

1 **JOINT POWERS AGREEMENT**

2
3 **between**
4 **CALIFORNIA DEPARTMENT OF PARKS AND RECREATION**
5 **and**
6 **EL DORADO COUNTY**

7 **for**
8 **ADMINISTRATION OF WHITEWATER CONCESSION CONTRACTS ON THE**
9 **SOUTH FORK OF THE AMERICAN RIVER**

10 **at**
11 **MARSHALL GOLD DISCOVERY STATE HISTORIC PARK AND FOLSOM LAKE**
12 **STATE RECREATION AREA**

13
14
15 THIS JOINT POWERS AGREEMENT (Agreement) is made and entered into
16 this ___ day of _____, 2020, by and between **STATE OF CALIFORNIA**,
17 acting through the Department of Parks and Recreation, hereinafter referred to as
18 **“STATE”**, and the **COUNTY OF EL DORADO**, acting by and through the Parks and
19 Trails Division, hereinafter referred to as **“COUNTY”** (each a Party and collectively
20 the Parties) for the purpose of setting forth the respective rights and obligations of the
21 Parties in the management of the State’s Whitewater Program on the South Fork of
22 the American River (hereinafter referred to as the Whitewater Program) which
23 operates within Marshall Gold Discovery State Historic Park (MGDSHP) and Folsom
24 Lake State Recreation Area (FLSRA).

25
26 **RECITALS**

27
28 **WHEREAS:**

29
30 1. The STATE and the United States Department of the Interior, Bureau of
31 Reclamation (BOR) entered into a twenty-five (25) year Managing Partner Agreement
32 (MPA) effective January 24, 2012, providing State the authority to develop and
33 operate FLSRA for public recreation purposes, which includes issuing and
34 administering third-party contracts to provide services consistent with the purpose of
35 the MPA; and

36
37 2. The rights of the STATE and COUNTY under the MPA are subordinate
38 to the rights of BOR and Water User Organizations or Use-Authorization Permittees,
39 as defined by the MPA. BOR reserves the right to close any portion of the project
40 area if such restriction is necessary in the interest of project operation, public safety
41 or national security; and

42
43 3. The STATE is authorized under Public Resources Code §5003 to
44 administer, protect, develop and interpret the property under its jurisdiction for the
45 use and enjoyment of the public; and

1
2 4. The STATE, through California Public Resources Code §5080.03, is
3 authorized to enter into contracts with and collect use fees from commercial
4 whitewater outfitters (CONCESSIONAIRE) for commercial recreation activities on
5 State Park lands; and

6
7 5. The COUNTY, pursuant to California Harbors & Navigation Code §660
8 and County Ordinance No. 4594, manages and regulates whitewater recreation on
9 the South Fork of the American River between Chili Bar and Salmon Falls through
10 commercial river use permitting of CONCESSIONAIRE.

11
12 6. STATE and COUNTY have expressed mutual interest in streamlining
13 the permitting and fee collection processes on the South Fork of the American River
14 at Salmon Falls raft take-out area and river/lake corridor upstream to approximately
15 100 yards east of Hospital Bar Rapid located in FLSRA and the portion of MGDSHP
16 known as North Beach, the boundaries of which are further described in **Exhibit A**,
17 attached hereto and hereby made part of this Agreement (“Property”), to improve
18 visitor services and concession administration; and

19
20 7. The General Plans for FLSRA and MGDSHP support concessions and
21 whitewater rafting recreation; and

22
23 8. Each of the parties hereto is a public agency and authorized to enter
24 into a Joint Powers Agreement pursuant to California Government Code §6500 et
25 seq. for the joint exercise of any power common to the contracting parties.

26
27 9. By this Agreement, the parties do not intend to create an agency or
28 entity separate from themselves.

29
30 **NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS**
31 **CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

32
33 **1. PURPOSE**

34
35 The purpose of this Agreement is to coordinate management of
36 CONCESSIONAIRE river access, activities, and use of FLSRA and MGDSHP and to
37 authorize the COUNTY, on behalf of the STATE, to administer and collect fees for
38 CONCESSIONAIRE use and access of FLSRA and MGDSHP areas designated in
39 Exhibit A (“Concession Permit”). The purpose of this Agreement shall be
40 accomplished in the manner hereinafter set forth.

41
42 **2. TERM**

43
44 This Agreement shall become effective on the date of approval by the
45 California Department of General Services as shown below. The term of this
46 Agreement shall be five years (5) which may be extended by mutual written

1 agreement of the Parties; however, any extension of the term shall not exceed the
2 term of the MPA between the STATE and BOR. The Agreement is not assignable
3 from the STATE to BOR, and will terminate at the expiration or termination of the
4 MPA. Further, this Agreement in no way affects, modifies, or changes the MPA and
5 its terms between BOR and the STATE.

6
7 **3. MANAGEMENT OF THE PROPERTY**

8
9 The STATE shall retain all possession, use, control, day use fee collection and
10 operational and maintenance responsibility for the Property except as explicitly stated
11 herein. STATE makes no representations or warranties respecting the condition of
12 the Property, except as expressly stated herein.

