

# **CORRECTED**

## **AN INVITATION TO BID**

MICHIGAN DEPARTMENT OF NATURAL RESOURCES  
PARKS AND RECREATION DIVISION  
Michigan State Park Concession

### **Tahquamenon Falls State Park**

#### **Shuttle Concession**

#### **Bid Package Enclosures**

- Section 1. Standard Bid Requirements
- Section 2. Specific Bid Information
- Section 3. Bid Forms
  - Bid Proposal Form
  - Concession Bidder Qualification Statement
  - Financial Statement in the amount of \$5,000
- Section 4. Sample Contract

## **SECTION 1, STANDARD BID REQUIREMENTS:**

Act 451, P.A. of 1994 authorizes the Director of the Department of Natural Resources to contract public service privileges in state parks. Through this authority, the Department desires to invoke the widest possible interest to obtain the most qualified and capable concession operator available.

The Department is seeking a partner to operate a shuttle concession at Tahquamenon Falls State Park. The selected partner will offer shuttle services to visitors of the park, between the Upper Falls, Lower Falls, and Rivermouth Campgrounds.

Bids must be enclosed in sealed envelopes. **Bid envelopes must be plainly marked** on the outside, **"Bid for Concession at Tahquamenon Falls State Park."** Other larger documents such as development plans must be enclosed and appropriately labeled. Only Sealed Bids properly addressed and identified can be accepted.

This bid will be opened on **January 8, 2025**, at **2:00 pm**. Bid documents received after this date and time will not be accepted. Incomplete bids will not be accepted. Bids will be opened at Petoskey State Park. You may either hand deliver your bid or mail it to:

DNR, Parks and Recreation Division  
Petoskey State Park  
Attn: Lori Green  
2475 Highway M-119  
Petoskey, MI 49770

**To bid on this concession, you must complete the following:**

1. Submit bid prior to **2:00 pm** on **January 8, 2025**
2. Bid Proposal Form
3. Concession Bidder Qualification Statement
4. Financial Statement in the amount of **\$5,000**
5. Sealed envelope and marked as "Bid for Concession at Tahquamenon Falls State Park"

### **Bidder Selection:**

**The bids will be primarily evaluated on business experience, financial stability and monetary compensation to be paid to the State; and, secondarily evaluated on other areas relating to the business and business operation and will include a review of the reference letters.** Personal interviews may be required to assist in evaluating each bidder's proposal and qualifications. If such interviews are required, bidders will be contacted to make arrangements. Each bidder may select one (1) additional representative to monitor the interview.

### **General Bid Information:**

1. Act 451, Public Acts of 1994, requires that the Director of the Department of Natural Resources shall provide that each concession is awarded at least every seven (7) years based upon extension, renegotiation or competitive bidding.
2. The bids will be primarily evaluated on business experience, financial ability and monetary payment to be paid to the State; and, secondarily evaluated on other areas relating to the business and business operation and identified as "secondary" in the "Bidder Qualifications Statement".
3. The successful bidder will be required to sign a contract. The terms and conditions stated in the enclosed sample contract are to be considered as requirements for this Invitation to Bid. Contractors must pay the Department a fee for the privilege of operating concessions.
4. It is recommended that applicants make a personal visit to the park and the concession facilities to determine the conditions to be encountered, plus any factors affecting the operation. In so doing, it is best to contact the Unit Supervisor or representative.
5. Bidders must accept all concession facilities in their present condition. Do not expect that the Department will perform any repairs or remodeling unless specifically stated in this Invitation to Bid.
6. The submission of a bid shall be deemed evidence that the bidder has carefully examined these instructions, the proposal form, and the sample contract terms and is fully aware of the responsibilities of the contractor. In addition, the bidder agrees to abide by all applicable laws relating to the operation of the concession if granted this concession contract.
7. Bids are to be made only on the basis of the Invitation to Bid. A bidder shall not be relieved of their bid because of mistakes.

8. Deviations from the specific terms, qualifications and requirements, as set forth in the Invitation to Bid are not permissible as a part of the bid. But, alternate or additional bids or suggested revisions, if any, may be submitted separately and apart from, but enclosed with, the proposal. Such alternate proposals will be reviewed only as to their merit and potential benefits to the public and the Department and may or may not have a bearing in the selection of a bidder.
9. The Department of Natural Resources reserves the right to reject any or all bids.
10. Performance Bond: The bidder that is awarded a contract must provide the Department with a Performance Bond for the amount specified in the specific information and requirements for this concession sheet **within ten (10) days of receipt of the contract award**. Failure to do so will result in the forfeiture of the award. The bond guarantees that the bidder will perform all requirements and provisions in this Invitation to Bid. The Performance Bond will be due within 10 days of the Contract award. The Performance Bond for the Contract will be **\$1,000**.

Performance Bonds can be accepted in four different types. All types must be approved by the Department of Natural Resources, Parks and Recreation Division, and remain in effect for the entire contract term or be effective for the entire period of operation for each year of the contract. Bonds are to be mailed to:

DNR, Parks and Recreation Division  
Petoskey State Park  
2475 Highway M-119  
Petoskey, MI 49770

- a) Surety Performance Bond is issued by a bonding company. This type of Bond shall be executed by a surety company authorized to do business in the State of Michigan. The Bond shall be payable to the State of Michigan.
- b) Cash Bond can be paid by check or money order made payable to the State of Michigan, or currency of the United States of America.
- c) Certificate of Deposit (CD) shall have a minimum maturity of one (1) year. Certificates must be negotiable and must be of a type that pays interest on maturity only. The State's Federal employee I.D. number (38-6001134) should be used on all certificates. The CD should be automatically renewable and must be registered as follows:

Chief, Parks and Recreation Division  
Michigan Department of Natural Resources

- d) Letter of Credit is issued by a bona fide financial institution. Letters shall have a minimum maturity of one (1) year. They must be registered as follows: Chief, Parks and Recreation Division, Michigan Department of Natural Resources.
11. Financial Statement: The Financial Statement is used to report financial information about a business. The amount required reflects a conservative estimate of what it will cost to set up and begin operations. The minimum Financial Statement amount required for this contract shall be **\$5,000**. To meet this requirement, the bidder must provide a certified document prepared by a licensed financial institution. The Financial Statement requirement must include a statement of total financial availability available for opening and operating the concession and may include the following:
- a) Bank statement of checking and/or savings account
  - b) Credit card statement showing available credit
  - c) Certified inventory list which includes financial values of each item
  - d) A letter from a financial institution reflecting funds available to the bidder for operation of a business

Current concessionaires with at least 10 years of business experience in Michigan State Parks and Recreation Areas are exempt from this requirement.

12. Selection Process: Prior to awarding a concession contract, the Department takes the following steps:
- a) Competitive bid letting
  - b) Bid Opening
  - c) Review of reference letters of bidders who met the minimum bid requirements
  - d) Department internal review of submissions (including at a minimum, Concession and Lease Manager, Park Manager, and District Supervisor)
  - e) Department may request a presentation from all bidders to gain clarification where questions arise
  - f) Notification of selection (approximately two weeks between bid and notification)
  - g) Bidders 10-day appeal period (add information on this and specify that it is based on incorrect scoring of bids)
  - h) Contract execution

## **SECTION 2, SPECIFIC BID INFORMATION:**

### **Contract Requirements:**

1. Liability Insurance (see Sample Contract Section XI.A.7.):

General Aggregate:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage (State owned buildings only)	\$500,000

- Workers Compensation Insurance pursuant to Sample Contract Section XI.B.
- A **minimum** Contract Fee of **10% of Gross Sales** pursuant to Sample Contract Section II.B.

