal non-responsive.

Sincerely,

Tiffany Oren
Recreation Manager

Enclosures:
(1) Request for Proposals
(2) Concession Agreement (draft)
(3) Proposer Response Form
COUNTY OF SAN MATEO, CALIFORNIA

PARKS AND RECREATION DEPARTMENT

Request for Proposals:
Boat Rental Concession
at Leo Ryan Park

Bids Due and Must Be Received by:
December 3, 2020 before 4:00 PM
650 Shell Boulevard, Foster City
CITY OF FOSTER CITY
REQUEST FOR PROPOSALS
Boat Rental Concession
at Leo Ryan Park

The concession agreement grants exclusive right to a single CONCESSIONAIRE to operate a boat rental business at the Leo Ryan Park Boathouse premises for the term of the Agreement to be awarded through this Request for Proposals. CONCESSIONAIRE shall provide materials and staff to provide the service and shall pay to CITY an annual concession fee and monthly use fee.

1. Scope of Deliverables:

   a. Location and Equipment. CONCESSIONAIRE shall operate a concession at the Leo Ryan Park Boathouse (the “premises”). CONCESSIONAIRE shall provide all equipment necessary to operate the concession at the premises.

2. Scope of Services:

   a. Purpose; Days and Hours; Operation. The premises shall be used by CONCESSIONAIRE only for the purpose of operating a boat rental concession on the Foster City lagoon to the general public from 11:00 A.M. to sunset daily, January - December. CONCESSIONAIRE may close operations during adverse weather or other adverse operating conditions. CONCESSIONAIRE will vacate the premises when requested by the City/District for major events or for required maintenance as determined by the City/District.

CONCESSIONAIRE expressly agrees at all times during the term of this Agreement, at its own cost and expense, to maintain and operate the concession in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of the Agreement in force relating to public health, safety or welfare.

CONCESSIONAIRE shall comply with all laws, rules and regulations applicable thereto, adopted by federal, state or other governmental bodies or departments of officers thereof, and the Agreement is expressly subject to present and future regulations and policies of the CITY/DISTRICT.

CONCESSIONAIRE shall remedy without delay any defective or dangerous conditions. No alcoholic beverage (including beer and wine) or goods, merchandise or material that are in any way explosive or hazardous shall be sold, kept or stored on the premises. No offensive or dangerous activity shall be carried on or permitted on the premises.

b. Additional Requirements. Concession shall be operated under the following additional conditions:
• Garbage Disposal: It is illegal to dispose of any garbage in Foster City’s lagoon. An enclosed receptacle for trash is required to be on board the vessel(s) at all times. CONCESSIONAIRE will be ultimately responsible for proper disposal of recyclable and non-recyclable items. Concession staff is permitted to impose an extra cleanup charge to renters if additional maintenance is required.

• Alcoholic Beverages: Alcohol use on the rental boat will be allowed. Operating the vessel under the influence of alcohol (.08% blood alcohol concentration and over) or other drugs is strictly prohibited. Smoking on the vessel is also prohibited per Foster City Municipal Code Section 8.05.030 (R).

• Passenger Loading and Unloading: The renter and cruise passengers may embark and disembark only at Leo Ryan Park at tie-ups near the Foster City Recreation Center or at renter’s private property.

• Proposed Waterway Route: Renters must cruise primarily on the wide water, maintaining 25 feet distance from all private property bulkheads. Vessels may not operate in the smaller side channels, except to access renter’s private property, or under the Highway 92 bridge.

• Docking: Docking is permitted only at public docks: Ryan Park, Boat Park, Marlin Cove Floating Dock, Catamaran Park, and Edgewater Place. Vessels may not dock at any private dock or seawall except those owned or leased by the renter. Concessionaire shall provide lagoon maps that include marked non-transit zones for each renter.

• Boat Identification: Rental boats are required to bear CONCESSIONAIRE’s company name and phone number in a visible exterior area of the boat. Each rental boat will also have assigned CF Numbers visible on the outside of the boat. This will allow for the easy tracking and identification of all rental boats that are accessing the lagoon.