13
14 **4. COUNTY RESPONSIBILITIES**

15
16 The COUNTY agrees to do the following:

17
18 A. COUNTY, on behalf of STATE, shall administer Concession Permits for the
19 take-out and put-in of commercial whitewater rafts and other non-motorized boats at
20 FLSRA and MGDSHP on the sites designated in **Exhibit A**, subject to the terms of
21 this Agreement. Concession Permits shall not be construed as a transfer or
22 conveyance of any interest in the BOR land, water, or public facilities. Concession
23 Permits may not allow or authorize the development of private exclusive use of BOR
24 land, water, or public facilities. COUNTY shall require CONCESSIONNAIRE to
25 adhere to all terms and conditions set forth in **Exhibit C**, which shall be included as
26 an exhibit to the Concession Permit.

27
28 B. COUNTY shall be responsible for ensuring its contractors and subcontractors
29 comply with the terms and conditions contained herein. Failure of COUNTY
30 contractors or subcontractors to abide by the terms and conditions of this Agreement
31 shall constitute default by COUNTY.

32
33 C. In consultation with STATE, COUNTY shall be responsible for developing,
34 permitting, executing, administering, managing and enforcing any Concession Permit
35 with a CONCESSIONNAIRE for access to the Property or any portion thereof, subject
36 to the terms and conditions contained in this Agreement. STATE must approve the
37 terms and conditions of any such Concession Permit and shall be included as a party
38 to any such permit, with all the corresponding rights to enforce the permit.

39
40 D. Any Concession Permit allowing CONCESSIONNAIRE access to the Property
41 or a portion thereof shall include a provision requiring the CONCESSIONNAIRE and
42 any sub-concessionaires to indemnify the STATE, COUNTY and BOR, its officers,
43 agents, employees, contractors, and assigns against all injuries and damages to
44 persons and property resulting in connection with the CONCESSIONNAIRE'S
45 operations on the Property, and shall include any other provisions that are necessary
46 to enforce and implement the terms of this Agreement. COUNTY shall include the

1 same such indemnity provision, and incorporate the relevant terms, conditions, and
2 requirements contained herein, when contracting out all or any portion of the work
3 permitted hereunder.

4
5 E. STATE, upon identifying CONCESSIONAIRE'S non-compliance with
6 Concession Permit requirements, shall provide notice to the COUNTY as soon as
7 possible, but no longer than 30 days, of the need for permit enforcement. STATE
8 shall have the right, but not the obligation, to enforce the permit in the event
9 COUNTY fails to do so after a material breach of the permit by the
10 CONCESSIONAIRE. Failure by the COUNTY to enforce the permit, at its sole
11 expense, against a defaulting CONCESSIONAIRE shall constitute default by the
12 COUNTY of this Agreement, and if not cured as required by STATE'S written 30-day
13 notification, shall entitle STATE to seek any and all remedies available, including
14 reimbursement from COUNTY for all costs, including attorney fees, incurred by
15 STATE in enforcing the permit against CONCESSIONAIRE, and at STATE'S sole
16 discretion, termination of this Agreement.

17
18 F. The term of the Concession Permit issued by the COUNTY may be for a
19 period not to exceed 3 years, nor it may exceed the term of the MPA, and shall
20 provide that the concession permit fees be reviewed by COUNTY and STATE and
21 adjusted at least every five years, upon approval by COUNTY and STATE, to reflect
22 market rates and economic conditions prevailing in which the concession is located.

23
24 G. Outside the COUNTY'S concession permitting process, the rules, regulations
25 and policies of STATE applicable to units of the State Park System shall be
26 applicable to the Property, provided, however, COUNTY may adopt rules and
27 regulations for the use and enjoyment of the Property by the public if they do not
28 conflict with STATE rules, regulations and policies. Such proposed COUNTY rules
29 and regulations shall be submitted to the State for review and shall not be
30 implemented without the prior approval of STATE.

31
32 H. COUNTY shall not use or permit the Property at MGDSP or FLSRA to be
33 used in whole or in part during the term of this Agreement for any purpose
34 whatsoever other than that permitted by this Agreement without the prior written
35 consent of the STATE.

36
37 I. COUNTY may, upon receiving written approval of the STATE, use the
38 Property on a rent-free basis to provide raft towing services to the public and
39 commercial whitewater outfitters from the Property. The raft-towing service may be
40 provided for a fee, as approved by the STATE, to ensure adequate cost recovery to
41 the COUNTY to provide such visitor services. The COUNTY or STATE may enter
42 into concession contracts with raft-tow service providers in the absence of the
43 COUNTY directly providing raft-tow services. The STATE reserves the right to
44 enforce provisions of the raft towing operations as provided in **Exhibit B**.

1 J. Activities conducted on the Property shall comply with all State and Federal
2 environmental laws, including, but not limited to, the Endangered Species Act,
3 California Environmental Quality Act ("CEQA"), National Environmental Protection Act
4 ("NEPA"), and Section 5024 of the California Public Resources Code.
5 Concessionaires, contractors and permittees shall be required to comply with all
6 applicable provisions of Federal, State, and local laws, rules and regulations, in force
7 now or as may be promulgated or changed in the future. COUNTY is responsible for
8 all Concessionaire Permit enforcement with input from the STATE and/or BOR
9 related to corresponding laws.