**General Information:**

Tahquamenon Falls State Park encompasses close to 50,000 acres that stretches over 13 miles. Most of this undeveloped woodland is without roads, buildings or power lines. The centerpiece of the park and the very reason for its existence is the Tahquamenon River with its waterfalls. The Upper Falls is one of the largest waterfalls east of the Mississippi. Dropping nearly 50 feet, a width of 200 feet across, and a maximum flow of more than 50,000 gallons of water per second makes this cascading waterfall breathtaking. Four miles downstream, the Lower Falls are made up of a series of five smaller falls that cascade around an island. Equally magnificent, these falls can be viewed from the riverbank or can be viewed up close by renting a rowboat and walking the footpath around the perimeter of the island.

**CORRECTION – Concession sales were previously reported incorrectly. Please see the amounts listed in this updated bid package.**

<u>Year</u>	<u>Concession Sales</u>	<u>Annual Visitors</u>
2015	\$33,466	452,622
2016	\$50,790	454,977
2017	\$43,027	443,027
2018	\$38,823	588,498
2019	\$36,515	572,358
2020	Closed	612,749
2021	\$39,225	575,830
2022	\$34,198	580,000 estimated
2023	\$36,434	540,000 estimated
2024	\$42,450	TBD

**Concession Facilities:**

The selected bidder may operate the shuttle service from designated locations at the Upper and Lower Falls and Rivermouth Campground parking lots and from the North Country Trail intersection on County Road 500. The selected bidder will place signage that meets Department approval at both the Upper and Lower Falls parking lots and the trailhead parking lots.

**Products and Services:**

The Department retains the right to approve the sale of all products and services. The Contractor shall not sell any product or service of which the Department does not approve. Products and services, which are permitted, are identified in the sample contract.

Visa and MasterCard credit cards should be accepted by the Contractor for all products and services.

**Minimum Season:**

The minimum season for this contract is identified in Sample Contract, Section II.F.

**Equipment:**

The necessary and required equipment for this contract is identified in Sample Contract, Section IX.

**Utilities and Telephone:**

The successful Contractor will be required to pay for certain utilities, which are identified in Sample Contract, Section VI.E.

**Maintenance Responsibilities:**

The required maintenance responsibilities, which will be required of the successful contractor, are identified in Sample Contract, Section VIII.

**Inspection of Facilities:**

To arrange for a personal inspection of the facilities, contact the Park Manager at (906) 492-3415

**SECTION 3, BID FORMS:**

## BID PROPOSAL FORM

Parks and Recreation Division  
Michigan Department of Natural Resources  
Petoskey State Park  
2475 Highway M-119  
Petoskey, MI 49770

I offer to operate and maintain the shuttle concession at **Tahquamenon Falls State Park**, for the convenience of the public, in accordance with the terms set forth in the Invitation to Bid and sample Concession Contract with a contract fee as follows:

**A percentage of gross sales in the amount of \_\_\_\_\_%, payable to the State, as identified in Sample Contract Section II.B.**

If selected, I agree, that within thirty (30) days of notification of acceptance of my offer, I will enter into negotiations with the Department of Natural Resources for a contract to furnish concession services as required, for the period specified within the sample Concession Contract, the provisions of which will be based on the Concession Contract template prescribed by the Department of Natural Resources and approved by the Michigan Attorney General.

Attached are the following documents and reference letters to support my offer:

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Financial Statement in the amount of **\$5,000**
- Other: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
(failure to sign will result in disqualification of bid)

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell: \_\_\_\_\_

Email: \_\_\_\_\_



## CONCESSION BIDDER QUALIFICATION STATEMENT

**You must prepare a response for all questions listed below, numbered and in the order in which presented – not responding to a question or following the above directions SHALL result in disqualification of your submitted bid.** You are encouraged to be very detailed in your responses. Your signature is required in order to verify the accuracy and truthfulness of your submission. All responses will be evaluated and scored by Department staff.

The completion and submission of all questions and the required attachments reflect accurate and truthful statements of the bidder's submission. The evaluation of the bid (primary and secondary information) is based solely on the bid and information submitted.

1. Please provide a comprehensive narrative overview of your prior experience providing, operating, programming and managing this type of concession. (Primary: Score 1-5)
2. Please provide your business mission statement. (Secondary: Score 1-2)
3. Please provide your business organization chart. (Secondary: Score 1-2)
4. Please identify the person who will assume management responsibilities for the concession, and describe the manager's experience and qualifications, and attach their resume. (Secondary: Score 1-2)
5. Do you plan to sublet or assign any portion or the entire contract to another party? If yes, explain. (Secondary: Score 1-2)
6. Please describe the staffing plan you intend to implement at the concession. (Secondary: Score 1-5)
7. Describe your marketing, advertising, and sales promotion plans including the annual budget specifically for each. (Secondary: Score 1-5)
8. List and describe the menu, merchandise, and/or services proposed to be offered. As applicable, attach the following which includes prices: a menu (that identifies which foods meet the 33% healthy food option requirement), merchandise, and/or service list. (Secondary: Score 1-5)
9. List all major equipment you will supply to provide food, merchandise and services required in this bid document. (Secondary: Score 1-2)
10. Describe your plans for maintenance and repair of the property/equipment whether state-owned or privately owned. (Secondary: Score 1-5)

11. Describe your methods for daily bookkeeping, monthly and yearly accounting, and monthly and yearly recording of revenues. (Primary: Score 1-5)
12. Provide financial statements, which could include but are not limited to a financial statement, tax return, profit and loss statement, balance sheet, cash flow statement, or owner equity statement, for your organization's last fiscal year demonstrating the firm's ability to operate. If providing information prepared by a Certified Public Accountant, it must be in accordance with generally accepted accounting principles. (Primary: Score 1-3)
13. What is the amount of working capital (amount of money readily available) intended to be provided for the business investment? Please provide details of how it will be allocated. (Primary: Score 1-3)
14. Will any portion of the initial investment and working capital be financed? If yes, approximately how much do you plan to finance. (Secondary: Score 1-3)
15. Do you have a financial interest in any other business entities? If yes, please provide details. (Primary: Score 1-3)
16. Have you ever closed or ceased operation of a business as a result of becoming compromised with creditors? If yes, please provide details. (Primary: Score 1-3)
17. Have you or your company ever failed to fulfill the requirements of a contract and/or ever terminated a contract early? If yes, please provide details. (Primary: Score 1-5)
18. Describe all infractions or notices of violation your business(es) has received in the past seven years and explain how each infraction or violation was addressed within your business practice. Also describe how you would avoid or address, to the Department's satisfaction, any future infraction or notices of violation. Failure to accurately report violations and/or how they were addressed will result in an award of 0 (zero) points. (Primary: Score 1-10)
19. Have any liens ever been filed against your business(es)? (Primary: Score 1 and 5)
20. Are there any judgments, suits, or claims pending against you and/or your business(es)? (Primary: Score 1 and 5)
21. Are you acting as endorser for others on their notes or accounts? (Primary: Score 1-2)

22. List name(s), address, phone number, and contact person of insurance carrier(s) who will provide your insurance (liability, vehicle, watercraft, workers compensation, etc.). (Secondary: Score 1-2)

23. Would you be able to provide the insurance coverage required by the draft contract? (Secondary: Score 1-2)

24. Provide a minimum of two (2) personal reference letters with addresses and telephone numbers of reference. Inaccurate contact information will result in a score of 0 (zero). (Secondary: Score 1-3)

25. Provide a minimum of two (2) business reference letters with addresses and telephone numbers of reference. Inaccurate contact information will result in a score of 0 (zero). (Secondary: Score 1-3)

26. Describe plans you may have for refurbishing or improving the operations, including projected expenditures. (Secondary: Score 1-5)

27. In a narrative format, please provide, any additional information you feel would assist the Department in evaluating your previous experience. (Primary: Score 1-5)

28. Please describe how you will implement the required environmentally sustainable practices identified in the draft contract in the invitation to bid. Please identify and explain whether you would implement any additional environmentally sustainable practices. (Secondary: Score 1-5)

29. Submitter must sign, print name, and date the bid response submittal. The submitter must have full authority to enter into a contract on behalf of the business. (Secondary: Score 1-2)

30. Did you include a percentage of gross sales on page 8? (Primary: Score 1-2)

**STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
PARKS AND RECREATION DIVISION**

**CONCESSION CONTRACT**

(Issued under authority of Act 451, P.A. 1994. Failure to comply with the terms and conditions may result in cancellation or termination.)