• Community Involvement: Under the supervision of the Department of Parks and Recreation, CONCESSIONAIRE will coordinate a boating safety program to be provided as part of the department class curriculum. CONCESSIONAIRE will also donate 6 hours of rental time to the Foster City Foundation to be used as raffle prizes at charity events.

• Noise Control: Per Foster City Municipal Code Section 17.68.030 (B), music and/or conversation shall not exceed 60 decibels.

• Privacy Concerns: As an element of the concession and rental agreement, Renters are required to maintain homeowners’ privacy.
• License: The driver of the rental boat must be at least 21 years old. Renters must provide a valid driver’s license, credit card, and signed contract to CONCESSIONAIRE prior to rental.

• Safety: CONCESSIONAIRE will provide a safety training for drivers of the boat including an outline of the 15-minute orientation with checklist. All rental boats shall have safety equipment compatible with coast guard safety standards. All rentals boats will be inspected, cleaned and maintained by CONCESSIONAIRE. Lifejackets will be provided for all passengers. Children under the age of 13 are required by law to wear a lifejacket. Adults are not required by law to wear a lifejacket but will be reminded that it is a good practice.

• Emergency Communication: Renters must have a cell phone or other communications device available during the cruise.

• Towing: Towing service must be available at all times during active boat rental.

• Insurance: Insurance will be reviewed by City Risk Manager and/or City Attorney.

• Signs: CONCESSIONAIRE shall supply City/District with copies of all promotional materials at least ten days prior to use thereof for its reasonable approval. City/District reserves the right to approve all signs to be placed on the premises. Signs must comply with the City’s Sign Ordinance, Foster City Municipal Code Chapter 15.12.

• Parking: CONCESSIONAIRE shall park vehicles in areas designated by the City/District. Employees and customers shall be directed by CONCESSIONAIRE to park in designated legal parking spaces. All regulations governing controlled parking spaces and fire lanes shall be observed.

• Taxes: CONCESSIONAIRE shall pay when due all taxes levied on personal property on the premises and shall pay any possessory interest tax that may be levied in connection with use of the premises. CONCESSIONAIRE agrees to indemnify and save City/District harmless from all such taxes.

• Condition of Premises: CONCESSIONAIRE agrees to accept the premises and any improvements thereon in the existing condition, “as-is.” City/District shall not be obligated to make any alterations, additions, improvements or repairs to the premises.

• CONCESSIONAIRE’s Personnel: CONCESSIONAIRE shall keep the City/District advised, in writing, of the names, mailing addresses, and phone number of all CONCESSIONAIRE employees engaged in operating the concession at the premises. All employees shall be at least 16 years of age.
and fully trained and qualified, to perform duties assigned to them. They shall be recognizable as employees of the concession.

- **Quality of Service; Rates and Charges:** CONCESSIONAIRE shall maintain a consistently high standard of service. Service rendered shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. If City/District is of the opinion that any fee is not comparable with fees being charged in other similar operations, the City/District shall notify CONCESSIONAIRE and request it to justify such fee. If City/District shall thereafter reasonably determine that the fee is not comparable, CONCESSIONAIRE shall not implement same.

- **Renewal of Contract:** Not less than two months before the expiration of the Agreement term, the City/District will review the CONCESSIONAIRE’s performance and determine if the term should be extended. The criteria used for extension of the Agreement will include but not be limited to quality of service, maintenance of concession site, rates, charges, customer and public input, and safety procedures.

- **Lagoon Inspection and Maintenance:** City/District reserves the right of entry upon the premises at all reasonable times for inspection purposes and to do any and all work of any nature necessary for maintenance and operation of the lagoon. CONCESSIONAIRE shall be given reasonable notice when any such work may become necessary and will adjust concession operations in such a manner that City/District may proceed expeditiously. City/District shall coordinate with CONCESSIONAIRE in an attempt to cause a minimum of interference with CONCESSIONAIRE's activities.