10
11 **5. STATE RESPONSIBILITIES**
12

13 STATE responsibilities pursuant to this Agreement are the following:
14

15 A. STATE agrees to make the Property available to COUNTY for the operation
16 and administration of the Property during the term of this Agreement under the terms
17 and conditions specified herein.
18

19 B. STATE agrees to cooperate with COUNTY in all phases of the project
20 development and operation; facilitation of legal and executive office review;
21 development of concession permit terms and conditions, including a concessionaire
22 fee schedule; final approval of project proposal; and selection of
23 CONCESSIONAIRE(S).
24

25 C. STATE shall retain primary responsibility for law enforcement within State Park
26 boundaries.
27

28 D. STATE hereby grants COUNTY a right of entry on the Property to allow
29 COUNTY to take any reasonable actions necessary to implement the provisions of
30 this Agreement.
31

32 E. At all times during the term of this Agreement, there shall be and is hereby
33 expressly reserved to STATE and to any of its agencies, contractors, agents,
34 employees, representatives or licensees, the right at any and all times, and any and
35 all places, to temporarily enter upon said Property to survey, inspect, or perform any
36 other lawful State purposes, including all purposes reasonably related to
37 implementation and enforcement of this Agreement. COUNTY agrees to not interfere
38 with State's right to enter the Property premises.
39

40 F. STATE shall not be obligated to make any alterations, additions, or
41 improvements to the Property except as otherwise expressly provided for in this
42 Agreement, nor does this Agreement allow the COUNTY to add any improvements to
43 the Property
44

45 G. Right to Halt Work. Notwithstanding any other provision of this Agreement, the
46 State shall have the right to halt work or other COUNTY or CONCESSIONAIRE

1 activities and demand mitigation measures at any time in the event it is determined
2 that such work or activities pose a threat to the health and safety of the public or
3 other persons.

4
5 **6. REVENUE SHARING**
6

7 A. In consideration of the services to be performed by the County pursuant to this
8 Agreement, the following access and user fees shall apply:
9

10 (1) Annual Concession Permit Fees: CONCESSIONAIRE access at Salmon Falls
11 and/or MGDSHP shall be charged an annual fee of three-hundred (\$300)
12 dollars. COUNTY shall remit to STATE by the fifteenth (15th) of the month
13 following the annual permit process, all annual concession permit fees less
14 ten percent (10%) of the total value to reimburse the COUNTY for
15 administering the permitting process.
16

17 (2) Customer Use Fees: In addition to annual fees as prescribed above, COUNTY
18 shall require CONCESSIONAIRES to pay customer use fees as set forth
19 below. Guide trainees at an outfitter guide school, students, or any other
20 individuals on a whitewater trip or school are considered commercial
21 client/customers if they pay money to or give compensation in any form to the
22 CONCESSIONAIRE:
23

24 Folsom Lake State Recreation Area (FLSRA) – Salmon Falls: Fees
25 from CONCESSIONAIRES shall be submitted by the COUNTY to the
26 Gold Fields District Office on the COUNTY’S Electronic Monthly
27 Operations Report (EMOR).

- 28 • \$3.00 per commercial client

29 Marshall Gold Discovery State Historic Park (MGDSHP): Fees from
30 CONCESSIONAIRES shall be submitted by the COUNTY to the Gold
31 Fields District Office on the COUNTY’S EMOR.

- 32 • \$2.50 per kayak launched within MGDSHP
- 33 • \$15.00 per raft launched within MGDSHP
- 34 • \$1.00 per kayak lunch stop within MGDSHP
- 35 • \$6.00 per raft lunch stop within MGDSHP

36
37 COUNTY shall remit to STATE by the fifteenth (15th) of each month all
38 customer use fees less fifty cents (\$.50) per commercial client to reimburse
39 the COUNTY for administering the fee collection process for the prior month
40 reporting period.
41

42 (3) CONCESSIONAIRE Penalties: All monetary penalties assessed by COUNTY
43 on CONCESSIONAIRES for late rent, failure to maintain the performance
44 bond, or legal proceedings resulting from a permit default shall be remitted to
45 the STATE by the fifteenth (15th) of each month for the prior month which
46 penalties were assessed.

1
2 (4) Any change in the permit, customer use or penalty fee structures shall be
3 mutually agreed upon in writing by the Parties. Any changes in the fee
4 structure mutually agreed to by the Parties shall not require approval from the
5 California Department of General Services (DGS).
6

7 **7. MAINTENANCE**
8

9 A. STATE shall not be obligated to make any repairs to or maintain any
10 improvement on the Property. COUNTY hereby expressly waives the right to make
11 repairs at the expense of the STATE and expressly waives any benefit or rights it
12 may have under Sections 1941 and 1942 of the California Civil Code relating thereto,
13 if there be any. STATE has made no representations respecting the condition of the
14 Property, except as specifically set forth in this Agreement.
15

16 **8. RECORDS**
17

18 A. At all times during the term of this Agreement, COUNTY shall keep separate,
19 true, and complete books, records, and accounts of all income and fees received and
20 all expenditures made in relation to all matters related to or in connection with any raft
21 towing services and the concession permitting process. COUNTY shall report said
22 income and expenditures to STATE in a manner acceptable to STATE on a monthly
23 basis, under terms to be agreed upon in writing by the Parties. Upon expiration or
24 termination of this Agreement, COUNTY shall provide STATE with a statement of
25 income and expenditures for the period not previously reported, prepared as set forth
26 above, and this obligation shall survive the expiration or termination of this
27 Agreement. These records are subject to the Public Records Act.
28