**PROPERTY:**            **Tahquamenon Falls State Park**

**CONTRACTOR:**

**CONCESSION:**      **Shuttle Service**

**EXPIRES:**            **November 30, 2031**

**PREFACE**

The State of Michigan, Department of Natural Resources (“Department”), provides facilities for the use and enjoyment of the public. A responsibility of the Department is to operate or contract for the operation of the facilities to maximize services and benefits to the public. The facilities located upon the Premise in this Contract are available to the Contractor with the understanding that the Contractor will operate them according to the terms and conditions of the Contract to provide use, service, and benefit to the public.

It is fully understood that the granting of this Contract to the Contractor by the Department **DOES NOT GRANT EXCLUSIVE RIGHTS** or **EXCLUSIVE USE** to the **ENTIRE PROPERTY**, identified above, where the concession is located, unless expressly provided for herein. This Contract grants rights to the Contractor to provide goods and/or services, specified under Section IV, for the Premises, more particularly identified in Section II.C.1. It is also understood that the Department is charged with the overall management of the Property and Premises and shall make all decisions as to what concessions shall or shall not be located, the location of the concession on the Property, and any management or operational question not specifically addressed in this Contract.

**I. GRANT OF CONCESSION CONTRACT**

The Department in consideration of the covenants and representations described in this concession Contract (“Contract”) grants to:

Business Name:

Owner Name:

Address:

Home/Office:

Cell:

Email address:

("Contractor"), this Contract to operate a concession at the Premises upon the Property. Failure to provide the required goods or perform the required services as outlined in the Contract, may result in the issuance of notices of violation including assessment of fees, suspension of operations, cancellation of the Contract, and/or termination of the Contract.

## **II. CONDITIONS**

**A. Contract Term.** The Contract term shall begin at 12:01 a.m. local time on the date the Contract is executed by the Department, and end at midnight, local time, on **November 30, 2031**. The Contract is subject to review by the Department.

1. Contractor shall cease operations on or prior to the Contract expiration. Contractor equipment may remain on the Premises until a new contract is secured in the spring of **2032**.
2. Contractor understands that nothing in this Contract conveys any ability to provide any goods or services beyond the Contract Term outlined above. Any activity of providing or attempting to provide any goods or services beyond the Contract Term will result in ineligibility to enter into any other contracts or agreements with the Department.

**B. Contract Fee.**

1. The fee payable ("Contract Fee") by the Contractor to the Department for the rights and privileges conveyed in the Contract shall be as follows:

**A Percentage of Gross Sales in the amount of       %, payable on the 15<sup>th</sup> of the month following sales (i.e. July sales are due August 15<sup>th</sup>).**

2. Payment of the Contract Fee shall be paid to the Department and made payable to the "State of Michigan" according to the above schedule.
3. Payment shall be delivered to **Tahquamenon Falls State Park, 41382 West M-123, Paradise, MI 49768**.
4. A completed Concession Operators Report (required form PR3007) must be submitted each month along with payment of the Contract Fee and received by the Department no later than the 15<sup>th</sup> of each month.
5. A \$10 per day Late Fee may be assessed by the Department to the Contractor for each day beyond the 15<sup>th</sup> day of the month the Contract Fee is not paid. If the Contract Fee is unpaid beyond the contract expiration date, the Late Fee will accrue until it is paid and/or the Late Fee amount reaches \$600.00.
6. Failure to pay the Contract Fee by the 15<sup>th</sup> day of the month, any Late Fees, and/or any violation fees may result in termination or cancellation of the Contract.
7. For purposes of this Section, Gross Sales shall be the total amount of all receipts in cash, credits, property, or interest of whatever kind received by the Contractor from all business transacted under the provisions of this Contract, but it shall not include Recreational Passport sales, fishing and hunting licenses sales, internal sales, credit card

transaction fees paid by a Contractor's customer, state lottery tickets, soft drink container deposits, sales tax receipts, or other taxes.

**C. Department's Property, Buildings, and Equipment.**

1. The Department has provided the below Premises, buildings, and items of equipment, for the use of the Contractor for this Contract. The Premises identified within this Contract to be the only approved location of where the good and/or services may be provided by the Contractor shall be:

**Designated parking located within the Upper Falls, Lower Falls and Rivermouth Campground parking lots as well as. The Contractor will handle reservations and sales in a location that is pre-approved by the Department.**

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The Department has exclusive authority to restrict access to areas of the Premises deems necessary by the Department for any safety or environmental concerns.

2. The Premises, including all buildings and parts of the buildings and grounds covered specifically in this Contract shall be open to inspection and access by persons authorized by the Department.
3. The Department does not warrant the provision of any water, sewer, gas, electric or telephone utilities to the Contractor. The responsibility for such utilities, including installation, maintenance, repair and/or payment are solely the responsibility of the Contractor or the utility companies providing such utilities. The Department is not responsible for any direct or consequential damages resulting from the failure of these utilities due to any cause whatsoever. In the case of Department-owned wells and septic fields, the Department endeavors to provide complying facilities, but is not responsible for any direct or consequential damages to the Contractor resulting from the failure of such facilities.
4. Smoking is prohibited in all State government facilities. This prohibition shall include all facilities operated by the Contractor.
5. Pets of any type are prohibited in all facilities, except service animals as defined in 28 CFR 36.104 which shall be allowed while performing their duties.

**D. Operation of Concession.**

1. The Department grants the Contractor permission to provide the exclusive goods and/or exclusive services authorized by this agreement on the Premises and identified in Section IV.
2. Annual operation of the Concession shall not commence until all required documents are received, reviewed, approved by the Department and the Department has communicated that the Concession is approved to provide good or services on the Premises.

- E. Visitors.** The Department does not guarantee a specific number of visitors to the Property/Premises and accepts no responsibility for the lack of visitors for any reason.

**F. Operating Schedule.**

1. The Contractor shall maintain the Premises, provided in the Contract, open and available to patronage by the public in accordance with the following minimum schedule. The minimum season, days, and hours of operation shall be as follows:

<b>Friday before Memorial Day to Third Friday in June:</b>	Weekends
<b>Third Friday in June through Labor Day:</b>	Daily to 8:30 pm or Sunset
<b>Weekdays in June:</b>	On-Call or by Reservation
<b>Labor Day through Second Weekend in October:</b>	Friday through Sunday

The Contractor may obtain permission from the Department to open for a longer term before and after the above stated season.

2. The Contractor may not operate for lesser periods without the prior written approval of the Department unless circumstances beyond the control of either Party make it necessary to take emergency action. In such cases, the Contractor must report the circumstances to the Department at the earliest possible moment. In case of inclement weather, the concession may close early with the Department's permission.

- G. Posting of Operation Schedule.** The Operating Schedule of the concession must not be handwritten and shall be posted at the park office, on the park bulletin boards, and in an exposed location at the Premises.

