

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made and entered into this 4th day of December, 2018 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, 2220 Tulare Street, 6th Floor, Fresno, California, 93721-2120, ("COUNTY") and Miguel Avendano-Reyes, a sole proprietorship, doing business as Elados Fruti Rico, whose address is 216 Lyons Street, Madera, CA 93638, ("LICENSEE"). COUNTY and LICENSEE may each be referred to as a "Party" or collectively as the "Parties."

WHEREAS, COUNTY owns and/or operates Skaggs Bridge Park, located at 5901 N. Madera Ave., Kerman, CA 93630, hereinafter referred to as "Premises," and,

WHEREAS, COUNTY and LICENSEE mutually desire to allow LICENSEE to use the Premises for the exclusive sale of pre-packaged ice cream products, ("Service"); and,

WHEREAS, COUNTY finds that LICENSEE'S operation of the Service is in the public interest and that the LICENSEE'S operating on the Premises will not substantially conflict or interfere with the use or enjoyment of the Premises by COUNTY or COUNTY residents.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the Parties agree as follows:

1. Exclusive Right: COUNTY grants to LICENSEE an exclusive right to provide Service on the Premises for the benefit of employees, guests, and patrons of COUNTY. LICENSEE must have LICENSEE'S business name printed legibly and visible on all vehicles and equipment operating on the Premises. Failure to do so may result in not being allowed access to the Premises.

2. LOCATION: The Premises, as shown in Exhibit A, attached and incorporated by this reference, is designated as the location for LICENSEE'S service equipment. LICENSEE shall operate solely from the designated park. LICENSEE shall not solicit customers by any means, including signs or handouts outside of the Premises. LICENSEE shall not affix signs or banners on trees, bushes or County-owned structures. The Service facilities, and all ancillary equipment, shall be removed at the end of each day of operation. No equipment shall be left at the Premises overnight.

LICENSEE shall not interfere with pedestrian or vehicle traffic.

3. TERM

The initial term of this Agreement shall begin on or about January 1, 2019 and shall end December 31, 2021("Initial Term"), unless terminated earlier pursuant to Section 4. Upon expiration of the Initial Term, this Agreement shall automatically renew for no more than two (2) additional one-year terms (each a "Renewal Term"). If both Renewal Terms are utilized, this Agreement shall end on December 31, 2023. The total possible five-year term of the Agreement shall be referred to as the "Term" throughout this Agreement. As to COUNTY, the Director of Public Works and Planning shall be authorized to provide notice of non-renewal or termination of this Agreement.

4. TERMINATION:

A. Breach of Contract - The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) A failure to comply with any term of this Agreement;
- 2) Improperly performed service.

In the event of breach of this Agreement by LICENSEE, COUNTY may immediately terminate this Agreement and LICENSEE will not be eligible for future agreements with the COUNTY for Services.

B. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to LICENSEE. This Agreement may be terminated, without cause, by LICENSEE giving thirty (30) days advance notice in writing to COUNTY.

5. COMPENSATION: Based on the bid amount submitted by LICENSEE, and in consideration for being granted this exclusive LICENSEE Agreement by the COUNTY, LICENSEE shall pay to COUNTY the amount of One Thousand Six Hundred Dollars (\$1,600.00) annually, paid in twelve (12) equal monthly installments. The total amount paid to the County for the possible five-year Term of the Agreement shall not exceed \$8,000. The first monthly installment payment of One Hundred and Thirty-Three Dollars and Thirty-three cents (\$133.33) is due thirty (30) days after the execution of this

1 Agreement. Thereafter, each monthly payment shall be due by the 5th of each month for the use of the
2 Premises. If payment is not made to the COUNTY by the 7th of each month, a 10% late penalty charge
3 will be due and payable with said payment. If payment is not made within two (2) weeks of the due
4 date each month, this Agreement may be terminated immediately and the LICENSEE will not be
5 eligible to continue to offer Services within the Premises. Payment shall be in the form of cash, a
6 cashier's check or money order.

7 Payment shall be made to the County of Fresno, Department of Public Works and Planning,
8 ATTN: Business Office – Parks - 2220 Tulare Street, 6th Floor, Fresno, CA 93721-2120. The Payment
9 includes one (1) annual entrance fee permit to Premises. Additional annual entrance fee permits can
10 be obtained from the Parks and Grounds Division of the Department of Public Works and Planning,
11 2220 Tulare Street, 6th Floor, at \$40 each. Or, in lieu of the annual entrance fee permits, LICENSEE
12 may pay on a per entrance basis to the premises at \$5 for each entry.

