

# **AN INVITATION TO BID**

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

## **Tawas Point State Park**

### **Mobile Food 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
  - Bank Statement of Credit
- 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 mobile food concession at Tawas Point State Park. The selected partner will offer prepared and pre-packaged foods, beverages, ice cream, and bagged ice from a self-contained mobile unit. It is possible that the systems supporting the Day Use pavilion be repaired within the seven (7) year term of the Concession Contract. Should the pavilion be repaired and opened to the public while the Concession Contract is effective, the Contractor may be given the ability to operate out of the existing Concession Building instead of a mobile unit.

Bids must be enclosed in sealed envelopes. **Bid envelopes must be plainly marked** on the outside, **"Bid for Concession at Tawas."** 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 11, 2022**, at **2:00 p.m.** Bid documents received after this date and time will not be accepted. Incomplete bids will not be accepted. Bids will be opened in the Roscommon Customer Service Center. You may either hand deliver your bid or mail it to:

Roscommon Customer Service Center  
Attn: Concession and Lease Manager  
8717 North Roscommon Road  
Roscommon, MI 48653

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

1. Submit bid prior to **2:00 p.m.** on **January 11, 2022**
2. Bid Proposal Form
3. Concession Bidder Qualification Statement
4. Bid Guarantee Payment in the amount of **\$200**
5. Bank Statement of Credit in the amount of **\$5,000**
6. Firewood Questionnaire Statement
7. Sealed envelope and marked as "Bid for Concession at Tawas"

### **Bidder Selection:**

**The bids will be evaluated on previous business experience, financial stability and monetary compensation to be paid to the State.** 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 evaluated on previous experience, financial ability and monetary payment to be paid to the State.
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 **\$500**.

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  
Roscommon Customer Service Center  
Attn: Concession and Lease Manager  
8717 North Roscommon Road  
Roscommon, MI 48653

- 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. Bid Guarantee: The Bid Proposal form must be accompanied by either a certified or cashier's check on an open, solvent bank in the amount of \$200. Guarantee of the three (3) highest bidders will be retained until the Department has awarded the contract. Guarantee payments of all other bidders will be returned within three weeks of the bid letting. If the successful bidder fails to provide a Performance Bond or open the concession on the date set by the Parks and Recreation Division, the guarantee payment shall be forfeited to the State.
12. Statement of Credit: The Statement of Credit reflects a conservative estimate of what it will cost to set up and begin operations. The Statement of Credit amount required for this contract shall be **\$10,000**. To meet this requirement, the bidder must provide a certified document prepared by a licensed financial institution. **Current concessionaires with at least 10 years of experience in Michigan State Parks and Recreation Areas are exempt from this requirement.**
13. Selection Process: Prior to awarding a concession contract, the Department takes the following steps:
- a) Competitive bid letting
  - b) Department internal review of submissions (including at a minimum, Concession and Lease Manager, Park Manager, and District Supervisor)
  - c) Department may request a presentation from all bidders to gain clarification where questions arise
  - d) Notification of selection (approximately two weeks between bid and notification)

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

### **Contract Requirements:**

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

General Aggregate:	\$1,000,000
Product Aggregate:	\$1,000,000
Personal Injury.....:	\$1,000,000
Occurrence.....:	\$1,000,000
Fire Damage Limit:	\$ 500,000
2. Workers Compensation Insurance pursuant to Sample Contract Section XI.B.

3. A **minimum Contract Fee of 10% of Gross Annual Sales** pursuant to Sample Contract Section II.B.

**General Information:**

Tawas Point State Park, located on the end of a sand spit that forms Tawas Bay along Lake Huron, is home to 183 acres of lakeside recreation and has been referred to as the “Cape Cod of the Midwest.” The Park is a stopover site for hundreds of migrating birds in the spring and fall, making it a favorite spot for many bird watchers from all over the Midwest.