**III. CONTRACTOR'S COVENANTS AND REPRESENTATIONS**

- A. Indemnification.** Contractor hereby covenants and agrees to indemnify and save harmless, the State of Michigan, its departments, officers, employees and agents, from any and all claims and demands, for all loss, injury, death or damage, that any person or entity may have or make, in any manner, arising out of any occurrence related to the issuance of this Contract, the activities authorized by this Contract, and the use or occupancy of the Premises which are subject of this contract by the Contractor, its employees, contractors, or its authorized representatives; arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceedings against the Department arising out of or resulting from the performance of the work, duties, responsibilities, actions or omissions of Contractor;
2. Any claim, demand, action, citation or legal proceeding against the Department arising out of or related to occurrences that Contractor is required to insure against as provided for in this Contract; and
3. Any claim, demand, action, citation or legal proceeding against the Department arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that any claims, demands, actions, citations or legal proceedings are caused by the negligence or reckless or intentional wrongful conduct of the Department.

- B. No Unnamed Partners.** The Contractor represents that there are no and will be no unnamed partners legally interested in or having authority over the entity, operation or management of the concession and further represents that the Contractor is the only person/entity responsible for carrying out the Contractor's duties as written in the Contract.
- C. Assignment and Delegation.**
1. The Contractor shall not sell, mortgage, rent, assign or parcel out the Contract hereby granted, or any interest therein, or allow or permit any other person or party to use or occupy any part of the Premises, building, or spaces, covered by this Contract for any purpose whatsoever without first obtaining the prior written approval of the Department. Such action by the Contractor without the prior written approval of the Department shall be cause for the immediate termination of this Contract.
  2. The Contractor may not assign this Contract or any of its obligations under this Contract to any other party (whether by operation of law or otherwise) without the prior written consent of the Department. Any purported assignment violating this Section is void. Further, the Contractor may not assign the right to receive money due under this Contract without the prior written consent of the Department. Any notice of violation shall be cause for the immediate termination of this Contract.
- D. Subcontractors.**
1. The Contractor cannot delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid without the prior written approval of the Department.
  2. The Contractor is responsible for performing all of its obligations under this Contract, whether the obligations are performed by the Contractor or an approved subcontractor. The Contractor is solely responsible for the adherence by subcontractors to all provisions of this Contract. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any costs resulting from the Contract.
  3. The State reserves the right to approve any subcontractor hired to perform the Contractor's obligations under this Contract and the right to require the Contractor to replace any subcontractor found unacceptable by the Department.
- E. Relationship of the Parties.** The relationship between the Department and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the Department for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.
- F. Contracts.** The Contractor may execute contracts or agreements as the operator of the concession. The language of the contracts or agreements shall not obligate the Department or conflict with the terms of this Contract and must contain a provision for automatic termination upon the termination of this Contract. The Contractor shall indemnify, defend, and exculpate the Department from any liability which may accrue or be asserted against the Department under such contracts or agreements.



#### **IV. SALE OF PRODUCTS AND SERVICES**

- A. The Department reserves the right to approve the sale of all products and services and the manner in which services are provided. The Contractor agrees to conduct and use the Premises for no other purpose than those stated in this Contract. The Department holds the right to purchase inventory for the Contractor to sell at the concession. In the event that the Department procures inventory for the Contractor, the Contractor must offer the inventory for sale at Department approved prices. The Contractors may be offered discount prices to purchase inventory from state contracts for resale, if they choose.
- B. **Products and Services.** The concession granted under the provisions of this Contract is as follows:
1. Products and services to include: **Shuttle services including car spotting and transportation of hikers with pickup and drop-off points located at Upper Falls parking lot and the Lower Falls parking lot. Services may also be offered on-call at the Rivermouth Campground parking lot and North Country trail crossing at County Road 500.**
  2. As a partner providing services on public lands, the mission of the Contractor must align with the Department. The Contractor shall provide all visitor services in a manner that is consistent with and supportive of any provided Department educational or interpretive assessments, management and strategic plans. The Contractor shall do the following:
    - Support the Department's responsible recreation and sustainable business practices in relationship to the services provided (for example, using only compostable flatware, life jacket training with each rental, solar operated food truck, selling merchandise made of recycled content or produced by local or indigenous artisans, promoting recycling, etc.).
    - Incorporate interpretive messaging opportunities in business operations (for example, sharing aquatic invasive species prevention information as part of boat rentals, theme of business environment to be reflective of the natural or cultural resources within the park or harbor, etc.)
    - Establish expectations for staff training, including training for all staff to have a knowledge of the park and its cultural and natural resource assets.
  3. The Contractor shall make every effort to implement additional sustainable practices beyond those required below. Sustainable practices are required as a means to maintain the qualities that are valued in the physical, natural, and ecological environment. Efforts to conduct business using sustainable practices will protect natural systems. The following sustainable practices must be implemented, (where applicable to the concession type):
    - Eliminate the use of Styrofoam
    - Eliminate the use and sale of single use plastic (plastic silverware, straws, trash bags, etc.)
    - Eliminate the use of paper towels and use cloth towels
    - Eliminate the use and sale of items in an aerosol can

- Where possible, eliminate the use of aluminum and utilize local sourcing materials and products where possible
- Explore the use of green cleaning products
- Implement best practice of energy use (energy saving fixtures, appliances, and bulbs, flow restricting faucets, not running AC with doors open, etc.)
- Explore the use of low-power point-of-sale systems
- Explore sale/use of bottled water that utilizes cans or recycled plastic
- Provide for sale toiletry items that reduce/minimize plastic packing and materials (i.e., bar shampoo/conditioner, bamboo toothbrushes, etc.)
- Offer for sale reusable water bottles made from recycled materials, and/or make available bottle filling stations
- Offer for sale non-chemical-based insect repellent, sunscreen, hair products, etc.

4. In an effort to minimize the impact and transmission of invasive species, the Contractor shall implement methods outlined within the “Invasive Species Decontamination Guidelines” ATTACHMENT A, where applicable.

**C. Additional Items.** The Contractor is encouraged to provide additional goods and/or services. Sale/rental of additional items not provided for under **Section IV**, requires the prior written approval of the Department.

**D. Credit Cards.** Visa and MasterCard credit cards must be accepted by the concession for all products and services. Credit cards shall not be held as collateral for any good or service. Holding or cutting up a card shall not be undertaken for a declined payment transaction. The only exception is when a card is declined and the pin pad response states “HOLD CARD and/or CALL ISSUER”.

**E. Prohibited Merchandise and Services.** The Contractor agrees not to offer for sale or rent prohibited merchandise or services, including:

1. Souvenirs, merchandise, or clothing which depict locations, landmarks, or natural resources which are not located within the local region.
2. Tobacco or marijuana products of any kind;
3. Alcoholic beverages, “mocktails”, or controlled substances;
4. Pornographic pictures, books, magazines, or other such products;
5. Fireworks of any kind, including Bag Bombs, Firecrackers, Sparklers, Smoke Bombs and Chinese lanterns;
6. Firearms or ammunition, BB or CO2 powered devices, slingshots, bows and arrows;
7. No children products that promote or portray immoral, unethical, or unhealthy activities (i.e. candy cigarettes);
8. All knives, except those with folding blades of 3” or less;
9. Balloons;

10. Recreational water equipment during periods when the double red-flags are in effect on a Great Lake or another waterbody when posted closed to water access;
11. Other items added to this list by the Department provided Contractor has been given written notification of the additional items.