- **Compliance:** CONCESSIONAIRE expressly agrees at all times during the term of the Agreement, at its own cost and expense, to maintain and operate the concession in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of this Agreement in force relating to public health, safety or welfare. CONCESSIONAIRE shall comply with all laws, rules and regulations applicable thereto, adopted by federal, state or other governmental bodies or departments of officers thereof, and this Agreement is expressly subject to present and future regulations and policies of the CITY/DISTRICT. CONCESSIONAIRE shall remedy without delay any defective or dangerous conditions. No alcoholic beverage (including beer and wine) or goods, merchandise or material which are in any way explosive or hazardous shall be sold, kept or stored on the premises. No offensive or dangerous activity shall be carried on or permitted on the premises.

### 3. Agreement Term
a. **Term.** The initial term of the Agreement shall commence January 1, 2021 and expire on June 30, 2026.

b. **Term Extensions.** The contract term may be renewed at the CITY’s sole option for up to two (2) two-year (24 months) increments. Within six (6) months of the expiration of the current term of the agreement, but not less than two (2) months before the expiration, CITY may exercise its option to extend the term, should an option remain, by notifying the CONCESSIONAIRE in writing.

4. **Fees and Payments**

a. **Concession Fee.** CONCESSIONAIRE shall pay the CITY/DISTRICT, without demand, the agreed upon percentage concession fee of CONCESSIONAIRE's gross receipts.

b. **Gross Receipts.** The Term “gross receipts” as used herein is the total amount of fees for service performed at the premises whether paid at the concession site or elsewhere, it being understood that sales on credit are to be included in gross receipts at the time of sale whether or not CONCESSIONAIRE actually receives payment. Any transaction shall be treated as a sale for the full price at the time such transaction was entered into irrespective of the time of payment. Gross sales shall not include the amount of any sales tax where such tax is stated separately, paid by CONCESSIONAIRE’s customers and remitted directly to the taxing authorities by CONCESSIONAIRE.

c. **Payment Schedule.** Beginning on the 15th day of the second calendar month of the term, and thereafter not later than the 15th day of each month of the term and the 15th day of the month next following the end of the term CONCESSIONAIRE shall pay the CITY/DISTRICT, without demand, the agreed upon percentage concession fee.

d. **Records; Inspection.** CONCESSIONAIRE shall keep true and complete books and records showing all of concession business transactions separately from any other business of CONCESSIONAIRE, in a manner reasonably acceptable to the CITY/DISTRICT. CONCESSIONAIRE shall preserve all such records for at least three years following the date of the last transaction recorded therein. CITY/DISTRICT shall have the right through its representatives, at all reasonable times, to inspect such books and records, including State of California Sales Tax and Federal Income Tax return. CITY/DISTRICT shall also have the right to examine all books and records at any time during the one-year period following the termination of this Agreement. CONCESSIONAIRE agrees that as part of his record keeping activity he shall:

(a) Record all purchases on the register showing a digital read-out of the total sale amount to the customer at the time of the sales transaction.
(b) Supply detail register tapes of daily sales transactions upon request for review at any time.
(c) Utilize a separate deposit bank account for all receipts from the premises prior to transfer thereof to any other depository.

5. Other Terms and Conditions

a. Agreement. The Concession Agreement will be executed within ten days following notification of such award (via City Clerk’s office).

b. Business License. A current Foster City business license is required to operate a concession in the City of Foster City.

Attachments:
- Exhibit A – Draft Concession Agreement
CONCESSIONS AGREEMENT
FOR
BOAT RENTAL CONCESSION
AT LEO RYAN PARK

This Agreement is made and entered into as of the 1st day of January, 2021 by and between the City of Foster City hereinafter called "CITY" and _________ hereinafter called "CONCESSIONAIRE".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

A. That CONCESSIONAIRE engaged CITY for authorization to operate a boat rental concession at Leo Ryan Park Boathouse ("Premises");

B. That CONCESSIONAIRE is qualified to operate the concession;

C. That the CITY and CONCESSIONAIRE wish to enter into an agreement upon the terms and conditions as hereinafter set forth.

