



**WASHINGTON STATE PARKS AND RECREATION COMMISSION  
OLYMPIA, WASHINGTON**

**REQUEST FOR PROPOSALS  
RFP 325-180**

**PROJECT TITLE: Ike Kinswa State Park Water Rentals**

**PROPOSAL DUE DATE: Tuesday, January 30, 2024, by 1:00PM PST**

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**ELECTRONIC BID RESPONSES ONLY: Bid responses will only be accepted electronically via Email/Email Attachment to [BidBox@parks.wa.gov](mailto:BidBox@parks.wa.gov). (PDF scan encouraged). See Section 2.3 – Submission of Responses for expanded details.**

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Procurement Coordinator: **Manuel Iglesias**

Email Inquiries to: [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov)

*EXPECTED TIME PERIOD FOR CONTRACT: The contract period will be for up to five years with the possibility of one additional five-year extension.*

**BIDDER ELIGIBILITY:** This procurement is open to those Bidders that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

**AVAILABILITY OF DOCUMENTS:** The RFP, along with any amendments and bid results will be available only through WEBS (Washington's Electronic Business Solution). For more information, go to:

<https://fortress.wa.gov/ga/webs/>

**SPECIAL NOTE:** The U.S. Department of Defense funds a resource group generically called the Procurement Technical Assistance Center (PTAC), which has multiple offices across the country. While these Centers do not speak for or supersede the competition document, the Centers can help a qualifying business in understanding and navigating the competition. Per WA-PTAC: "No cost, confidential, one-on-one technical assistance in all aspects of selling to federal, state, and local governments. We have eight locations across Washington State assisting small businesses with marketing to the government, solicitations, drawings, and other areas relating to government selling." Link:

[Washington PTAC - PTAC - Washington State Procurement Technical Assistance Center](#)

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## **1 INTRODUCTION**

### **1.1 PURPOSE AND BACKGROUND**

RCW 79A.05.030 authorizes the Washington State Parks and Recreation Commission (State Parks) to grant concessions in its state parks and parkways and set the terms of the Concession. Under the authority of RCW 79A.05.030 State Parks may directly negotiate and enter into agreements. While competition is not required it is also not prohibited and State Parks is choosing to perform a competition to help determine which Concessionaire (a.k.a. Contractor) is worthy of the grant and in the best interest of State Parks.

The purpose State Parks grants this concession agreement is to provide quality services, programs, and facilities that enhance the convenience, enjoyment, education, and recreational experiences of State Parks visitors.

It is State Parks' expectation that this competition will result in a concession grant contract with a Bidder that meets the Objectives herein.

To the extent reasonable, State Parks intends to include qualified firms with expertise in the category of work that are certified diverse businesses. Diverse businesses are defined as; small business, microbusiness, mini-business, minority owned business (MBE), and women owned business (WBE), as defined in RCW 39.26.010 and veteran-owned businesses as defined in RCW 43.60A.010.

All submitting firms are encouraged to register in Washington's Electronic Business Solution Application (WEBS) at:

<http://www.des.wa.gov/services/ContractingPurchasing/Business/BidOpportunities/Pages/bidNotification.aspx>. WEBS is the system of record for this competition.

### **1.2 OBJECTIVE**

The project seeks a kayak rental vendor at Ike Kinswa State Park. The location of vendor will be in the day-use area near the swim beach. Exact space to be determined. The contract period will be for up to five years with the possibility of one additional 5-year term. This concession should provide kayaks (1 or 2-person or both), SUP boards, and possibly other types of approved water rentals. Due to the close proximity to the food concession, no food or beverages sales will be allowed. It is possible the park has space to park a trailer for storage of kayaks and lifejackets. Location TBD.





### 1.3 MINIMUM QUALIFICATIONS

REQUIRED: The awarded Bidder/Contractor must be licensed to do business in the state of Washington.

Vendor must be able to provide services at the park per the schedule below:  
Weekends only starting on Memorial Day Weekend and daily starting at end of school year through Labor Day.

The exact schedule is negotiable, but core hours should be 10 am to 6 pm.

Attendance for the park for the last three seasons:

	2023	2022	2021
May	6,927*	12,100	19,600
June	8,736	23,000	34,600
July	22,282	42,300	41,300
August	36,800	39,200	35,600

\* Low Attendance in 2023 was due to the campground being closed through July 15, 2023.

Bidders, who cannot meet the minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any proposal that is rejected as non-responsive will not be evaluated or scored.