**F. Point of Sales (POS) System.**

1. The Contractor shall furnish Point of Sales system (POS). The POS shall be kept in full view of the public and all sales shall be registered in the presence of the customer and have the capability of providing the customer with a receipt.
2. POS must be approved in writing, by the Department. Cash registers shall be equipped with the following cash control features when practical:
  - a. Sales indication windows which are visible from the front and back of the register.
  - b. Non-resettable grand total counter. Total cannot be reset with a key or by any other means.
3. The POS system shall provide the following required reports:
  - a. Daily, weekly, monthly, and annual report on specific product name and units sold.
  - b. Daily, weekly, monthly, and annual summary to specific type of transaction. System needs to show total daily, weekly, monthly, and annual credit card sales, coupon transactions, and direct cash operations.
  - c. Inventory summary of products (goods/services) sold and what should be remaining on hand.
  - d. Products purchased from third party vendors.

- G. Pre-numbered Tickets or Receipts:** If the Department determines the requirements for POS described in Section IV.N. are not practical, the Contractor shall use an attraction log, ticketing system, or issue a pre-numbered receipt register, or pre-numbered ticket as approved by the Department. Transaction date/time must be included on all tickets as well. POS must maintain accurate schedule and timing.

**H. Rates, Prices, and Charges.**

1. Prior to offering any goods or services for sale, the Contractor shall submit to the Department for approval a listing of the products.
2. Product list must include proposed prices.
3. All prices charged are subject to approval of the Department. Unless Contractor can document to the satisfaction and approval of the Department that a higher price is

warranted, such prices shall be comparable to prices charged for similar merchandise in the locality in which the concession operates.

4. Except for any offered discount, coupon, or sale price to an already approved good or service, any changes to the Department approved listing of products or prices must be submitted to the Department for review and approval prior to being implemented and/or offered for sale.
5. The Contractor shall maintain on public display signage showing the Department approved prices for the sale of goods/services, in the following locations: the Upper and Lower Falls parking lots and trailhead parking lots. Signage shall not be handwritten.

#### **V. ADDITIONAL TERMS**

- A. Contractor and concession staff must wear uniforms identifiable by the public as belonging to the Concession, complete with name tag.
- B. The Contractor cannot play music outside of the vehicle.
- C. No storage will be allowed outside of the concession unit.
- D. The Department is not responsible for any delays or cancellations due to power outages or weather-related issues.
- E. The Contractor is responsible to maintain equipment in a safe and workable condition.
- F. The Contractor acknowledges that the Department is not liable for any theft, vandalism, or damage that may occur to Contractor equipment/supplies.
- G. No motorized vehicles will be allowed off paved surfaces.
- H. The Contractor is responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises.
- I. If using a vehicle, Contractor driver(s) must always carry valid operators' license in their possession.
- J. Contractor and employee vehicles accessing the Premises are required to have a valid Recreation Passport affixed.

#### **VI. ACCOUNTING, REPORTING, AND ADVERTISING**

##### **A. Accounting Records.**

1. All point of sale (POS) tapes, logs, pre-numbered tickets and receipt registers shall be kept by the Contractor with the applicable monthly sales reports for inspection by the Department for the duration of the Contract, plus one (1) year.
2. The Contractor shall keep or cause to be kept accurate books, records, and accounts of its operations under the Contract.

3. Separate accounting records shall be maintained for each facility or operation in the Contract.
1. All such records shall be maintained in accordance with generally accepted accounting principles (GAAP).
2. The Contractor shall make all bank deposits, cash register tapes, pre-numbered tickets, permits, customer receipts, logs and reports concerning the operation available to the Department at such times as the Department may require.

**B. Monthly Reports.**

1. The Contractor shall furnish the Department with a monthly concession operator report (monthly report) for the previous calendar month showing the Gross Sales amount received, on forms furnished by the Department.
2. The original copy of the monthly report shall be submitted to the Department no later than the 15<sup>th</sup> day of each month.
3. Failure to timely submit a monthly report may be grounds for issuance of a Notice of Violation and/or termination of the Contract.

**C. Annual Reporting Requirements.**

1. Prior to opening each season, the Contractor shall provide the following reports to the Concession Manager for review and Department approval:
  - For returning contractors, Profit and Loss (P&L) statement for the prior season. The P&L for the last year of the contract shall be due prior to November 30. May be submitted on PR 3068.
  - Certificate of general liability and workman compensation insurance listing the "State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insured.
  - Performance bond if Surety, Letter of Credit or Certificate of Deposit.
  - Equipment inventory list. May be submitted on PR 3067.
  - Price list. May be submitted on form (PR 2999).
  - Employee/agent/volunteer list with position title, phone number and emergency phone number. May be submitted on PR 3000.
  - Employee/agents/volunteer background reports (including for minor employees/volunteers) from the following:
    - 1) iCHAT,
    - 2) Michigan Department of Corrections, and
    - 3) National sex offender reports.
2. No later than sixty (60) days, or a different date agreed to by the Department, following the Contract closing of the concession, the Contractor shall submit an annual Profit and Loss Statement for that season's operations.

3. Where the Department has determined that a concession operation is substantial enough to warrant, following the close of each tax season, the Contractor shall submit an annual compiled financial statement prepared by an independent accountant. This report is due by April 30<sup>th</sup> following each operating season.
  4. Reports are to be sent directly to the Commercial Services and Land Use Administrator (CSLUPA).
- D. Lien.** To secure the payment of all Contract Fees and liquidated damages, the Contractor acknowledges that the Department may place a lien on all personal property owned by the Contractor which is located in the Premises used in the operation of the concession.
- E. Utilities, Telephone, Internet/Cable.**
1. The Contractor shall pay for all utilities used for the concession operation, including but not limited to: **electric, water, sewer, internet, and refuse.**
  2. The Contractor must have a telephone assigned for concession use, at the Contractor's expense, and shall pay all related costs. It may be beneficial for the Contractor to provide the phone number to the Department.
  3. In addition, the Contractor is encouraged to provide internet services at the concession location for use of visitors.
  4. Failure to pay utility bills will result in termination of this Contract.
- F. Taxes.** The Contractor shall pay all federal, state, and local taxes, assessments, or fees which are, or which may become legally chargeable to the business operated under the terms of the Contract.
- G. Advertising.**
1. The Contractor agrees that any social media account or webpage created to promote a facility and/or operation located within the Premises is subject to the approval of the Department. Account username(s) and password(s) for all park related social media account(s) and webpage(s) shall be provided to the Department upon implementation.
  2. At the termination or cancellation of the Contract, the Contractor shall turn management of all social media account(s) and webpage(s) created to promote a facility and/or operation located within the Premises over to the Department, and/or deactivate.
  3. The Contractor agrees that they will not utilize the DNR logo without written permission. All uses of the DNR logo must be reviewed and approved by the Department and must follow Department logo use standards.
  4. The Contractor will conduct a diverse advertising effort designed to increase business under the provisions of the Contract.
  5. All promotions, scripts, texts, and layouts must be submitted to the Department for written approval prior to execution or implementation.

6. The Contractor must place promotional signage on the Premises at the following location: Upper and Lower Falls parking lots and trailhead parking lots. The signage content and material must meet Department approval. The signage should contain operational hours, prices, contact information, and other information approved by the Department.
7. The Contractor shall not employ or use any persons known as “hawkers,” “spielers,” “criers,” or other noisemakers or means of attracting attention to the Contractor’s business.
8. The Contractor must include information regarding the Recreation Passport requirement on all web pages, advertisements, and social media platforms.

## **VII. CONTRACT OPERATION**

### **A. Standard of Performance.**

1. The Contractor shall provide operation supervision and shall operate the business under the Contract in accordance with the laws of the State of Michigan and shall communicate with and respond to the Department on a reasonable basis not to exceed ten (10) business days regarding any operational or management issues or concerns.
2. Any dispute arising under this Contract must be resolved in the Michigan Court of Claims.
3. In performing services for the State under this Contract, the Contractor must comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with any applicable state agency rules that the Department provides to the Contractor.
4. Use of the Premises for purposes other than those permitted in this Contract shall be grounds for termination of the Contract.
5. The Contractor shall attend any meeting(s) set by the Department regarding the operation, management, and oversight of the Contract. The Department will work to coordinate a mutually agreed upon date, time, and location of any meetings. If no mutually agreed upon date, time and location can be secured, the Department retains the exclusive ability to set a required date, time and location. Failure to attend a meeting may result in the issuance of a Notice of Violation.