1. Services. The services to be performed by CONCESSIONAIRE under this Agreement are set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONCESSIONAIRE under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon the date enumerated in Exhibit A, delivery of the product or completion of performance of services hereunder by CONCESSIONAIRE, whichever date shall first occur.

(b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement without cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. Nothing herein contained shall be deemed a limitation upon the right of CITY to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.
3. **Compensation; Expenses; Payment.** CONCESSIONAIRE shall compensate CITY in an amount fully described in Exhibit B attached hereto and by this reference incorporated herein.

4. **Records.** CONCESSIONAIRE shall keep and maintain accurate records of its gross receipts. Said records shall be available to CITY for review and copying during regular business hours at CONCESSIONAIRE’s place of business or as otherwise agreed upon by the parties.

5. **Authorization.** This Agreement becomes effective when endorsed by both parties in the space provided below.

6. **Relationship of Parties.** It is understood that the relationship of CONCESSIONAIRE to the CITY is that of an independent contractor and all persons working for or under the direction of CONCESSIONAIRE are its agents or employees and not agents or employees of the CITY.

7. **Schedule.** CONCESSIONAIRE shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions or deviations from the schedule as needed to account for unavoidable circumstances; provided, however, that CONCESSIONAIRE obtains authorization from the CITY.

8. **Indemnity.** To the fullest extent allowed by law, CONCESSIONAIRE hereby agrees to defend, indemnify, and save harmless CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, CITY or Estero Municipal Improvement District, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of CONCESSIONAIRE, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of CONCESSIONAIRE to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONCESSIONAIRE to indemnify CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.
CONCESSIONAIRE’s responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

9. Insurance. CONCESSIONAIRE shall acquire and maintain Workers’ Compensation, employer’s liability, commercial general liability, owned and non-owned and hired automobile liability insurance coverage relating to CONCESSIONAIRE’s services to be performed hereunder covering CITY’s risks in form subject to the approval of the City Attorney and/or CITY’s Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

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<tr>
<th>Insurance Category</th>
<th>Minimum Limits</th>
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<tbody>
<tr>
<td>Workers’ Compensation</td>
<td>statutory minimum</td>
</tr>
<tr>
<td>Employer’s Liability</td>
<td>$1,000,000 per accident for bodily injury or disease</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury and property damage</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CONCESSIONAIRE’s vehicle usage in performing services hereunder)</td>
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It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the CITY as an Additional Insured. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

CONCESSIONAIRE agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor’s work. Subcontractors hired by
CONCESSIONAIRE shall agree to be bound to CONCESSIONAIRE and CITY in the same manner and to the same extent as CONCESSIONAIRE is bound to CITY under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. CONCESSIONAIRE shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the CITY prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, CONCESSIONAIRE shall, on the Insurance Coverage form provided in Exhibit D, or equivalent, furnish CITY with certificates and copies of all declaration and endorsement pages for the insurance policy or policies required hereunder. With respect to commercial general liability and automobile liability insurance coverage, CONCESSIONAIRE must obtain and provide the following original endorsements:

(a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after CITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;

(b) Naming the CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and

(c) Providing the additional insured coverage under CONCESSIONAIRE’s insurance policy shall be primary and non-contributory insurance with respect to CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by CITY for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of CONCESSIONAIRE’s insurance and not contributory with it. CONCESSIONAIRE and its insurer may not seek contribution from CITY’s insurance or self-insurance.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance 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, to the extent required by this Agreement, before the CITY’s insurance or self-insurance may be called upon to protect CITY as a named Insured.
All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named CONCESSIONAIRE/Named Insured or CITY.

CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to CONCESSIONAIRE and CITY in the same manner and to the same extent as CONCESSIONAIRE is bound to CITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor’s work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

CONCESSIONAIRE shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event CONCESSIONAIRE fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by CONCESSIONAIRE.

10. WORKERS’ COMPENSATION. CONCESSIONAIRE certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONCESSIONAIRE certifies that it will comply with such provisions before commencing the performance of the work of this agreement.

11. NON-DISCRIMINATION. The CONCESSIONAIRE will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CONCESSIONAIRE will take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONCESSIONAIRE shall at all times be in compliance with the
requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The CONCESSIONAIRE agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

12. **Notice.** All notices required by this Agreement shall be given to the CITY and CONCESSIONAIRE in writing, by first class mail, postage prepaid, addressed as follows:

   **CITY:**
   City of Foster City
   610 Foster City Boulevard
   Foster City, CA 94404-2299
   Attention: Tiffany Oren, Recreation Manager

   **CONCESSIONAIRE:**
   Name
   Address
   City, State, Zip
   Attention: 
   Email Address:

13. **Non-Assignment.** This Agreement is not assignable either in whole or in part.

14. **Amendments.** This Agreement may be amended or modified only by written agreement signed by both parties.

15. **Validity.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

16. **Governing Law.** This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney’s fees and expenses of litigation of the successful party.

17. **Mediation.** Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
18. CONCESSIONAIRE shall pay, before delinquency, any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed against CONCESSIONAIRE or the CONCESSIONAIRE's property situated within the Premises, which become due during the term as a result of the CONCESSIONAIRE's use of the Premises. CONCESSIONAIRE acknowledges and understands that the property and Boathouse may be exempt from property taxation, because the Owner is a public entity, but that a property tax on CONCESSIONAIRE's possessory Interest, if any, in the Premises may be levied directly on the CONCESSIONAIRE.

19. Entire Agreement. This Agreement, including Exhibits A, B C, D, and E, comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: _________________________________
Catherine Mahanpour, Mayor

ATTEST:

Dated: ________________________________
Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: ________________________________
Jean Savaree, City Attorney

CONCESSIONAIRE

Dated: ________________________________
Type Name & Title of CONCESSIONAIRE
Authorized to Sign
EXHIBIT A

SCOPE OF WORK and SCHEDULE
FOR
BOAT RENTAL AT LEO RYAN PARK

Scope of Deliverables:

Scope of Services:

Term:
EXHIBIT B

CONCESSIONAIRE’S FEES and PAYMENT MILESTONES

Summary:

Payment Schedule:
EXHIBIT C
ADDITIONAL TERMS and CONDITIONS
This INSURANCE COVERAGE FORM modifies or documents insurance provided under the following:

**Named Insured:**

**Effective Work Date(s):**

**Description of Work/Locations/Vehicles:**

**ADDITIONAL INSURED:**

**City of Foster City/Estero Municipal Improvement District (CITY)**

610 Foster City Boulevard, Foster City, CA 94404

**Attention:**

**Contract Administrator**

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### Endorsement and Certificates of Insurance Required

The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)

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<th>Policy No.</th>
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- **General Liability:** (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. (Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85)

- **Auto Liability:** the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.

- **Other:**

**Certificate of Insurance Required (no endorsement needed) (Check all that apply)**

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- **Workers Compensation:** work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.

- **Professional Liability:**

**PRIMARY/NON-CONTRIBUTORY:** This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

**SEVERABILITY OF INTEREST:** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer’s limit of liability.

**PROVISIONS REGARDING THE INSURED’S DUTIES AFTER ACCIDENT OR LOSS:** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

**CANCELLATION NOTICE:** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

**WAIVER OF SUBROGATION:** The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

**Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.**

**SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER**

I, ________________________________________ __________________(print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

**SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)**

**ORGANIZATION:**

**TITLE:**

**ADDRESS:**

**TELEPHONE:** ()

**DATE ISSUED:**
Exhibit E
SPECIAL TERMS and CONDITIONS
CITY OF FOSTER CITY
PROPOSER RESPONSE FORM
Boat Rental Concession
at Leo Ryan Park