The Park is home to a modern campground and overnight lodging facilities, popular for their location on Tawas Bay, where the water is shallow and warm for swimming. The park’s day-use area features a popular swimming beach, a picnic area and nature trail along the picturesque Lake Huron coast. From the park, visitors can access the Tawas Bay Multi-Use Trails, part of Michigan’s Iron Belle Trail, along Lake Huron or explore nearby historical, natural and cultural areas along the Lumbermen’s Monument Auto Tour.

<u>Year</u>	<u>Annual Visitors</u>
2016	265,709
2017	284,487
2018	306,625
2019	304,185
2020	286,932

**Concession Facilities:**

This will be a new concession. No historical sales information exists. The selected bidder will be placed in an area within the day use parking area. No water or electric is available. The Contractor may use the campground dumping station to dispose of grey water.

**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 (989) 362-5041.

**SECTION 3, BID FORMS:**

## BID PROPOSAL FORM

Parks and Recreation Division  
Michigan Department of Natural Resources  
Roscommon Customer Service Center  
8717 North Roscommon Road  
Roscommon, Michigan 48653

Concession and Lease Manager:

I offer to operate and maintain the concession at **Tawas Point 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 fee 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 references to support my offer:

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Bid Guarantee Payment in the amount of **\$200**
- Bank Statement of Credit in the amount of **\$5,000**
- Other: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

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.** Your response must be completed with a date, signature and the printed name of the signatory. The completion and submission of all questions and the required attachments reflects accurate and truthful statements of the signatory. Your response will be scored by Department staff on a scale of zero to thirty, with thirty being high.

1. Please provide a comprehensive overview of your prior experience providing, operating, programming and managing this type of concession. (Score 0 to 30)
2. If you plan to use a manager, describe the manager's experience and qualifications. (Score 0 to 20)
3. Do you plan to sublet or assign any portion or the entire contract to another party? If yes, explain. (Score 0 to 2)
4. Please describe the staffing plan you would like to implement at the concession. (Score 0 to 30)
5. Describe your marketing, advertising, and sales promotion plans including the annual budget specifically for each activity. (Score 0 to 20)
6. Describe the menu you would offer. Attach a menu. (Score 0 to 30)
7. List all major equipment you will supply to provide products and services required in this bid document. Provide a photograph of your mobile unit. (Score 0 to 30)
8. Describe your methods for daily bookkeeping, accounting, and recording revenues on a daily basis. (Score 0 to 20)
9. Provide financial statements prepared by a Certified Public Accountant in accordance with generally accepted accounting principles for your organization's last fiscal year demonstrating the firm's ability to operate. Samples of a financial statement are tax return, profit and loss statement, balance sheet, cash flow statement or owner equity statement. (Score 0 to 10)
10. How much working capital, for the initial inventory investment are you prepared to provide? (Score 0 to 20)
11. Approximately what portion of the aggregate of initial investment and working capital do you plan to finance? (Score 0 to 2)

- 12.** In what other businesses are you financially interested? (Score 0 to 2)
- 13.** Have you ever failed in business or compromised with creditors? (Score 0 to 20)
- 14.** Have you or your company ever failed to fulfill the requirements of a contract? (Score 0 to 20)
- 15.** Describe all infractions or notices of violation that have occurred in your operations in the past five years and explain how each infraction or violation was addressed. (Score 0 to 30)
- 16.** Have any liens ever been filed against any of your work? (Score 0 to 2)
- 17.** Are there any judgments, suits, or claims pending against you? (Score 0 to 2)
- 18.** Are you acting as endorser for others on their notes or accounts? (Score 0 to 2)
- 19.** List names, address, phone number, and contact person of insurance carrier who will provide your liability and vehicle insurance. (Score 0 to 2)
- 20.** What is your insurance coverage deductible, if any? (Score 0 to 2)
- 21.** Provide a copy of the operational limitations required by your proposed insurance carrier. (Score 0 to 20)
- 22.** List a minimum of two (2) personal references with addresses and telephone numbers. (Score 0 to 20)
- 23.** List a minimum of two (2) business references with addresses and telephone numbers. (Score 0 to 20)
- 24.** Please provide a narrative that would include anything you feel might assist the Department in evaluating your experience or plan of operation. (Score 0 to 30)
- 25.** Submitter must sign, print name and date the response submittal. (Score 0 to 5)

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

**CONCESSION CONTRACT**  
(Required under authority of Act 451, P.A. 1994.  
Failure to comply with conditions may result in  
cancellation or termination of Contract.)