### 1.4 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFP is tentatively scheduled to begin in May of 2024 and shall have a duration of up to five (5) years. Thereafter, via mutual negotiation, State Parks and the Contractor **may** extend the contract for an additional five years or in parts thereof.

### DEFINITIONS

Definitions for the purposes of this RFP include:

**Bidder.** Means an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.

**Concession or Concession Grant.** The purpose of the State Parks concession grant is to provide quality services, programs, and facilities that enhance the convenience, enjoyment, education, and recreational experiences of State Parks visitors.

**Contractor.** Individual or company whose proposal has been accepted by State Parks and is awarded a fully executed, written contract. A contractor may also be called a Concessionaire.

**Proposal.** A formal offer submitted in response to this solicitation. May also be called a “bid”, “bid response”, or quote.

**Request for Proposals (RFP).** Formal procurement document in which services needed are identified and firms are invited to provide their qualifications and responses to provide the services and their hourly rates. It may also be called a competition or competition document.

**State Parks.** Washington State Parks and Recreation Commission (**WSPRC**) is the agency of the state of Washington that is issuing this RFP.

**Submittal:** Are materials, documents, information, etc., that is required to be returned as your bid response.

**WEBS.** Washington’s Electronic Business Solution is the state’s bid notification system and is required for competitions falling under RCW 39.26 and encouraged for competitions falling under other procurement authority. The system offers one online site where Bidders can register to receive government bid notifications. Governmental buyers will be able to go to the same site to post bidding opportunities and amendments. For further information, please contact the WEBS Customer Service Help Desk at 360-902-7400 or [webcustomerservice@des.wa.gov](mailto:webcustomerservice@des.wa.gov).

## **1.5 SMALL AND DIVERSE BUSINESS PARTICIPATION.**

State Parks strongly encourages the participation of minority and women-owned businesses, Veteran owned businesses and small businesses, as prime Consultants or Subconsultants.

If you are a small business that needs assistance responding to this solicitation, help is available. Please visit OMWBE Small Business Assistance at <https://omwbe.wa.gov/small-business-assistance> to see the services offered. The Washington Procurement Technical Assistance Center (PTAC) is also available with no cost, confidential technical assistance for small businesses doing business with the state government.

### **Minority and Women-Owned Businesses**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State encourages participation in all of its contracts by firms certified by the Office of Minority and Women’s Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a Subconsultant basis. Bidders may go to <https://omwbe.wa.gov/directory-certified-businesses> to obtain information on certified firms

## 2 GENERAL INFORMATION FOR BIDDERS

### 2.1 RFP COORDINATOR & COMMUNICATION INSTRUCTIONS

The RFP Coordinator is the sole point of contact in State Parks for this procurement. All communication between the Bidder and State Parks shall be with the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Bidder. Bidders may only rely on the RFP Coordinator's written statements that are also posted on the state's bid notification system, the Washington Electronic Business solutions (WEBS). Any other communication, verbal or written, will be considered unofficial and non-binding on State Parks.

The RFP Coordinator for this competition is:

Name	Manuel Iglesias
Mailing Address	PO Box 42650, Olympia, WA 98504-2650
Street Address	OR 1111 Israel Road SW, Tumwater, WA 98501-6512
E-Mail Address	<a href="mailto:contracts@parks.wa.gov">contracts@parks.wa.gov</a> Please also include the name of the Procurement Coordinator in the body of the email.

- a. **Communication Point of Contact:** [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov). Subject line must include **325-180** This alpha-numeric identifier is used as "the search term." Failure to use the proper subject line means your communication may not be recognized by State Parks. It is your responsibility to follow solicitation/competition rules.

*DO NOT contact other State Parks personnel* regarding this opportunity; State Parks will likely DISQUALIFY the bid from your firm. Only contact the RFP Coordinator at [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov). Please also include the name of the Procurement Coordinator in the body of the email.

i. **Prebid Conference:**

Bidders are invited to attend a prebid conference where the Bidder may ask questions, seek clarifications, and request changes to the competition document.

The Prebid conference meeting will be conducted virtually via Microsoft TEAMS. Bidders interested in joining the prebid conference must RSVP to [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov) no later than **Tuesday, December 19, 2023**. The email subject line must include **325-180 RSVP**.