29 B. The books, records, and accounts applying to the operation of the Property,
30 any raft towing services, and the concession permitting process kept by COUNTY
31 shall be open for audit or inspection by STATE at all reasonable times. All records
32 shall be kept for a period of at least four (4) years.
33

34 **9. HOLD HARMLESS AGREEMENT**
35

36 A. COUNTY shall indemnify, protect, save, hold harmless, and defend STATE
37 and BOR, its officers, agents, and/or employees against any and all claims,
38 demands, and legal actions for injury or damages to persons or property, or both,
39 including, but not limited to, all costs, expenses, attorney fees, experts fees, and
40 costs of suit, arising out of or in any way connected to the performance of this
41 Agreement by COUNTY, its officers, employees, agents, and/or contractors and
42 subcontractors; or as a result of the acts or omissions of the COUNTY, its officers,
43 employees, agents and/or contractors and subcontractors arising from or in any way
44 connected with the COUNTY's implementation of this Agreement, provided, however,
45 in no event shall COUNTY be obligated to defend or indemnify STATE and BOR with
46 respect to the sole negligence or willful misconduct of STATE or BOR, its officers,

1 employees, and/or agents. For purposes of this Agreement, an agent shall not
2 include CONCESSIONAIRES.

3
4 **10. NO ASSIGNMENT**

5
6 A. Any interest of COUNTY or a third party in the Property or any portion thereof,
7 shall not be assigned, delegated, mortgaged, sublet, hypothecated, or transferred
8 without the prior written consent of STATE and BOR. The Parties agree that only the
9 STATE and BOR may grant real property rights in the Property.

10
11 B. Neither the STATE nor COUNTY shall assign any of the rights or obligations
12 granted to it by this Agreement, except as otherwise specified herein.

13
14 **11. NOTICES AND CONTACTS**

15
16 Any notice and/or report required to be given or that may be given by either
17 party to the other shall be deemed to have been fully given when made in writing and
18 deposited in the United States Postal Service, postage prepaid, and addressed as
19 follows:

20
21 STATE: District Superintendent
22 Department of Parks and Recreation
23 Gold Fields District
24 7806 Folsom-Auburn Road
25 Folsom, CA 95630-1797
26 (916) 988-0205

27
28 COUNTY: Parks Manager
29 County of El Dorado, Parks and Trails
30 200 Armory Drive
31 Placerville, CA 95667
32 (530) 621-5360

33
34 COPY: Department of Parks and Recreation
35 Partnerships Division
36 P.O. Box 942896
37 Sacramento, CA 94296-0001
38 (916) 653-7733
39 Parternships@parks.ca.gov

40
41 The above shall also be the contacts for each Party for purposes of
42 implementing this Agreement.

43
44 **12. DEFAULTS AND REMEDIES**

1 Any failure of a Party to comply with the terms and conditions of this
2 Agreement, if not cured within 30 days after receiving written notice from the other
3 Party that a cure is necessary, shall constitute default and breach of this Agreement,
4 provided, however, if the nature of the failure to comply with this Agreement is such
5 that it cannot be reasonably cured within the thirty (30) day period, the offending party
6 shall not be deemed to be in default if an effective cure is commenced within the
7 thirty (30) day period and thereafter diligently prosecuted to completion.

8
9 A. Default by STATE: In the event of default or breach of this Agreement by
10 STATE, COUNTY shall have the right to terminate this Agreement by providing
11 written notice to STATE or, at its option, keep this Agreement in effect and initiate an
12 action to recover all damages flowing from such breach. Upon termination, COUNTY
13 shall immediately transfer the rights and responsibilities granted by this agreement to
14 the COUNTY back to the STATE. In such an event, COUNTY shall be entitled to all
15 rights and remedies at law and/or inequity including, but not limited to, costs and
16 expenses incurred by COUNTY as a result of termination, and compensation for all
17 damages suffered by COUNTY as a result of STATE's failure to perform its obligation
18 under this Agreement.

19
20 B. Default by COUNTY: In the event of default or breach of this Agreement by
21 COUNTY, STATE shall have the right to terminate this Agreement or, at its option,
22 keep this Agreement in effect and initiate an action to and recover all damages
23 flowing from such breach. Upon receiving written notice of termination from STATE,
24 COUNTY shall immediately transfer the rights and responsibilities granted by this
25 agreement to the COUNTY back to the STATE. In such event, STATE shall be
26 entitled to all rights and remedies at law and/or in equity, including but not limited to,
27 costs and expenses incurred by STATE in recovering possession of and/or restoring
28 the Property, and compensation for all damages suffered by STATE as a result of
29 COUNTY's failure to perform its obligations under this Agreement.

30 31 **13. DISPUTES**

32
33 The Parties shall make a good faith effort to resolve disputes by negotiation.
34 Disputes that cannot be resolved at the field level shall be presented to the DPR
35 District Superintendent, Gold Fields District, and the COUNTY'S Parks Manager for
36 final resolution.