**B. Supervision by Property Manager.** The Department is responsible for the general management of the area of the Premises. The day-to-day oversight of the Contract, with respect to the quality of service rendered, hours the concession is open, sanitation, exterior building maintenance and other operational matters as the Department may determine.

### **C. Discrimination.**

1. The Contractor shall comply with the Elliot-Larsen Civil Rights Act, 1976 PA 435, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other Federal, State, and local fair

employment practice and equal opportunity laws, and covenants that Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

2. The Contractor agrees to include, in every subcontract entered into for the performance of this Contract, covenants not to discriminate in employment.
3. No individual shall be denied ingress or egress to the Premises on the basis of race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability.
4. The Contractor's breach of the covenants in VII.C.1, VII.C.2. and VII.C.3. shall be regarded as a failure to comply with this Contract and is cause for its termination.

**D. Unfair Labor Practices.** Under the State Contracts with Certain Employers Prohibited Act, MCL 423.321 et seq., the Department must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the Contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to MCL 423.324, the Department may void any contract if, after award of the contract, the name of contractor as an employer or the name of the subcontractor, manufacturer, or supplier of the contractor appears in the register.

**E. Prevailing Wages.** If execution of this Agreement involves work by a construction mechanic, and any part of that work is sponsored or financed in whole or in part by the State, then the following will apply: The rates of wages and fringe benefits to be paid to each class of construction mechanics by Permittee cannot be less than the wage and fringe benefit rates issued by the Michigan Department of Energy, Labor and Economic Growth, Wage/Hour Division, in its schedule of occupational classification and wage and fringe benefit rates for the locality in which the work is to be performed.

## **VIII. MAINTENANCE**

### **A. Alterations.**

1. Alterations and repairs incidental to the operation of the concession may be made by the Contractor at the expense of the Contractor, but only with the specific written approval of the Department.
2. Any additions or improvements made to the buildings or surrounding premises shall become the property of the Department at the termination of this Contract, except as may be otherwise stated in the Contract.

### **B. Sanitation.**



1. The Contractor shall collect and deposit, in approved sanitary containers, all garbage, waste and debris within a fifty (50) feet radius surrounding the concession area for disposal in a licensed sanitary landfill.
2. Department will work with Contractor to identify site location of refuse containers.
3. The Contractor is also responsible for collection, removal, and disposal of all grease products.
4. The Contractor shall keep the Premises occupied under the Contract in a clean and sanitary condition and in conformity with established state and local standards and rules for sanitation and public health.

**C. Special Contractor Responsibilities.**

1. Dispose of Contractor-owned equipment.
2. Clean interior and exterior of vehicles on a daily basis or more often as necessary.
3. Comply with all licensing and permit requirements, including but not limited to: Health Department, Fire Marshall, EGLE, LARA.
4. Submit copies of all approved permits and inspection reports to the Department Representative within seven (7) days of receipt.

**D. Cleanliness.**

1. The Contractor shall maintain standards of cleanliness which will reflect favorable public opinion on the Contractor and the Department.
2. The Department may perform or have others perform the duties of the Contractor under this Section, if the Department determines the Contractor has failed to maintain an acceptable standard of cleanliness.
3. The Contractor shall pay 105% of the cost of such work, whether performed by the Department, or by others, at the discretion of the Department.
4. If the Department determines the need for cleaning after the Contractor returns the facility at the termination of this Contract, the Contractor must reimburse the Department at the above rate for all cleaning costs incurred during that cleaning.

**E. Environmental.**

1. The parties agree that they will not bring onto the Premises any hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof), other than fuel necessary to operate Contractor's backup generator on the Premises, or underground storage tanks (collectively Environmental Hazards).
2. For purposes of this Contract, the term hazardous substances shall mean the term as defined in the Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. §9601, et seq., and any subsequent or amended regulations thereto and as defined in the Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*, and any subsequent amendment thereto. The term hazardous wastes shall be as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, and any subsequent or amended regulations thereto.

3. For purposes of this Contract, the term pollutants shall be as defined in the Clean Water Act, 33 U.S.C. §1251, et seq., and any subsequent or amended regulations thereto.
4. Each party shall promptly notify the other party in writing of any environmental accident, claim, or complaint involving the Premises or the Contractor's activities thereon.

F. **Flammable / Poisonous Materials.** The Contractor shall not use or permit storage within the Premises, of any illuminating oils, fuel, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, except for citronella candles, propane fuel cylinders less than 16 ounces, and other similar items intended for resale which are properly stored and identified and approved on the annual Price List.

#### IX. **EQUIPMENT AND SUPPLIES**

##### A. **Equipment.**

1. The Contractor must equip the concession with all needed equipment.
2. All equipment must be in new or like new condition.
3. Annually, the Contractor shall furnish to the Department a complete list of equipment inventory provided by the Contractor for use at the Concession. Any equipment added during the season shall be updated on the list of equipment inventory and the updated version must be provided to the Department between the hours of 8am – 5pm Monday through Friday prior to use.
4. The Contractor acknowledges that any equipment made available for use by the Contractor is not the responsibility of the Department.
5. Permanent fixtures may be installed only with the written approval of the Department.
6. All equipment that becomes a permanent fixture to the building or structure and fastened thereto shall become the property of the Department.
7. All equipment and materials to be kept on the Premises in connection with the concession shall be supplied at the Contractor's own cost and expense.

B. **Alteration of Premises.** The Contractor shall not install, move, or alter any permanent or temporary equipment belonging to the Department in or about the Premises. The Contractor shall not modify water supply lines, waste lines, electric lines, or other utility, machinery or fixtures, except upon written permission from the Department.

#### X. **EMPLOYEES**

**A. Employment.**

1. The Contractor shall employ and maintain such help and labor as may be necessary to operate the concession in a manner acceptable to the Department.
2. Annually, the Contractor shall provide the Department with the information required in Section VI.C.
3. With the prior approval of the Department, the Contractor may employ a manager.
4. If, at any time, the Department shall be of the opinion that any employees, agents and/or volunteers of the Contractor has engaged in improper conduct on the Premises, the Department shall notify the Contractor and the Contractor shall take appropriate action to address with the employees, agents and/or volunteers the improper conduct, including discharge of employees, agents and/or volunteers or reassigning such employees, agents and/or volunteers to duties not related to the park concession contract.
  - a. Improper conduct includes, but is not limited to, behavior that is not in accordance with propriety, reason, or honest. It is behavior that is unfitting, insulting, intimidating, humiliating, malicious, degrading, or offensive. Improper conduct can include corrupt conduct, serious professional misconduct, misconduct, and unsatisfactory conduct.