**PROPERTY:**                    **Tawas Point State Park**

**CONTRACTOR:**                \_\_\_\_\_

**CONCESSION:**               **Mobile Food**

**EXPIRES:**                    **November 30, 2028**

**PREFACE**

The State of Michigan, Department of Natural Resources (“Department”), provides facilities for the use and enjoyment of the public. The responsibility of the Department is to operate or contract for the operation of the facilities so as to maximize service and benefit to the public according to approved standards. The facilities included in this Contract are made available to the Contractor with the intent that the Contractor will operate them according to those standards to provide maximum use, service, and benefit to the public.

It is fully understood that the granting of this Contract to the Contractor by the Department of Natural Resources **DOES NOT GRANT EXCLUSIVE RIGHTS** to the **ENTIRE PROPERTY** where the concession is located, unless expressly provided for herein. This Contract grants rights to the Contractor to provide goods and services specified under Section IV for the Premises identified in Section II.C.1. It is also understood that the Department is charged with the management of the property and shall make all decisions as to what concessions shall or shall not be located on the property and where these concessions shall be located.

**I. GRANT OF CONCESSION CONTRACT**

The Department in consideration of the covenants and representations 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 Tawas Point State Park in Iosco County (the “Property”). This Contract is subject to the right of the Department to terminate this Contract upon the Contractor’s failure to perform the required services in a satisfactory manner.

## 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, 2028** and is subject to annual review by the Department.

1. The 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 **2029**.

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 Income 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 **Tawas Point State Park, 686 Tawas Beach Road, East Tawas, MI 48730**.
4. A completed Concession Operators Report (PR3007) shall be submitted each month along with the payment.
5. A \$10 per day Late Fee must be paid to the Department by the Contractor for every day beyond the designated day of the month that 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.
6. Failure to pay the Contract Fee on time will be grounds for the Department to terminate the Contract.
7. For purposes of this Section, Gross Income shall be the total amount of all receipts in cash, credits, property, or interest of whatever kind received by the Contractor from all business done under the provisions of this Contract, but it shall not include Recreational Passport sales, fishing and hunting licenses sales, internal sales, 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 listed property, buildings, and items of equipment, for the use of the Contractor for this Contract. The area included within this Contract (“Premises”) shall be:

**A self-contained mobile unit shall be placed in designated space located in the day use parking lot. No provision of electric, sewer or water is provided. If the Day Use concession building support systems are repaired and the building is approved to be opened to the public, the Contractor may be given approval to operate out of that building instead of operating a mobile unit.**

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

2. All buildings and parts of the buildings and grounds covered specifically in this Contract shall be open to inspection during normal business hours 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. Such utilities are solely the responsibility of the vendors or 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 the exclusive rights to provide the goods and services authorized by this agreement and identified in Section IV.

**E. Visitors.** The Department does not guarantee a specific number of visitors to the Property 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:

**Friday Before Memorial Day to Labor Day:**

Monday through Friday, 11:00 am to 7:00 pm

Saturday, Sunday and Holidays: 10:00 am to 9:00 pm

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

2. The Contractor must 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 in writing 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 this concession 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 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 consent 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.