37 38 **14. MODIFICATION**

39
40 Modifications to this Agreement may be made by mutual written agreement of
41 the Parties and shall become effective upon signature of the Parties, or upon
42 approval by the COUNTY and California Department of General Services, if such
43 approval is required. Any changes to the fee structure contemplated herein shall not
44 require approval by DGS.

1 **15. TERMINATION**

2
3 The parties may terminate this Agreement at any time by written mutual
4 agreement of the Parties. Upon termination by mutual agreement, COUNTY shall
5 within 30 days of such termination, transfer the rights and responsibilities granted by
6 this agreement to the COUNTY back to the STATE. The obligations of the Parties
7 provided for in Section 12 herein shall survive the expiration or termination of this
8 Agreement.

9
10 In the event of termination of this Agreement, any property acquired under this
11 Agreement by COUNTY shall remain in the possession and ownership of COUNTY
12 unless payment therefor is made by the STATE to COUNTY, and any property
13 acquired under this Agreement by the STATE shall remain in the possession and
14 ownership of the STATE unless payment therefor is made by the COUNTY to the
15 STATE.

16
17 **16. ENVIRONMENTAL AWARENESS AND RESOURCE PROTECTION**

18
19 COUNTY, in the performance of this Agreement, shall comply with STATE's
20 resource management and preservation mandates in the conduct of all activities that
21 impact cultural, natural, or scenic resources. These mandates include the California
22 Public Resources Code Sections 5024 et seq. and 5097 et seq., STATE's Resource
23 Management Directives, and the United States Secretary of the Interior's Guidelines
24 for Historic Preservation.

25
26 A. COUNTY shall comply with all laws, federal, state, or local, existing during the
27 term of this Agreement pertaining to the use, storage, transportation, and disposal of
28 any hazardous substance, as that term is defined in such applicable law. In the event
29 the STATE or any of its affiliates, successors, principals, employees, or agents
30 should incur any liability, cost, or expense, including attorney's fees and costs, as a
31 result of the COUNTY'S illegal use, storage, transportation, or disposal of any
32 hazardous substance, including any petroleum derivative, COUNTY shall protect,
33 indemnify, defend, and hold harmless any of these individuals or entities against such
34 liability. Where COUNTY is found to be in breach of this provision due to the
35 issuance of a government order directing COUNTY to cease and desist any illegal
36 action in connection with a hazardous substance, or to remediate a contaminated
37 condition directly caused by COUNTY or any person acting under COUNTY direct
38 control or authority, COUNTY shall be responsible for all costs and expenses of
39 complying with such order, including any and all expenses imposed on or incurred by
40 the STATE in connection with or in response to such government order.

41
42 B. Notwithstanding the foregoing, in the event a government order is issued
43 naming COUNTY, or COUNTY incurs any liability during or after the term of the
44 Agreement in connection with contamination that preexisted the COUNTY obligations
45 under this Agreement, or prior Agreements or that were not directly caused by
46 COUNTY, the STATE shall be solely responsible as between COUNTY and STATE

1 for all expenses and efforts in connection therewith, and STATE shall reimburse
2 COUNTY for all reasonable expenses actually incurred by COUNTY therewith.

3
4 **17. SIGNS AND ADVERTISING**

5
6 No signs, logos, names, placards, or advertising matter shall be inscribed,
7 painted, or affixed upon Property without STATE's prior written approval of the
8 specific text, design and location. Approval will be granted only when said signs or
9 advertising are consistent with the purposes of this Agreement and State Park
10 policies.

11
12 **18. LIMITATION**

13
14 This Agreement is subject to all valid and existing contracts, leases, licenses,
15 encumbrances, and claims of title that may affect Property.

16
17 **19. PARAGRAPH TITLES**

18
19 The paragraph titles in this Agreement are inserted only as a matter of
20 convenience and reference and in no way define, limit, or describe the scope or intent
21 of this Agreement or in any way affect this Agreement.

22
23 **20. AGREEMENT IN COUNTERPARTS**

24
25 This Agreement may be executed in counterparts, each of which shall be
26 deemed an original.

27
28 **21. AGREEMENT IN WRITING**

29
30 This Agreement contains and embraces the entire Agreement between the
31 parties hereto and neither it nor any part of it may be changed, altered, modified,
32 limited, or extended orally or by any Agreement between the parties unless such
33 Agreement be expressed in writing, signed, and acknowledged by the STATE and
34 COUNTY or their successors in interest.

35
36 **22. PARTIAL INVALIDITY**

37
38 If any term, covenant, condition, or provision of this Agreement is held by a
39 court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of
40 the provisions hereof shall remain in full force and effect and shall in no way be
41 affected, impaired, or invalidated thereby.

42
43 **23. TIME IS OF THE ESSENCE**

44
45 Time shall be of the essence in the performance of this Agreement.

46

1 **24. MISCELLANEOUS**

2
3 A. Except as specifically provided in this Agreement, nothing in this Agreement
4 shall be construed as giving either of the Parties the right or ability to bind the other or
5 to create any joint liability with the other Party with regard to or as a result of the
6 activities undertaken to implement this Agreement.

7
8 B. Except as provided in this Agreement, neither Party waives any of the
9 privileges and immunities from liability, exemptions from laws, or ordinances and
10 rules. All pension, relief, disability, workers' compensation and other benefits that
11 apply to the activity of officers, agents or employees of any Party shall apply to them
12 to the same extent while engaged in activities for the implementation of this
13 Agreement. Any employee and/or agent of a Party shall remain the employee and/or
14 agent of that Party while engaged in an activity for the implementation of this
15 Agreement.