The following day we will send out a meeting request (with hyperlink) to the email address that you used to RSVP. Attendees should not display video and keep their microphone muted if not talking. Prebid Conference date: **Thursday, December 21, 2023, 10:30 – 11AM.**

Only State Parks responses posted on Washington Electronic Business Solutions (WEBS) are deemed official. All other State Parks communication whether it be verbal or in writing is deemed unofficial and nonbinding.

If for some reason this conference fails, if you were unable to ask a question, or if you want to ask a question, simply send in the question before 3PM (Pacific local time) the same day. State Parks will review the questions and using our discretion, responses if any, will be posted on WEBS (State of Washington's bid notification system).

State Parks accepts no responsibility for the quality of the prebid conference, technological difficulties, or failure to participate in the conference.

**ii. Question Period:**

1. Starts: See Section 2.2 Schedule of Procurement Activities
2. Due: See Section 2.2 Schedule of Procurement Activities
3. Send Questions to: [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov).
4. Subject line must include **"325-180 Question"**
5. Responses, if any, will be posted on WEBS (WA's bid notification system).

**iii. Complaint Period:**

**NOTE: Complaints received before the start date and after the due date will be disqualified and found to have no merit.**

1. Starts: See Section 2.2 Schedule of Procurement Activities
2. Due: See Section 2.2 Schedule of Procurement Activities
3. Send Complaints to: [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov).
4. Subject line must include **"325-180 Complaint"**
5. Responses, if any, will be posted on WEBS (State of Washington's bid notification system).

*(Bidders should consider addressing any concerns during the Question period prior to using the Complaint process)*

Bidders submitting complaints shall follow the procedures described in this section. Complaints that do not follow these procedures shall not be considered.

All complaints must be in writing and sent to the Procurement Coordinator before the deadline, to the email address, and using the proper subject line.

The complaint must state the basis for the complaint and a proposed remedy.



Only complaints that fall into the categories below and stipulate an issue of fact shall be considered:

- The solicitation unnecessarily restricts competition;
- The solicitation evaluation or scoring is unfair or flawed; or
- The solicitation requirements are inadequate or insufficient to prepare a response.

PAGE LIMITATION: WSPRC does not currently mandate any page limitation. However, Complaints must be succinct, organized, logical, and professional. Complaints that do not clearly fall into one of the three categories above, or, that are rants, attacks, contain disparaging remarks, includes multiple attachments or references to other material (document dumping, document overload), or any Complaint submission that appears to require the reader to weigh through voluminous amounts of material to verify the argument being made or piece together voluminous amounts of material to decipher the argument being made WILL BE administratively rejected by the Procurement Coordinator who will notify the Complaining Party that the communication received by WSPRC purporting to be a Complaint did not follow procedure and is therefore found to have no merit and will have no opportunity to cure and resubmit. Keep it succinct, organized, logical, and professional.

REVIEW BY STATE PARKS: The purpose of a complaint review is to give enhanced consideration to the argument being made by the complaining party and the agency's need to meet the mission of State Parks. Complaints will be reviewed by a State Parks manager who is not involved with this action and who will determine if State Parks needs reasonably requires the methodology employed. When a decision is reached, a response will be sent to the complaining party.

## 2.2 SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	<b>12/04/2023</b>
Prebid RSVP	<b>12/19/2023 COB</b>
Prebid Conference	<b>12/21/2023 10:30-11AM</b>
Question period  (see Section 2.1, a, i – Question Period)	Start: <b>12/04/2023</b> Due: <b>01/16/2024</b>
Responses to Questions (if any) (Responses may be posted on WEBS)	Anticipate <b>12/04/2023 – 01/16/2024</b>
Complaint Period  (see Section 2.1, a, ii – Complaint Period)  (Bidders should consider addressing any concerns during the Question period prior to using the Complaint process)	Start: <b>01/16/2024</b> Due: <b>01/22/2024</b>
Issue addendum to RFP (if applicable)	Any time before the due date
<b>Proposals due date (deadline)</b>  • <b>See also Section 2.3 Submission of Proposals</b>	<b>01/30/2024 1:00PM</b>
Evaluate proposals	Anticipate one to two weeks
Announce Apparent Successful Bidder (ASB) and send notification via e-mail to proposers (bidders)	Following the evaluation
Hold debriefing conferences (if requested)  (See Section 4.6 – Debriefs)	Following the Announcement of the ASB
Protests (if filed)  (See Section 4.7 – Protests)	Following the Debriefs
Award Contract	Following Debriefs and Protests

State Parks reserves the right to revise the above schedule.