**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 consent 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 subcontractor. The Contractor is exclusively 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. 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:

**Products and services to include: Prepared/grilled and pre-packaged food, beverages, bagged ice, and ice cream.**

**C. Food and Beverages.**

1. The Contractor may sell the food and beverages including basic grocery and picnic items, prepared/grilled items, pre-packaged foods, soft drink products, and ice cream products.
2. The public health and wellbeing of the visitors to the Property is important to the Department. The Contractor is required to provide a variety of foods that allow healthy options, including, but not limited to, fresh fruits and vegetables and items with lower sodium, sugar, and fat content (see **Attachment A**).
3. The Contractor is encouraged to market concession products in a way that may help customers make healthier food choices when making a purchase. Examples include, lower prices for healthier options, listing calorie counts, or putting healthy options in prime sale areas.
4. Food may be prepared by the Contractor only if the Contractor equips the facility with the minimum items necessary for the safe preparation and service of foods in accordance with any applicable state and local laws (see **Section VIII.D.9**).
5. The Department reserves the right to designate a specific company to provide beverages sold by any means. If the Department elects to designate a specific company's product, the Contractor shall sell only their product line.
6. Use of biodegradable or recycled products in dispensing of food items (except for prepackaged items) is required.

**D. Ice.** Bagged ice may be sold. The ice shall be prepared and packaged according to U.S. Food and Drug Administration rules and regulations, including:

1. Sanitary conditions.
2. Monitoring of cleanliness.
3. Hygiene of employees.
4. Properly cleaned and maintained equipment.
5. Safe and sanitary water.

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

**F. Credit Cards.** Visa and MasterCard credit cards must be accepted by the concession for all products and services.

**G. Prohibited Merchandise.** The Contractor agrees not to offer for sale prohibited merchandise, including:

1. Personal watercraft;



2. Tobacco products of any kind;
3. Flotation devices such as air mattresses, paddle boards, water wings, life jackets, inflated floats, and inner tubes which are not US Coast Guard approved.
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 C02 powered devices, slingshots, bows and arrows;
7. Alcoholic beverages, “mocktails”, or controlled substances;
8. No children products that promote or portray unmoral, unethical, or unhealthy activities (i.e. candy cigarettes);
9. All knives, except those with folding blades of 3” or less;
10. Balloons; and
11. Other items added to this list by the Department provided Contractor has been given written notification of the additional items.

**H. 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 credit card sales, coupon transactions, and direct cash operations.
  - c. Inventory summary of products sold and what should be on hand.
  - d. Products purchased from third party vendors.

**I. Pre-numbered Tickets or Receipts:** If the Department determines the requirements for POS described in Section IV.L. 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.

**J. Rates, Prices, and Charges.**

1. Ten (10) days before starting, 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.
4. The Contractor shall maintain on public display, a neat and legible sign showing the approved prices for the sale of goods/services. If practicable, such prices shall be comparable to prices charged for similar merchandise in the locality in which the concession is operated.

**V. ADDITIONAL TERMS**

- A. Contractor and concession staff must wear uniforms identifiable by the public, complete with employee name tag.
- B. Annually, the Contractor must submit a proposed menu (identifying “Healthy” food choices) for Department approval.
- C. The Contractor cannot play music outside of the mobile unit.
- D. No storage will be allowed outside of the concession unit.
- E. The Department is not responsible for any delays or cancellations due to power outages or weather-related issues.
- F. The Contractor is always responsible to maintain equipment in a safe and workable condition.
- G. The Contractor may set up tents, tables and chairs at the concession area with prior Department approval. Tents, tables and chairs may be for daily event use only and must be removed prior to daily close of the Premises.
- H. The Contractor acknowledges that the Department is not liable for any theft, vandalism, or damage that may occur to Contractor equipment/supplies.
- I. No motor vehicles will be allowed off paved surfaces.
- J. The Contractor is responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises.

- K. If using a vehicle, Contractor driver(s) must always carry valid operators' license in their possession.
- L. Contractor vehicles accessing the Premises will be required to have a valid Recreation Passport affixed.
- M. The Department and/or the Friends Group reserve the right to sell merchandising products within the Premises.
- N. The Contractor may not prohibit visitors and/or Department staff from bringing food from home or ordering food outside of the Premises and having it delivered to the Premises.

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

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

1. All POS tapes, attraction logs, pre-numbered tickets and receipt registers shall be kept by the Contractor with the applicable monthly sales reports for audit by the Department for the life 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, separate and apart from other operations.
3. All such records shall be maintained in accordance with generally accepted accounting practices (GAAP).
4. The Contractor shall make all bank deposits, cash register tapes, pre-numbered tickets, permits, customer receipts, attraction logs and reports concerning the operation available to the Department at such times as the Department may require.
5. Separate accounting records shall be maintained for each facility or operation in the Contract.