16
17 C. Each Party agrees to act in good faith with regard to the other Party and any
18 activities conducted in connection with or arising from the implementation of this
19 Agreement.

20
21 D. The Parties each warrant that they have the authority to execute this
22 Agreement.

23
24 **25. WAIVER OF RIGHTS, CLAIMS, AND AGREEMENT TERMS**

25
26 Unless otherwise provided by this Agreement, no waiver by either party at any
27 time of any of the terms, conditions, or covenants of this Agreement shall be deemed
28 as a waiver at any time thereafter of the same or of any other term, condition, or
29 covenant herein contained, nor of the strict and prompt performance thereof. No
30 delay, failure, or omission of the STATE to re-enter the Property or to exercise any
31 right, power, or privilege, or option arising from any breach, nor any subsequent
32 acceptance of rent then or thereafter accrued shall impair any such right, power,
33 privilege, or option, or be construed as a waiver of such breach or relinquishment of
34 any right or acquiescence therein.

35
36 **26. INTERPRETATION OF AGREEMENT**

37
38 This Agreement is made under and is subject to the laws of the State of
39 California in all respects as to interpretation, construction, operation, effect, and
40 performance. Any dispute between the parties in connection with this Agreement
41 shall be venued in Sacramento County or El Dorado County as mutually agreed
42 upon.

43
44 **27. NO THIRD PARTY BENEFICIARIES**

1 This Agreement does not confer any additional legal rights, liabilities, or obligations
2 between the Parties or to third parties that do not already exist.

3
4 **28. MUTUAL DRAFTING**

5
6 This Agreement shall be deemed to have been drafted by both parties, with each
7 having equal say and status. In no event shall any term be interpreted more favorably
8 as to one party or the other.

9
10 **29. OTHER AGREEMENTS**

11
12 This Agreement in no way restricts either party from participation in similar
13 Agreements with other public or private entities.

14
15 **30. COUNTY CONTRACT ADMINISTRATOR**

16
17 The County officer or employee with responsibility for administering this Agreement is
18 Vickie Sanders, Parks Manager or successor.

19
20 (signature page to follow)

1 **IN WITNESS WHEREOF**, the parties have executed this Agreement the day
2 and year first above written.

3
4 **COUNTY OF EL DORADO**
5 **PARKS AND TRAILS**

STATE OF CALIFORNIA
 DEPARTMENT OF PARKS AND
 RECREATION

6
7
8
9 By: _____

 By: _____

10
11 Title: _____

 Title: _____

12
13 Date: _____

 Date: _____

14
15 Attest:

16
17 _____
18 COUNTY Clerk/Agency Secretary

19
20 Approved as to Form:

21
22 _____
23 COUNTY Attorney/Agency Counsel

24
25
26
27 **APPROVED:**
 DEPARTMENT OF GENERAL SERVICES

EXHIBIT A – THE PROPERTY



River/Lake Corridor between Salmon Falls Takeout and Hospital Bar Rapid (yellow highlight)



Whitewater Rafting Access Point at Marshall Gold Discovery SHP

EXHIBIT B – SAMPLE RAFT TOWING OPERATIONAL GUIDELINES

1 The Salmon Falls premises at FLSRA may be used by the COUNTY to
2 operate an optional raft and vessel towing service for public, private and commercial
3 clients on the American River in accordance with the following:

4 A. All tow vessels shall comply with applicable California boating laws
5 including displaying current registration stickers and vessel registration
6 number. Tow vessels shall be inspected and approved by State prior to being
7 placed in service. All watercraft used in tow service operations shall have four
8 stroke engines unless otherwise approved by State.

9 B. All tow vessels shall display COUNTY name or an identifying logo on
10 both sides. Name and/or logo must be easily identifiable from shoreline.

11 C. All equipment, including ropes, cables and straps shall be of high
12 quality, well maintained and secured inside of vessel when not in use.

13 D. All tow vessels shall observe the speed limit of five miles per hour (5
14 MPH) at all times within the area of operation. Tow vessels shall be fully
15 capable of towing fifteen (15) loaded rafts at 5 MPH.

16 E. COUNTY shall manage the number of rafts and boats being towed so
17 as not to cause a hindrance to other boaters or recreationists.

18 F. All rafts and boats shall be towed in a bow to stern direction. Tow lines
19 shall be designated such that each raft or boat being towed is attached
20 directly to the line and not another boat.

21 G. Tow services shall begin where the river current decreases significantly
22 due to the effects of lake elevation. This location shall be designated
23 approximately mid-channel by a buoy, individual on a vessel, or other easily
24 visible marker indicating clearly where tow will begin. COUNTY shall be
25 responsible for maintaining proper location of marker.

26 H. COUNTY shall provide a level of service frequency such that customers
27 are not waiting longer than 25 minutes to begin to be towed.

28 I. Tow vessels shall only launch at approved boat launching facilities
29 within Folsom Lake SRA or at the Salmon Falls Parking Area. Vessels must
30 be launched prior to 1:00 PM at Salmon Falls. COUNTY may launch below
31 the posts/gate at the Salmon Falls Parking Area but must park out of ramp
32 area in the upper gravel parking lot and have properly displayed Gold Fields
33 District parking passes. The posts/gate shall remain locked at all times when
34 not in use.