## 2.3 SUBMISSION OF PROPOSALS

**Responses are due on: See Face-page for exact details**

Washington State enacted law allowing for electronic alternatives to pen-to-paper wet-ink signature on hardcopy documents, meaning if WSPRC agrees to alternatives other than wet-ink signature (pen-to-paper) on hardcopy documents, these alternatives may be accepted by WSPRC and are legally binding. See RCW 1.80.

For purposes of this competition document, WSPRC is accepting a PDF scan (or similar representation) of the Bidder's wet-ink signature when and where a signature is required.

For clarity: Print out the competition document, review it, include any other required document(s), complete where necessary, sign where you need to sign with a pen onto the paper, when you believe your bid response is ready to be submitted to WSPRC, scan it as a PDF file, review the PDF file one last time, and then attach the PDF file to your business email and send it to WSPRC.

It is WSPRC's expectation that the Bidder's bid response email will contain an attachment with all of the required documents scanned as a PDF, including any required signatures.

Bidders are required to submit the bid response electronically by email/email attachment to the address below.

Send your bid response to: [BidBox@parks.wa.gov](mailto:BidBox@parks.wa.gov)

- Subject line should include the bid's identification number, "Bid" and Company name.

Example email subject line: 325-180 Bid ACME

Example email subject line: 325-180 Bid John Smith Construction

Example email subject line: 325-180 Bid Microsoft

**CAUTION:** Submit your bid response early as a safeguard against any technological slow-down or delays. Bids received after the deadline for any reason, no matter the cause, regardless of responsibility, will be rejected.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of State Parks and will not be returned.

**VERIFICATION:** Bidders are welcome to contact the State Parks Contracts, Grants, and Procurement team (CGP) to see if your bid response was received, however, this process works best if there's enough time between the date and time submitted and the bid's due date deadline. Bidders should give CGP at least a day to notice your verification request and respond. Send verification requests to:

[contracts@parks.wa.gov](mailto:contracts@parks.wa.gov)

and in the subject line use "VERIFICATION" and the competition's number identifier (see face-page for the competition number).

## **2.4 ALTERATIONS TO WSPRC DOCUMENTS:**

The Bidder understands and agrees that the Bidder shall not alter this document [original competition and any follow-on competition amendments] and if the bid response received by WSPRC materially alters the competition or competition amendments (if any) then the bid response may be disqualified. Whether the alteration is noticed or not noticed by WSPRC, any resulting contract may be cancelled by WSPRC (only WSPRC) and the Bidder/Contractor shall hold WSPRC HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE). Or, WSPRC may allow the contract to continue with the altered portions being ignored in favor of the WSPRC official language. The awarded Bidder/Contractor understands, agrees, and accepts this provision and SHALL hold WSPRC HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).

## **2.5 UNREQUESTED SUPPLEMENTAL MATERIALS IN BIDDERS BID RESPONSE:**

Unrequested material places doubt whether or not the Bidder is making an exception to the Competition or makes the Bidder's bid response contingent on WSPRC accepting the unrequested material. The Bidder understands and agrees that the Bidder shall not supplement this document [original competition and any follow-on competition amendments] with unrequested materials and if the document received by WSPRC includes unrequested materials it may be disqualified. Whether the supplemental material is noticed or not noticed by WSPRC, any resulting contract may be cancelled by WSPRC (only WSPRC) and the Bidder/Contractor shall hold WSPRC HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).. Or, WSPRC may allow the contract to continue with the supplemental material being ignored in favor of the WSPRC official language. The awarded Bidder/Contractor understands, agrees, and accepts this provision and SHALL hold WSPRC HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).

## **2.6 PUBLIC DISCLOSURE/ PROPRIETARY INFORMATION & WAIVER**

Proposals submitted in response to this competitive procurement shall become the property of State Parks. All proposals received shall remain confidential until the Announcement of Apparent successful Bidder (ASB); thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

The Bidder will affirm in the Certifications and Assurances (Submittal A) that the bid response does not contain any confidential or proprietary information and that Bidder grants to WSPRC a full and complete Release of Information should the Bid Response contain any Confidential or Proprietary information.

## **2.7 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided through WEBS.

State Parks also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.8 ACCEPTANCE PERIOD**

Proposals must provide 90 days for acceptance by State Parks from the due date for receipt of proposals.

## **2.9 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

State Parks also reserves the right in its sole discretion to waive minor administrative irregularities.