### **B. Monthly Reports.**

1. The Contractor shall furnish the Department with a monthly statement for the previous calendar month showing the gross amount of moneys received, on forms furnished by the Department.
2. The original copy of the monthly report shall be submitted to the Department prior to the 15<sup>th</sup> day of each month.
3. Failure to submit a monthly statement on time will be grounds for the Department to terminate the Contract.

### **C. Annual Reporting Requirements.**

1. Prior to opening each season, the Contractor shall provide the following reports to the Concession Manager:

- 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.
  - Updated 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.
  - Updated performance bond if Surety, Letter of Credit or Certificate of Deposit.
  - Equipment inventory list.
  - Price list and menu including healthy choices, if applicable.
  - Employee list with phone numbers.
  - Employee background report including sex register offender search.
2. No later than sixty (60) days following the yearly closing of the concession, the Contractor shall submit an annual Profit and Loss Statement for that season’s operations on forms furnished by the Department.
  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 Concession and Lease Manager.
- 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 in or about the concession, including but not limited to: **electric, water, sewer, and refuse.**
  2. The Contractor must have a telephone assigned for concession use, at the Contractor’s expense, and shall pay all related costs. The Contractor is required to provide 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 telephone, cable, internet, refuse, disposal and 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 will conduct a balanced advertising effort directed at developing more business under the provisions of the Contract.

2. All promotions, contracts, scripts, texts, and layouts must be submitted to the Department for written approval prior to execution or implementation.
3. The Contractor may place a promotional sign on the Premises if the location, sign material, and content meet Department approval. The sign may contain Operational Hours, prices, contact information, and other information approved by the Department.
4. 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.
5. 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.
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.

**B. Supervision by Property Manager.** The Department is responsible for the general management of the area on which this concession is located. 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 designate, shall be determined by the Department.

### **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 property covered in this Contract 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.

## **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 responsible for obtaining and paying for refuse containers.
2. 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.
3. Department will work with Contractor to identify site location of refuse containers.
4. The Contractor is also responsible for collection, removal, and disposal of all grease products.
5. 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. Service grease pit and arrange and pay for disposal of all cooking oils.
2. Arrange and pay for annual servicing of fire extinguishers and water testing.
3. Dispose of Contractor-owned equipment.
4. Clean interior and exterior of Premises on a daily basis or more often as necessary.
5. Comply with all licensing and permit requirements, including but not limited to: Health Department, Fire Marshall, EGLE, LARA.
6. Sweep the entrance, porch, sidewalk, and patio area, pickup and dispose of trash, and remove cobwebs from the Premises on a daily basis or more often as necessary.
7. Submit copies of all approved permits and inspection reports to the Department Representative within seven (7) days of receipt.

**D. Janitorial.**

1. The Contractor shall perform cleaning and janitorial services within the Premises.
2. ALL areas of the Premises must be kept clean and safe. This includes, but is not limited to staff break areas, areas fenced off from visitors, and locations that are not visible to visitors.
3. The Contractor shall supply cleaning supplies which have been approved by the Department and must maintain "Safety Data Sheets" on site.
4. The Contractor is required, whenever possible and within reasonable costs, to equip appliances with energy reduction accessories, utilize environmentally friendly (green) cleaning and maintenance products and provide customers and employee recycling opportunities.

**E. 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.

**F. 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.

**G. Waste.** The Contractor shall not use or permit the storage of any illuminating oils, gas, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, or any substances or things in any buildings erected or any property covered by the Contract except in buildings specifically designated for this purpose.