13 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations
14 assumed by LICENSEE under this Agreement, it is mutually understood and agreed that LICENSEE,
15 including any and all of the LICENSEE'S officers, agents, and employees will at all times be acting and
16 performing as an independent CONTRACTOR, and shall act in an independent capacity and not as an
17 officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore,
18 COUNTY shall have no right to control or supervise or direct the manner or method by which
19 LICENSEE shall perform its work and function. However, COUNTY shall retain the right to administer
20 this Agreement so as to verify that LICENSEE is performing its obligations in accordance with the terms
21 and conditions thereof.

22 LICENSEE and COUNTY shall comply with all applicable provisions of law and the rules and
23 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

24 Because of its status as an independent CONTRACTOR, LICENSEE shall have absolutely no
25 right to employment rights and benefits available to COUNTY employees. LICENSEE shall be solely
26 liable and responsible for providing to, or on behalf of, its employees all legally required employee
27 benefits. In addition, LICENSEE shall be solely responsible and save COUNTY harmless from all
28 matters relating to payment of LICENSEE'S employees, including compliance with Social Security

1 withholding and all other regulations governing such matters. It is acknowledged that during the term of
2 this Agreement, LICENSEE may be providing services to others unrelated to the COUNTY or to this
3 Agreement.

4 7. MODIFICATION: Any matters of this Agreement may be modified from time to time by
5 the written consent of all the parties without, in any way, affecting the remainder.

6 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement
7 or its respective rights or duties under this Agreement without the prior written consent of the other
8 party.

9 9. HOLD HARMLESS: LICENSEE agree to indemnify, save, hold harmless, and at
10 COUNTY's request defend the COUNTY, its officers, agents and employees, from any and all costs
11 and expenses (including attorney's fees and costs), claims, suits, liabilities, losses and damages
12 occurring or resulting to COUNTY in connection with the performance, or failure to perform, by
13 LICENSEE(S), their officers, agents or employees under this Agreement, and from any and all costs
14 and expenses (including attorney's fees and costs), damages, liabilities, claims and losses occurring or
15 resulting to any person, firm or corporation who may be injured or damaged by the performance, or
16 failure to perform, of LICENSEE(S), their officers, agents, subcontractors, assigns, or employees under
17 this Agreement. The provisions of this Section 9 shall survive the termination of this Agreement.

18 10. INSURANCE: Without limiting the COUNTY'S right to obtain indemnification from
19 LICENSEE or any third parties, LICENSEE, at its sole expense, shall procure and maintain in full force
20 the following insurance policies throughout the term of this Agreement:

21 A. Commercial General Liability Commercial General Liability Insurance with limits of not
22 less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million
23 Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may require
24 specific coverage including completed operations, products liability, contractual liability, Explosion-
25 Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of
26 the nature of this contract.

27 B. Automobile Liability Comprehensive Automobile Liability Insurance with limits for bodily
28 injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred

1 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand
2 Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars
3 (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this
4 Agreement.

5 C. Worker's Compensation A policy of Worker's Compensation insurance as may be required
6 by the California Labor Code.

7 D. Sexual Abuse / Molestation Liability A policy of Sexual Abuse/Molestation Liability
8 insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million
9 Dollars (\$2,000,000.00) annual aggregate is required. This policy shall be issued on a per occurrence
10 basis.

11 LICENSEE shall obtain endorsements to the Commercial General Liability insurance naming
12 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
13 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
14 additional insured shall apply as primary insurance and any other insurance, or self-insurance,
15 maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing
16 with insurance provided under LICENSEE'S policies herein. This insurance shall not be cancelled or
17 changed without a minimum of thirty (30) days advance written notice given to COUNTY.

18 LICENSEE hereby waives its right to recover from COUNTY, its officers, agents, and
19 employees any amounts paid by the policy of worker's compensation insurance required by this
20 Agreement. LICENSEE is solely responsible to obtain any endorsement to such policy that may be
21 necessary to accomplish such waiver of subrogation, but LICENSEE's waiver of subrogation under this
22 paragraph is effective whether or not LICENSEE obtains such an endorsement.