## **2.10 MOST FAVORABLE TERMS**

State Parks reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Bidder can propose. State Parks does reserve the right to contact a Bidder for clarification of its proposal.

The Bidder should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Bidder's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to State Parks.

## **2.11 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful Bidder will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit A. In no event is a Bidder to submit its own standard contract terms and conditions in response to this solicitation.

It is anticipated the first deliverable under the contract will be a scoping plan, which will define the specific services to be provided by the Contractor based upon agreement between State Parks and the Contractor.

## **2.12 COSTS TO PROPOSE**

State Parks will not be liable for any costs incurred by the Bidder in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.



### **2.13 NO OBLIGATION TO CONTRACT**

This RFP does not obligate the state of Washington or State Parks to contract for services specified herein.

### **2.14 REJECTION OF PROPOSALS**

State Parks reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

### **2.15 INSURANCE COVERAGE**

Upon State Parks request, the awarded Bidder (Contractor) shall furnish State Parks with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at Contractor's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to State Parks within fifteen (15) days of the contract effective date.

#### **Liability Insurance**

*Commercial General Liability Insurance (CGL):* Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

*Business Auto Policy:* As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

#### **Employers Liability ("Stop Gap") Insurance**

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

## **Additional Provisions**

Above insurance policy shall include the following provisions:

- **Additional Insured.** State Parks, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** State Parks shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the state's contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by State Parks, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

## **Workers' Compensation Coverage**

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### **3 PROPOSAL CONTENTS**

Responses should provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the response, but should assist the Bidder in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the response for the response to be considered responsive, however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **3.1 SUBMITTAL A - BIDDER DECLARATION & CERTIFICATION (MANDATORY)**

The Bidder Declaration & Certification (Submittal A to this RFP) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship.

##### **3.1.1 WAGE THEFT PREVENTION CERTIFICATION**

Prior to awarding a contract, agencies are required to determine that a bidder is a ‘responsible bidder.’ See RCW 39.26.160(2) & (4). Pursuant to legislative enactment in 2017, the responsible bidder criteria include a bidder/contractor certification that the bidder/contractor has not willfully violated Washington’s wage laws. See Chap. 258, 2017 Laws (enacting SSB 5301).

The Bidder certifies by signing the Declaration and Certification (Submittal A to this RFP) that the Bidder certifies under penalty of perjury under the laws of the state of Washington the following is true and correct: No Wage Violations. This Firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082. any provision of RCW chapters 49.45, 49.48., or 49.52 within the three (3) prior years to the date of this competition’s date of issue.

##### **3.1.2 IN SUPPORT OF WORKERS RIGHTS CERTIFICATION**

Pursuant to the Washington State Governor’s Executive Order 18-03 (dated June 12, 2018), the Washington State Parks and Recreation Commission is seeking to contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.

The Bidder certifies by signing the Declaration and Certification (Submittal A to this RFP) that under penalty of perjury under the laws of the state of

Washington the following is true and correct: No Mandatory Individual Arbitration Clauses and Class or Collective Action Waivers for Employees. This firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.

### 3.1.3 CERTIFICATIONS AND ASSURANCES

The Certifications and Assurances document is incorporated by reference into this Competition and any resulting Award, and/or Contract.

The Bidder certifies by signing the Declaration and Certification (Submittal A to this RFP) that under the penalty of perjury under the laws of the state of Washington that the Bidder makes the certifications and assurances as outlined in the document titled CERT & WAIVER embedded immediately below.



Certification &  
Waiver

### 3.2 QUALIFICATIONS SECTION

The qualifications section of the response must contain information that will demonstrate to the agency the Bidder's understanding of the types of services proposed, the firm's ability to accomplish them, and the ability to meet tight timeframes, etc.

Please submit the following:

#### 3.2.1 SUBMITTAL B - BUSINESS INFORMATION (MANDATORY)

Up to three (3) pages, self-authored.

NOTE: THE BIDDER'S SELF-AUTHORED RESPONSE TO THIS SECTION SHOULD BE SEGMENTED EXACTLY AS SEGMENTED BELOW AND INCLUDE EASY-TO- READ TRANSITIONS. STATE PARKS SUGGESTS THAT THE BIDDER USE 3.2.1.A, 3.2.1.B, 3.2.1C, 3.2.1.D, AND 3.2.1.E. FAILURE BY THE BIDDER TO PROVIDE THIS INFORMATION **MAY** RESULT IN DISQUALIFICATION OR POINTS REDUCTION.