35 J. COUNTY may place staff on shore at the beginning of the tow service
36 location to collect monies and organize tows. A banner that is no larger than
37 two (2) foot by two (2) foot may be placed, near COUNTY staff in a manner
38 approved by the State. Banner should include COUNTY name, rates and
39 hours of operation.

40 K. Prior to commencement of operations, COUNTY shall submit in writing
41 the names of all staff to District Superintendent or designee for review and
42 approval.

43 L. All COUNTY towing staff shall be issued and required to wear, at all
44 times, an approved U.S. Coast Guard Personal Floatation Device (PFD).

1 The PFD shall be of a bright color contrasting with the water, so as to be
2 visible in open water conditions.

3 M. All COUNTY staff shall wear a uniform or other clothing that can be
4 easily identified by the public and park staff, such as a hat or PFD with
5 company logo displayed.

6 N. All COUNTY towing staff shall maintain a valid California Boater Card.

7 O. All operations shall cease whenever wind, thunderstorms or other
8 weather events results in a significant safety threat.

9 P. COUNTY shall remove all property, including tow vessels, from the
10 premises at the end of each day.

11 Q. Vehicles used by COUNTY shall be in good operating condition.

12 R. COUNTY shall not assign calls of service to other operators. In the
13 event the tow service is unable to respond or will be delayed, COUNTY shall
14 notify State immediately.

15 S. COUNTY shall have a working communication device onsite at all times
16 and shall immediately report any injury or non-injury accident or incident to
17 State Parks Dispatch at (916) 358-1300. The names of COUNTY staff; the
18 names, addresses and phone numbers of patrons involved in the accident or
19 incident; and any related witnesses shall be collected and immediately made
20 available to park staff.

21 T. COUNTY shall maintain accurate records of all services. Records shall
22 include, but are not limited to, number of crafts towed, tows billed and
23 revenues collected. Records shall be made available to State upon request.

24 U. COUNTY shall conduct all operations in a manner that will not interfere
25 with the use of private property.

26 V. COUNTY operations shall not conflict with special events. COUNTY
27 acknowledges that premises is the venue for a wide variety of special events
28 that may conflict with concession operations. When anticipated COUNTY
29 operation(s) conflict with scheduled special event(s), State will notify
30 COUNTY via electronic mail (email) that operations may need to be modified,
31 rescheduled or canceled.

32 Tow services shall be provided seven (7) days a week between the hours of
33 1:00 PM and Sunset, starting on May 1 and ending on September 30, or when the
34 unit closes, whichever is earlier, during each year of the Contract. In the event State
35 deems the hours of operation inadequate for proper service to the public, State may
36 require COUNTY to adjust the days and/or hours of operation to a schedule provided
37 by State. COUNTY may remain open on other dates, observing same (or longer)
38 hours, at COUNTY'S discretion with the concurrence of State. In the event of
39 adverse weather or other operating conditions, State may permit the COUNTY to
40 close at any time during the term of this Contract.

41 COUNTY shall not use or permit the Premises to be used in whole or in part
42 during the term of this Contract for any purpose other than as herein set forth without
43 the prior written consent of the State.

44 A competent person shall be on the Premises at all times while the tow
45 services are in operation. If the on-site manager is other than the COUNTY, State
46 reserves the right to approve such manager.

EXHIBIT C – STATE’S TERMS AND CONDITIONS FOR COMMERCIAL WHITEWATER OUTFITTERS OPERATING ON STATE PARK LANDS

OVERVIEW

The stretch of the South Fork of the American River addressed by this concession contract flows twenty (20) miles from the Chili Bar access area at Highway 193 to the Salmon Falls area of Folsom Lake. On its journey, the river passes through private lands within El Dorado County and public lands within California State Parks (Folsom Lake State Recreation Area and Marshall Gold Discovery State Historic Park) and the Bureau of Land Management - U. S. Dept. of the Interior. Flowing through semi-wilderness areas and more developed areas, this beautiful segment of river has rapids ranging from Class I through Class III. To better regulate and administer commercial, institutional and organized group activities related to whitewater boating on the river, California State Parks has developed this South Fork American River Concessions Contract. This contract addresses those activities occurring in and along the State Park lands.

If you should have any questions about this Concessions Contract please contact:

Department of Parks and Recreation
Gold Field District
Attn: Holly Welch
7806 Folsom Auburn Road
Folsom, California 95630-1797
(916) 988-0205

I. SPECIAL REQUIREMENTS

This South Fork American River Concession Contract addresses the commercial, institutional and organized group whitewater uses and the activities related to those uses within Marshall Gold Discovery State Historic Park and Folsom Lake State Recreation Area.