**B. Moral Conduct.** From a public viewpoint, the Contractor and Contractor employees, agents and volunteers are direct representatives of the Department. Therefore, the Contractor and Contractor employees, agents and volunteers are required to conduct themselves in a professional manner befitting a state employee. Professional requirements include, but are not limited to the following:

1. The Contractor shall prohibit gambling, drinking, discourtesy to guests, and other illegal and/or undesirable acts by employees, agents and volunteers, whether on or off duty on the Premises.
2. All employees, agents and volunteers must use appropriate (“G” rated) language and actions at all times.
3. Annually and upon hiring throughout the season, the Contractor is required to provide the background reports outlined below on all employees, agents and volunteers prior to them performing work at the Premises. The Contractor must provide the information to the Department for review and approval prior to the employee’s, agent’s, or volunteer’s start of work. Submissions must include:
  - a. State of Michigan’s Internet Criminal History Access Tool (iCHAT) [Home Page - ICHAT Menu \(michigan.gov\)](#)
  - b. Michigan Department of Corrections (OTIS) [Offender Tracking Information System \(OTIS\) \(state.mi.us\)](#)
  - c. National Sex Offender Registry (NSOPW) [United States Department of Justice National Sex Offender Public Website \(nsopw.gov\)](#)

4. The Department reserves the ability to suspend or remove a concession employee(s), agent(s) and volunteer(s) who has violated a law, rule, order or performed inappropriate customer service. Department will work with Contractor to ensure enough time for proper staffing. Inappropriate customer service includes but is not limited to, any interaction with a customer that results in a negative opinion, dissatisfaction, or harm to the Department's reputation.
5. The Department prohibits alcohol consumption or drug use while on duty, possession of a drug or an open alcoholic beverage container on state-owned or leased property or in a state-owned or leased vehicle and reporting to duty or being on duty with a prohibited level of alcohol or drugs.

Contractor and employees, agents and volunteers of the Contractor shall not consume alcohol or use drugs while on duty. Possession of a drug or an open alcoholic beverage container by a Contractor or employees, agents and volunteers, while on state-owned or leased property or in a state-owned or leased vehicle, is likewise prohibited.

A Contractor and employees, agents and volunteers of the Contractor shall not report to duty or be on duty with a level of alcohol or drugs in his or her bodily fluids that is prohibited by Michigan Civil Service Commission (CSC) Rule 2-7.1 and Civil Service Commission (CSC) Regulation 2.07 and 2.08. If there is reasonable suspicion that a Contractor or employees, agents and volunteers of the Contractor has reported for duty or is on duty with a prohibited level, the Contractor or employees, agents and volunteers of the Contractor shall submit to a drug test or an alcohol test.

A Contractor and employee/volunteer of the Contractor who 1) consumes alcohol or uses drugs while on duty; 2) possess a drug or an open alcoholic beverage container while on state-owned or leased property or in a state-owned or leased vehicle; 3) reports to duty or is on duty with a level of alcohol or drugs prohibited by CSC Rule 2-7.1 and CSC Regulation 2.07 and 2.08; 4) refuses to submit to a drug test or an alcohol test when there is reasonable suspicion the Contractor and employees, agents and volunteers of the Contractor is in violation of CSC Rule 2-7.1 and CSC Regulation 2.07 and 2.08, OR 5) interferes or tampers with reasonable suspicion drug or alcohol testing, shall be subject to disciplinary action, up to and including termination of the Contract.

As used in this Contract, the terms "drug" and "drugs" means a controlled substance, or a controlled substance analogue listed in Schedule 1 or 2 of Part 72 of the Michigan Public Health Code.

**C. Appearance.**

1. All concession personnel who encounter the public shall be neat, clean, and in uniforms identifiable by the public, complete with employee name tag identification. Uniforms shall be approved by the Department.
2. All Contractor employees, agents and volunteers will assure proper hygiene is maintained, including, but not limited to, showering, maintaining a clean and acceptable appearance, and removal/covering of any non-G rated body piercings and tattoos.

**D. Training.**

1. To promote the facilities of the Department of Natural Resources and to provide quality service to the public, employees, agents and volunteers of the Contractor must receive thorough training.
2. Concession operators and their employees, agents and volunteers must attend seasonal training programs if offered by the Department on the Property where the Premises is located. These training programs will acquaint personnel with information about the Property/Premises, as well as information to disseminate to the general public.
3. In addition, designated Department staff will be invited to Contractor concession trainings. Department attendees will then share key training information with their staff.

**E. Parking.**

1. The Contractor, and all agents of the Contractor, shall park in areas identified by the Department.
2. The identified parking area may be changed by the Department to facilitate construction, to protect the public or the Property.
3. The Department is not responsible for damage or theft to vehicles of the Contractor or the Contractor's agents.

**F. Special Conditions.**

1. No motor vehicles will be allowed, without Department prior approval, except on paved surfaces intended for vehicle use.
2. This Contract does not provide Contractor with the ability to go directly to the front of the line when entering the Property. Contractor and employees must wait in line with all other park guests.
3. A valid Recreation Passport is required on all Contractor owned, and employee/volunteer owned vehicles entering the Property.
4. Off-road vehicles (ORV) such as golf carts are not permitted on State property without prior authorization of the Department. If approved for use by the Contractor, an ORV must be street legal and are required to have a valid Recreation Passport affixed.

**XI. INSURANCE AND PERFORMANCE GUARANTEE**

**A. General.**

1. At least thirty (30) calendar days prior to occupancy of the Premises, Contractor shall provide proof of the minimum levels of insurance coverage identified below and listing the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds. A commercial Contractor shall

provide this proof on commercial general liability form CG 2110 00 01 an endorsement, a non-commercial Contractor shall provide this proof on the appropriate ACCORD, or other documentation as otherwise approved by the Department. All such certificate(s) shall contain a provision indicating that coverages afforded under the policies will not be cancelled or materially changed without prior written notice having been given to Department.

2. Prior to expiration of the insurance coverage, the Contractor must provide an updated certificate of insurance meeting all of the above requirements. Failure to provide may result in a Notice of Violation, suspension of activities, and/or termination.
3. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.
4. The Contractor hereby releases, waives, discharges and covenants not to sue the State of Michigan, its departments, officers, employees and agents, from any and all liability to Contractor, its officers, employees and agents, for all losses, injury, death or damage, and any claims or demands thereto, on account of injury to person or property, or resulting in death of Contractor, its officers, employees or agents, in reference to the activities authorized by this Contract.
5. The insurance shall be written for not less than the minimum coverage herein specified or required by law, whichever is greater. All deductibility amounts for any of the required policies must be approved by the Department.
6. The Department reserves the right to reject insurance written by an insurer the State deems unacceptable.
7. Before starting work the Contractor must furnish to the Department, certificate(s) of insurance verifying insurance coverage. The certificate must be on the standard "ACCORD" form. All such certificate(s) are to be prepared and submitted by the insurance provider and not by the Contractor. All such certificate(s) shall contain a provision indicating that coverages afforded under the policies will not be cancelled or materially changed without prior written notice having been given to Department.
8. The insurance must include as an additional insured– **State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents.** The language as provided must be included without deviation or exception.
9. The Contractor is required to provide Commercial General Liability Insurance with the following minimum limits:

General Aggregate:	\$1,000,000
Each Occurrence:	\$1,000,000
Property Damage (structures and equipment - only applicable for State owned building):	\$500,000

- B. Workers Compensation.** To the extent as required by law, the Contractor is required to provide Worker's Disability Compensation, disability benefit or other similar employee benefit act with minimum statutory limits. Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable. Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.
- C. Automobile/Watercraft Insurance.** The Contractor must maintain automobile and/or Watercraft insurance required by law for claims arising from ownership, maintenance, or use of a motor vehicle or any watercraft equipment as may be required by this Contract.
- D. Proof of Insurance.**
1. All required Insurance shall be kept in force during the period of the Contract and shall be written for not less than the limits of liability specified above.
  2. The Contractor is responsible for making each subcontractor comply with these insurance requirements.
  3. All certificates of Insurance, or changes in insurance coverage, require approval by the Department and shall be filed with the Department prior to the Contractor's occupancy of the Premises and operation of the concession, for each year of the Contract.
  4. The certificates shall contain a provision that the coverage's afforded under the policies will not be modified or cancelled until after at least thirty (30) days written notice to the Department.
  5. Failure to comply with all insurance requirements specified in this contract may result in termination of this Contract.
- E. Performance Guarantee.**
1. The Contractor, as a prior condition to any rights under this Contract, shall furnish a performance guarantee in a manner and amount acceptable to the Department.
  2. All performance guarantees must be written in such a manner that they provide continuous coverage for the term of the Contract and shall not expire until the Department has verified that vacancy has occurred without damage.
  3. The guarantee shall be in continuous effect during the entire Contract period and shall not expire until the Contractor has received verification from the Department that no damage has occurred to the premises or Department equipment.
  4. The condition of said guarantee shall be that the Contractor will faithfully keep and perform all covenants on the part of the Contractor as set forth in the Contract.