- A. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. State the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.

- C. State how many employees are with the firm. Name the firm principles and their roles.
- D. State if the Bidder has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Bidder's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default. NOTE: IF THERE IS NO TERMINATION FOR DEFAULT SIMPLY STATE 3.2.1.D: NO TERMINATIONS FOR DEFAULT IN THE PAST FIVE YEARS.
- E. State full details of the terms for default, including the other party's name, address, and phone number. Present the Bidder's position on the matter. State Parks will evaluate the facts and may, at its sole discretion, reject the response on the grounds of the past experience. If no such termination for default has been experienced by the Bidder in the past five years, so indicate. NOTE: IF THERE IS NO TERMINATION FOR DEFAULT SIMPLY STATE 3.2.1.E: NO TERMINATIONS FOR DEFAULT IN THE PAST FIVE YEARS.

### **3.2.2 SUBMITTAL C - BUSINESS PLAN (SCORED)**

Up to six (6) pages, self-authored.

Describe the main purposes or needs to be served by the concession, the bidder's concepts for providing that service, and the rationale for why the concept(s) will be successful. The amount of written detail to be provided is left to the bidder, but bidders are cautioned that evaluators are under no obligation to seek clarification or additional information, and interviews might not be provided to any or all bidders. Failure of the bidder to submit such information may cause an adverse impact on the evaluation of the bidder's proposal.

### **3.2.3 SUBMITTAL D - EXPERIENCE (MANDATORY)**

Up to three (3) pages, self-authored.

The awarded Bidder/Contractor must be licensed to do business in the state of Washington. You may attach copies of licenses or other documents demonstrating compliance.

Bidder, provide a self-authored document explaining how you meet this/these requirements.

### **3.3 SUBMITTAL E - REFERENCE (MANDATORY)**

NOTE: THE BIDDER'S SELF-AUTHORED REFERENCE RESPONSE MUST BE LEGIBLE AND MEET THE CONDITION IMMEDIATELY BELOW.



List names, addresses, telephone numbers, fax numbers and e-mail addresses of three references for whom work has been accomplished and briefly describe the type of service provided for them. By submitting a proposal in response to this Competition, the Bidder grants permission to State Parks to contact these references and others, who from State Parks' perspective, may have pertinent information. State Parks may or may not, at State Parks' discretion, contact references. **Do not include current State Parks staff as references.**

References: WSPRC reserves the right to not check references. WSPRC also reserves the right to request additional references if determined as necessary to evaluate the bidder.

### **3.4 SUBMITTAL F – OMWBE/VETERAN OWNED BUSINESSES CERTIFICATION (SCORED)**

State Parks, in accordance with Washington law, encourage small and diverse businesses to compete for and participate in state procurements as contractors and subcontractors to awarded bidders.

Please include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises, Washington State Certified Small Business, and/or Certified Veteran-Owned Businesses. Alternatively, if you are a small business registered in Washington's Electronic Business Solution (WEBS), we will verify your registration to determine your eligibility.

### **3.5 SUBMITTAL G - QUOTATIONS SECTION (SCORED)**

Submit the Quotation Form (Submittal G to this RFP). It must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship.

WA State SALES TAX: Awarded Bidders/Contractors are required to collect and pay Washington State taxes as applicable.

WA State LEASEHOLD TAX: **The leasehold excise tax applies in lieu of county property tax when persons or businesses lease or occupy publicly-owned real or personal property. Public property is property owned by the federal government, state of Washington, counties, school districts and other municipal corporations.**

Link: <https://dor.wa.gov/taxes-rates/other-taxes/leasehold-excise-tax>

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose proposal best meets the requirements of this RFP. Bidders are encouraged, however, to submit proposals which are consistent with state government efforts to conserve state resources.

## 4 EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals may be accomplished by an evaluation team to be designated by State Parks, which will determine the ranking of the proposals.

State Parks, at its sole discretion, may also elect to select the top-scoring firms as finalists for an oral presentation.

The evaluation criteria is combined with and integrated into the Checklist (Matrix) in section 4.3 EVALUATION, SCORING METHOD, VALUES AND PAGE LIMIT below.