SECTION 1: Contact Information

Organization Name: _____________________________________________________________
Contact Name: _________________________________________________________________
Address: _______________________________________________________________________
Phone #: ______________________________________________________________________
Email: _________________________________________________________________________

SECTION 2: Addenda

I acknowledge receipt of the following addenda:

<table>
<thead>
<tr>
<th>Addenda Number</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SECTION 3: Qualifications

<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Describe the Experience and Qualifications of the Organization and its Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Include number of years, type of experience and certifications and licenses</td>
</tr>
<tr>
<td>Equipment Rental</td>
<td></td>
</tr>
<tr>
<td>(specific to water access equipment, if any)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other services proposed to be offered</th>
<th>Qualifications for additional services proposed in Section 5, if any, should be included here.</th>
</tr>
</thead>
</table>

Description of Team to Provide Boat Rental Services

<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Role with Organization</th>
<th>Proposed Role with Concession Operation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What sets your organization apart and what do you bring to the concession? How do your reputation, service capabilities and quality make you a good fit for the needs of the community in Foster City?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

The current concessionaire provides a boat rental service. What additional equipment or services, if any, would you propose to provide?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

How do you plan to integrate the concession into the fabric of Foster City?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

SECTION 4: Conflict of Interest

☐ By checking this box, we confirm that this engagement will not result in a conflict of interest for the organization or any of the team members.

SECTION 5: Proposal

The Request for Proposals outlines the minimum proposed terms for the concession agreement. Please provide any additional or different proposal terms that will best meet or exceed these minimums. Any requested waivers, reductions, exceptions or alternatives to the minimum terms must be included below in order to be considered.
<table>
<thead>
<tr>
<th>Section</th>
<th>Accept RFP</th>
<th>Additions, Exceptions, Waivers or Alternative Terms (add sheets if needed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a: Location and Equipment</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2a: Purpose, Days and Hours, Operation</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2b: Compliance</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2c: Condition of Premises</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>2d: Quality of Service, Rates and Charges</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>3a: Term</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>3b: Term Extensions</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>4a: Concession Fee</td>
<td>☐</td>
<td>If this box is blank, the proposal will be considered incomplete.</td>
</tr>
<tr>
<td>4b: Gross Receipts</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>4c: Project Payment Schedule</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>4d: Records; Inspection</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5a: Agreement</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5b: Business License</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5c: Signs</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5d: Parking</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5e: Taxes</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5f: Concessionaire’s Personnel</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>5g: Park Inspection and Maintenance</td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>Exhibit A: Draft Concession Agreement</td>
<td>☐</td>
<td>Exceptions to any of the terms of the agreement, including requested insurance waivers must be indicated here.</td>
</tr>
<tr>
<td>Section</td>
<td>Accept RFP</td>
<td>Additions, Exceptions, Waivers or Alternative Terms (add sheets if needed)</td>
</tr>
<tr>
<td>---------</td>
<td>------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Check this box to indicate your understanding that contracts will be awarded to a single concessionaire for this service</td>
<td>☐</td>
<td>If this box is not checked, the proposal will be considered incomplete</td>
</tr>
<tr>
<td>Please list other Proposed Terms not contained in RFP, if any (optional)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SECTION 6: Submittal guidelines**

Submit two (2) hard copies of this proposal form and optional one-page cover letter by 4 PM on Thursday, December 3, 2020 to:

**Recreation Center**  
650 Shell Boulevard  
Foster City, CA 94404

Proposals must be received by the date and time above. Late proposals will not be considered.

By signing below I attest that the information contained in this proposal is true and correct.

______________________________  
SIGNATURE OF CONCESSIONAIRE AUTHORIZED TO SIGN AGREEMENTS  

______________________________  
DATE

______________________________  
PRINT NAME AND TITLE