**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 the Department a complete inventory of equipment owned, leased, or loaned to the Contractor, on forms provided for that purpose. Any additional equipment shall be reported as soon as installed.
4. The Contractor acknowledges that any equipment available for use by the Contractor is not the responsibility of the Department to fix and/or replace.
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. Coin-operated.** The Contractor shall not permit or provide for the installation of mechanical rides, pinball machines, coin-operated amusement machines, jukeboxes (music boxes, record/CD players), or similar devices in or about the Premises.
- C. 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 names and position of all employees, agents and volunteers.
3. With the prior approval of the Department, the Contractor may employ a manager who is satisfactory to the Department.
4. If, at any time, the Department shall be of the opinion that any employees, agents and 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 correct the employees, agents and volunteers related problem, including discharge of employees, agents and volunteers or reassigning such employees, agents and volunteers to duties not related to the park concession contract.

**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, the Contractor is required to complete background checks (ICHat) and Sex Offender Registry checks on all employees, agents and volunteers prior to them performing work at the Premises. Contractor must provide the information to the Department for review prior to the employee's, agent's, or volunteer's start of work.

4. The Department reserves the ability to suspend or remove a concession employees, agents and volunteers who has violated a law or park rule or performed inappropriate customer service. Department will work cooperatively with Contractor to ensure enough time for proper staffing.
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 come in contact with 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/volunteers will assure proper hygiene is maintained, including, but not limited to, showering daily, maintaining a clean and acceptable appearance, and removal/covering of un-family friendly 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/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, 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 designated by the Department.
2. The designated 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 by 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. The Contractor is required to provide annual proof of the minimum levels of insurance coverage as indicated below. 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.

2. 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.
3. The insurance shall be written for not less than any 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.
4. The Department reserves the right to reject insurance written by an insurer the State deems unacceptable.
5. 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 thirty (30) days prior written notice having been given to Department.
6. The insurance must include as an additional insured – **State of Michigan and its Natural Resources Commission, Department of Natural Resources and their officers, servants, agents and employees.**
7. The Contractor is required to provide Commercial General Liability Insurance with the following minimum limits:

General Aggregate (other than Products-Completed Operations):	\$1,000,000
Products-Completed Operations Aggregate Limit:	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000
Fire Damage Limit - Any One Fire	\$ 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 **\$500.**

**XII. LIQUIDATED 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 liquidated damages as stated below.

**B. Violations.**

1. The Contractor will be provided with a written "Violation Notice" stating which provision 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 "Violation Notice" 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 Section IX for violations of this Contract's terms.
7. The Department reserves the right to waive liquidated damages.

**C. 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.D.1. 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.

**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. This Contract must be re-bid prior to the 2029 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.D. 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, if the Department determines that such a cancellation is in the Department's best interest.
2. Reasons for such cancellation shall be left to the sole discretion of the Department and may include, but not necessarily be limited to:
  - a. The Department no longer needs the services or products specified in the Contract.
  - b. Changes in laws, rules, or regulations that make implementation of the Contract services no longer practical or feasible.
  - c. Change in ownership of the State property or damage to the Premises.
  - d. Unacceptable prices for additional services requested by the Department.
3. The Department may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice thirty (30) days prior to the date of cancellation.
4. 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.
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 and exclusive 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.



**DEPARTMENT  
STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES**  
WITNESSED BY:

\_\_\_\_\_  
Signature Date Ronald A. Olson, Chief Date  
Printed Name: \_\_\_\_\_ DNR, Parks and Recreation Division

STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2021 by Ronald A. Olson, Parks and Recreation Division Chief, for the Michigan Department of Natural Resources.

\_\_\_\_\_  
DIANE MARIE MUNSON, Notary Public  
My Commission Expires: 07/04/2022  
Acting in the County of: Ingham

**CONTRACTOR**

**IN WITNESS WHEREOF**, the parties to this Concession Contract subscribe their names on the date set forth below:

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.

**Witness**

**Contractor**

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

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

\_\_\_\_\_  
Witness Signature Date

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

\_\_\_\_\_  
Title

STATE OF MICHIGAN, COUNTY OF \_\_\_\_\_ The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2021 by \_\_\_\_\_, for Contractor.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
State of Michigan, County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of: \_\_\_\_\_