23 Within ten (10) days from the date LICENSEE executes this Agreement, LICENSEE shall
24 provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as
25 required herein, to the County of Fresno, Department of Public Works and Planning, Attn: Parks
26 Manager, 2220 Tulare Street, 6th Floor, Fresno, CA 93721-2120, stating that all such insurance policies
27 have been obtained and the coverage provided thereunder is in full force; that the County of Fresno, its
28 officers, agents and employees will not be responsible for any premiums on the policies; that for such

1 worker's compensation insurance the LICENSEE has waived its right to recover from the COUNTY, its
2 officers, agents, and employees any amounts paid under the insurance policy and that waiver does not
3 invalidate the insurance policy; that such Commercial General Liability insurance names the County of
4 Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only
5 insofar as the operations under this Agreement are concerned; that such coverage for additional
6 insured shall apply as primary insurance and any other insurance, or self-insurance maintained by
7 COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
8 provided under LICENSEE'S policies herein; and that this insurance shall not be cancelled or changed
9 without a minimum of thirty (30) days advance, written notice given to COUNTY.

10 In the event LICENSEE fails to keep in effect at all times insurance coverage as herein provided,
11 the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon
12 the occurrence of such event.

13 All policies shall be with admitted insurers licensed to do business in the State of California.
14 Insurance policies shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
15 FSC VII or better.

16 11. PERMITS: LICENSEE shall provide to the foregoing address a copy of a valid Permit To
17 Operate ("Permit") issued by the County of Fresno, Department of Community Health, Environmental
18 Health Division not later than fourteen (14) days following the beginning of the Term of this Agreement.
19 LICENSEE understands that said Permit must be obtained on an annual basis and LICENSEE shall
20 provide a copy of any new annual Permit to the aforementioned address within fourteen (14) days of
21 obtaining the Permit. LICENSEE understands that Permits are not transferable or refundable and said
22 Permits become void upon change of ownership. LICENSEE also understands that any new owner(s)
23 and/or operator(s), if an assignment is approved by COUNTY in writing, as required in Section 9 above,
24 must obtain a new Permit in his/her/its own name prior to beginning operation.

25 12. BACKGROUND CHECK REQUIRED: LICENSEE and any of LICENSEE'S employees or
26 agents who will be performing Services at the Premises must submit an application for a background
27 check, including but not limited to, a criminal background check, including requiring submission of
28 fingerprints for a state and federal criminal background check at the Fresno County Sheriff's Office prior to

1 providing Services at the Premises. LICENSEE shall be responsible for all costs associated with these
2 background checks.

3 13. AUDITS AND INSPECTIONS: The LICENSEE shall at any time during business hours,
4 and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all
5 of its records and data with respect to the matters covered by this Agreement. The LICENSEE shall,
6 upon request by the COUNTY, allow the COUNTY to audit and inspect all of such records and data
7 necessary to ensure LICENSEE'S compliance with the terms of this Agreement.

8 14. SPECIFICATIONS: LICENSEE shall only sell pre-packaged ice cream from mobile
9 unit(s). No general merchandise shall be sold other than those items specifically approved by
10 COUNTY. No products with glass containers will be allowed to be sold. LICENSEE shall comply with
11 all of the following:

12 A. The California Retail Food Code (Part 7 of Division 104 of the California Health and
13 Safety Code, commencing with Section 113700, hereinafter "CRFC") and regulations promulgated
14 thereunder, including but not limited to any future laws and regulations enacted/promulgated to replace
15 or supplement CRFC; and,

16 B. All County of Fresno Ordinances, including all regulations, policies and requirements of
17 the County of Fresno's Department of Community Health; and,

18 C. Any other laws, regulations or ordinances as they relate to mobile/portable food
19 concession units.

20 15. UTILITIES AND DISPOSAL: All mobile units operated by the LICENSEE must be self-
21 contained. Electrical power, potable water and sewage disposal is not available.

22 16. DAYS OF OPERATION: LICENSEE may provide Service seven (7) days per week during
23 standard park operational hours, except on days when the Premises are closed by the COUNTY or are
24 rented by the COUNTY, in their entirety and on an exclusive basis, to another person or entity for the
25 purpose of hosting or conducting a private or special event.

26 17. GOVERNING LAW: Venue for any action arising out of or relating to this License
27 Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all
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1 interpretation and performance of this License Agreement shall be governed in all respects by the laws
2 of the State of California.

3 18. NOTICES: Any and all notices between either party under the terms of this Agreement or
4 by law shall be in writing and shall be deemed to be duly given if served when personally delivered or
5 deposited into the United States mail, with postage prepaid, registered, and addressed to the
6 respective addresses stated as follows:

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8 County of Fresno
9 Dept. of Public Works and Planning
10 Parks Manager
11 2220 Tulare Street, 6th Floor
12 Phone # – (559) 274-9093
13 (559) 600-3004

Miguel Avendano-Reyes
216 Lyons Street.
Madera, CA 93638
Cell – (559) 373-5071

14 19. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the
15 LICENSEE and COUNTY with respect to the subject matter hereof and supersedes all previous
16 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
17 understandings of any nature whatsoever unless expressly included in this Agreement.