A. Marshall Gold Discovery State Historic Park

1. **ALL TAKE-OUT ACTIVITY IS PROHIBITED.**
2. Concession put-in activity is prohibited except for the following:
 - a) Put-in at the North Beach River Access Area is allowed for instructional purposes. All instructional trips are required to have an instructor student ratio of no greater than 6 students to 1 instructor (e.g. a ratio of 7:1 would not be allowed). All instructors are required to boat along with the students in the river while instructing – from the start of the trip to completion. All instructors must be paid staff of the authorized company with adequate experience and training to safely run the instructional trip.
 - b) Put-in at the North Beach River Access Area is allowed for disabled float trips. All disabled trips are recommended to have an adequate guide-to-disabled boater ratio to insure the safety of all passengers. Each boat is required to have at least one guide(s) from

1 the start of the trip to completion. All guides must be paid staff of the
2 authorized company with adequate experience and training to safely
3 run the disabled trip.

- 4 3. **LUNCH STOPS AND PARK TOUR STOPS** are allowed at the North Beach
5 River Access Area with the required fees paid. (Section II.A.2.a.)
- 6 4. Parking is limited at the North Beach area of Marshall Gold Discovery State
7 Historic Park. Concessionaire is required to shuttle people and equipment
8 to and from the North Beach area. All vehicles parking within the State Park
9 will be subject to standard day use fees. Short-term, ten (10) minute parking
10 (also subject to fees) is permitted only in designated loading or unloading
11 zones. Boats and equipment shall not block road access at any time.
12 **ROAD SHOULDER STOPPING OR PARKING ON HIGHWAY 49 IS NOT**
13 **ALLOWED WITHIN THE PARK.**
- 14 5. Temporary beaching of rafts on State Park property other than at North
15 Beach is **PROHIBITED**. The river access at North Beach is to be used to
16 unload passengers for lunch stops and park tours.
- 17 6. All boats must be stacked at the "put-in" until such time as the trip is prepared
18 to start down river.

19 **B. Salmon Falls Area - Folsom Lake State Recreation Area**

- 20 1. Concession take-out is prohibited at Indian Creek and Skunk Hollow, except
21 when using the disabled access at Skunk Hollow. Concessions are required
22 to take-out at the Lower Salmon Falls parking lot (river left, ¼ mile down river
23 from Salmon Falls Bridge).
- 24 2. Equipment vehicles may use the lower Salmon Falls Day Use ramp area to
25 pick up equipment and clients through the gate with either a combination
26 lock or padlock. These vehicles should only use the ramp area for the
27 immediate loading of gear. Vehicles only used for transport of clients are
28 not allowed to use the ramp area and should remain on the paved lot.
- 29 3. Concessions are required to shuttle people and equipment to and from the
30 Lower Salmon Falls Day Use parking lot. Patrons must park outside of State
31 Park lands.
- 32 4. Concession Vehicle Parking at the Salmon Falls Day Use Area:
 - 33 a) Weekends: Short-term parking, not longer than ninety (90) minutes, is
34 permitted only in designated areas within the paved lot. All concession
35 vehicles parked within the paved Salmon Falls Lot are required to have
36 an appropriately licensed driver, immediately available, to relocate
37 vehicles within the lot at the direction of State Park personnel. The dirt
38 lot adjacent to the main entry road is available for parking unattended
39 vehicles, space permitting during day use hours. Vehicles must have
40 proper logos displayed at all times.
 - 41 b) Weekdays: Concession vehicles may park unattended in the dirt lot
42 adjacent to the main entry road and when that is full, may park
43 unattended in the designated "15 minute parking" areas during the
44 posted day use hours at the Salmon Falls Day Use Lot. Vehicles must
45 have proper logos displayed at all times. Buses may be parked in the
46 "Bus Only" parking areas as well.

- 1 5. All boats and equipment must be placed (boats stacked or rolled) in the
2 perimeter areas adjacent to the parking lot until such time that the equipment
3 is loaded onto/into vehicles. Boats and equipment must be kept out of the
4 traffic lanes, vehicle parking spaces and red zones at all times.
- 5 6. Only buses shall park in the designated "Bus Only" parking areas.
- 6 7. Concessions desiring raft tows must utilize the state authorized tow
7 concession or tow their own boats. In the absence of a state authorized
8 tow concession, one outfitter may tow boats of another outfitter, provided
9 there is no exchange of money. Insurance documentation must be
10 provided to the Whitewater Recreation Office for any tow craft owned by
11 the Concessionaire. Outfitter concessions using their own tows must
12 contact the State Park WRO prior to the start of the season for specific
13 authorization and advisement of the annual regulations regarding tow
14 vessels, tow vehicles, parking and ramp access.
- 15 8. Concession boats being used for non-concession trips (i.e. "private trips")
16 must:
 - 17 a) Have concession logos completely covered or removed, or
 - 18 b) Have 3 (three) "flags" attached to the raft. Flags must each be at least
19 a 12" x 12" square of red or orange durable material. Flags must be
20 attached to the bow, and on each side near the logos. Safety kayaks
21 do not require logos, but must stay with the trip while traveling
22 downstream.
 - 23 c) Safety kayakers do not require name, approved abbreviation, or logos,
24 on the kayak but the kayaker must wear a bib with the approved
25 company identification that can be observed from either shore. The
26 safety kayaker must stay with the trip while traveling downstream.

27 28 **C. Campfires**

- 29 1. No person shall light, build, use, or maintain a fire on State Park lands except
30 in a portable camp stove, fire pan, or fire ring in an approved picnic area and
31 where allowed.
- 32 2. No camping is permitted on State Park lands along the South Fork.