5. Proof of a guarantee currently in force must be kept continuously on file with the Department.
6. If such valid guarantee is not kept in force with written documentation provided to the Department, this Contract will be terminated by the Department.
7. **The guarantee shall contain a provision that it may not be cancelled except by written approval by the Department.** The performance guarantee requirement for this Contract is **\$1,000**.
8. **Should any portion of the performance guarantee be exhausted, it shall be replenished to the original amount required above.**

## **XII. NOTICE OF VIOLATION AND DAMAGES**

- A. This Contract has been established to provide services, goods, or both, to the visitors of the Department's facilities and the citizens of the State of Michigan. The Contractor's failure to comply with the various provisions of the Contract may cause a loss of services or goods to those visitors, and also may cause untimely delays in the administration of this Contract, depriving the Department of the agreed upon services or causing a loss of revenue. The Contractor's failure to comply with the provisions of this Contract will subject the Contractor to a system of damages as stated below.
- B. **Failure to Open.**
  1. The Contractor shall be in full and complete operation with a full staff of employees on the first day of the term of operation as provided in Section II of this Contract.
  2. If the Contractor is not in full operation on that date (except for causes wholly beyond the control of the Contractor and not involving neglect by the Contractor), this Contract, at the option of the Department, may be terminated without notice. Upon termination, the Department may re-enter the Premises and obtain a new Contractor for the operation of the facilities.
  3. In addition to any other remedy, the Department may assess liquidated damages of \$50 per day, per facility, for each day that any facility remains out-of-service because of non-performance by the Contractor.
- C. **Notice of Violation.**
  1. Upon notice of a violation of any term of the Contract, the Contractor will be provided with a written "Notice of Violation" identifying which term of this Contract has been violated and a date by which the stated violation must be corrected.
  2. If the violation has not been corrected by the date specified, the Contractor agrees to pay the Department liquidated damages in the sum of \$50 per day, per violation.
  3. If after the seventh (7<sup>th</sup>) day, the violation is still not corrected, the Contractor agrees to pay an additional \$100 per day, per violation. This fee shall increase \$100 per violation every seven (7) days, until corrected.



4. If during the contract period a “Notice of Violation” is issued for recurrent violation(s) the initial sum of the liquidated damages shall be \$100 per day, per violation; and increase every seven (7) days in the sum of \$200 per violation, per day.
5. The system of progressive liquidated damages is not intended to be in lieu of the Contractor performing according to the Contract provisions.
6. This liquidated damage provision does not waive or modify any rights the Department has to terminate this Contract pursuant to the Contract’s terms.
7. The Department reserves the right to waive liquidated damages.
8. In addition to the terms of the Contract related to termination, the Department may terminate this contract upon the Contractor receiving up to three (3) major violation or six (6) minor violations (two (2) minor violations are equivalent to one (1) major).
  - a. Major Violation – A violation of term(s) of the contract that impacts the health, safety and/or welfare of visitors or Department staff or that negatively impacts the environment, resource, or mission of the Department.
  - b. Minor Violation – A violation of term(s) of the contract that is not a “Major Violation”.

### **XIII. EXTENSION / RENEGOTIATION / MODIFICATION**

#### **A. Extension and Renegotiation.**

1. This Contract is subject to an annual review by the Department.
2. At the expiration date of the Contract, the Department, at its option, may grant an extension of the Contract, or renegotiate the Contract with the Contractor.
3. Every seven (7) years, this Contract must be put out for competitive bids, unless circumstances arise where it is in the best interest of the State to extend or renegotiate. Barring termination or cancellation, the earliest this Contract may be re-bid is for the 2032 operation season.

#### **B. Modification.**

1. This Contract shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance.
2. No modifications of this Contract are effective unless in writing, signed by the parties, and executed in the same manner as this Contract was originally executed.
3. A party may waive or release the other party’s breach or default only in writing.

- C. Severability.** Each provision of this Contract is severable from all other provisions of this Contract, and if one or more of the provisions of this Contract are declared invalid, the remaining provisions of the Contract remain in full force and effect.

### **IX. TERMINATION**

A. **Act of God.** Whenever, as a result of any cause beyond the Department or Contractor's control (such as fire, flood, windstorm, or other acts of God or emergency declared by federal or state governments), the Department or the Contractor is prevented from complying with any obligation of this Contract, the Department or Contractor shall not be liable for any damages for default of this Contract. In the event of an Act of God causing noncompliance with the Contract, at the option of the Department, this Contract shall terminate, and each party hereto shall be released from further obligation under the Contract.

B. **Cancellation.**

1. In the event that the Contractor wishes to cancel this Contract, Contractor may do so only with the prior written approval of the Department.
2. If the cancellation request is approved, it is understood that the Contractor will not be considered as a prospective bidder for that concession until after it has been determined that no other party is interested.
3. The Contractor may not cancel, and the Department may not approve any request to cancel this Contract where the effective date for cancellation falls during any operating season established in accordance with Section II.F. above.

C. **Termination.**

1. Upon the failure of the Contractor to comply with any provision, stipulation, or condition of the Contract, including the regular payment of rent and fees as agreed upon, this Contract and concession may be terminated at the option of the Department.
2. In the event of the termination of this Contract for any cause, the Contractor shall be liable for that portion of the Contract Fee, Pro-rated to the effective date of such termination (see Section II. B).

D. **Cancellation for Convenience.**

1. The Department may cancel this Contract for its convenience, in whole or part, upon thirty (30) days' notice to Contractor, if the Department determines that such a cancellation is in the Department's best interest.
2. Cancellation shall be left to the sole discretion of the Department and may include, but are not limited to:
  - a. The Department no longer needs the services or products specified in the Contract.
  - b. The Contractor provided information to the Department in its bid for this contract or at any time during the contract term, that was false or fraudulent.
  - c. Changes in laws, rules, or regulations that make implementation of the Contract services no longer practical or feasible.
  - d. Change in ownership of the State property or damage to the Premises.

e. Unacceptable prices for additional services requested by the Department.

3. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

**E. Vacating Premises.**

1. The Contractor shall vacate the Premises by the expiration date of the Contract, unless another date is approved by the Department.

2. If termination shall occur, then the Contractor shall vacate the Premises within fifteen (15) days of termination.

3. No personal property on which the Department has placed a lien shall be removed from the Premises until all Contract Fees and other sums owed to the Department have been paid.

**F. Waiver of Default.** The failure of a party to insist upon strict adherence to any term of this Contract does not deprive the party of the right to insist upon strict adherence to that term, or any other term, of this Contract.

**G. Integration.** This Contract constitutes the complete agreement and understanding of the parties as it relates to this transaction. This Contract supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction.

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**DEPARTMENT  
STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES**

\_\_\_\_\_  
Ronald A. Olson, Chief                      Date  
DNR, Parks and Recreation Division

**CONTRACTOR**

Each of the signatories below herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who has legal authority to sign on behalf of its business or organization as named in this Agreement.

**Contractor**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Contractor Signature                      Date

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