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1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the
2 day and year first above written.

3
4 VENDOR

COUNTY OF FRESNO

5 MIGUEL AVENDANO
6 Miguel Avendano-Reyes, Licensee
Elados Fruti Rico

Sai Quintero
Sai Quintero, Chairperson of the Board
of Supervisors of the County of Fresno

7 MIGUEL AVENDANO
8 Print Name and Title

9 Date: 10-30-18

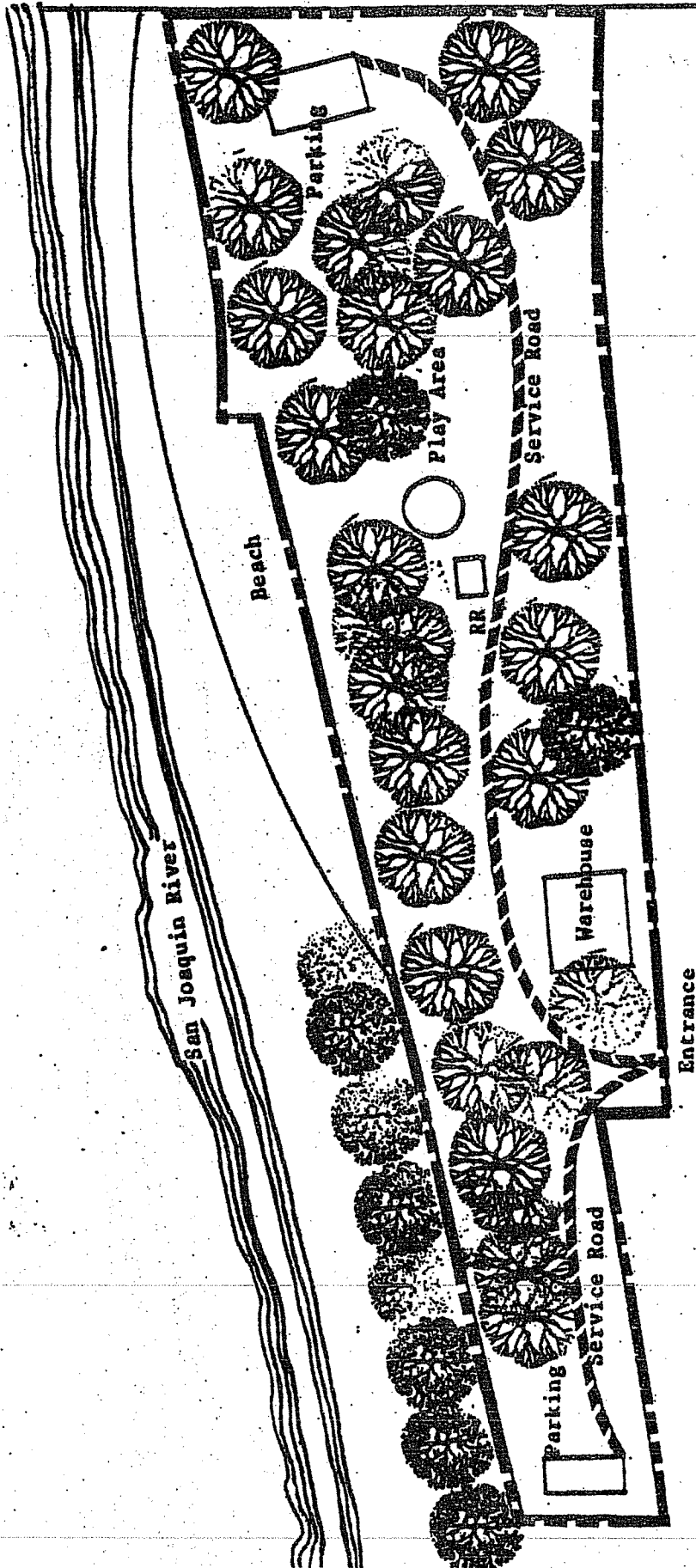
10 **ATTEST:**
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

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13 By: Sai Quintero
Deputy

14 FOR ACCOUNTING USE ONLY:

15 Budget Unit No.: 7910
16 Fund No.: 0001
Account No.: 3400
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Highway 145



SKAGGS BRIDGE PARK



North

17 ACRES