The Checklist Matrix in section 4.3 reflects all submittals required to be present in the Bidder's bid response. It details whether pass/fail, scored, or a combination, the specific predetermined criteria and values system, the submittal form (if any), and section reference. Some submittals are evaluated as pass/fail or scored either by a scoring evaluator or scoring team or predetermined method, and a few submittals are optional or informational.

Pass/Fail: Some submittals are scored pass/fail. If a Bidder's bid submittal is scored a "fail" it will be disqualified from further evaluation and receiving an award/contract.

Point Scored: See Checklist (Matrix) for an individual Submittal breakdown of points.

General Evaluation Continuum: State Parks will use the following as general guidance and the specific criteria detailed in the Checklist (Matrix) in determining scores.

General Evaluation Continuum					
Bidder demonstrates renowned experience and/or the least or no risk, and/or ideal fit for what is being sought by State Parks  (most points)	Bidder demonstrates considerable experience, and/or some minor risk, and/or a close but not ideal fit for what is being sought by State Parks.	Bidder demonstrates solid experience, and/or mild risk, and/or fair fit for what is being sought by State Parks.	Bidder demonstrates adequate experience, and/or medium risk, and/or mediocre fit for what is being sought by State Parks.	Bidder demonstrates limited experience, and/or high risk, and/or poor fit for what is being sought by State Parks.  (low points)	Bidder demonstrates no experience, and/or grave risk, and/or a bad fit for what is being sought by State Parks  (no points)

**4.2 CLARIFICATION OF PROPOSAL**

The RFP Coordinator may contact the Bidder for clarification of any portion of the Bidder’s proposal.

**4.3 EVALUATION, SCORING METHOD, VALUES AND PAGE LIMIT**

The following will be assigned to the proposal for evaluation purposes:

#	Submittal	Method	Form Provided	Page Limit	What is of value to State Parks (SP)	Reference Section
A	Bidder Declaration & Certification  - 3.1.1 - 3.1.2 - 3.1.3	P/F	Yes	N/A	Signed and included.	3.1
B	Qualifications - <i>Business Information</i>  QUESTIONS:  - 3.2.1 A - 3.2.1.B - 3.2.1.C - 3.2.1.D - 3.2.1.E	P/F	No; self-authored by the Bidder	Up to 3 Pages	Information complete enough for SP to understand who you are, help SP research and investigate your firm for responsiveness.	3.2.1
C	Qualifications - <i>Business Plan</i>	Scored: up to 20 points	No; self-authored by the Bidder	Up to 6 Pages	SP is looking for a plan that demonstrates a robust knowledge, capability, and wherewithal to carry out the contract and serve park patrons.  SP will be looking for the Bidder's candor and well-thought-out detail versus what appears to be an inflated and unrealistic set of promise.	3.2.2

#	Submittal	Method	Form Provided	Page Limit	What is of value to State Parks (SP)	Reference Section
D	Qualifications - Experience	P/F	No; self-authored by the Bidder	Up to 3 Pages. Bidder may attach proving documents such as copies of licenses, etc.	Submittal must clearly demonstrate that the Bidder is licensed to do business in the state of Washington and has at least one (1) year experience in activity sought by this competition.	3.2.3
E	References	P/F	No; self-authored by the Bidder	1 Page Approx.	SP is looking for references that know and/or have worked with the Bidder, can vouch for the Bidder's good work acumen and ethic, and would hire and/or work with the Bidder.	3.3
F	OMWBE/Veteran, Small Ownes Business Certification	Scored: 10 points	No; self-authored by the Bidder	Proof of WA-OMWBE, Veteran, Small Certification. If you are a small business registered in Washington's Electronic Business Solution (WEBS), we will verify your registration to determine your eligibility.		3.4
G	Quotation	Scored: 30 points for greatest return and pro rata for remaining Bidders.	Yes	N/A	Greatest return to SP.	3.5

#### **4.4 REJECTED BIDS**

Bids that do not meet the legal and mandatory requirements are deemed nonresponsive and will be rejected. State Parks will notify the Bidder using the email address that is provided by the Bidder in the Bid response. State Parks will share the reason for the rejection. Once the bid is rejected, the bid is not evaluated any further, as such, the bid may contain other disqualifying factors that are unknown to State Parks.

#### **4.5 ANNOUNCEMENT OF APPARENT SUCCESSFUL BIDDER (ASB)**

Following the bid Evaluation, State Parks will announce the Apparent Successful Bidder (ASB) by email to the email address provided by the Bidder on its Declaration of Certification Submittal. The Announcement of ASB starts a clock and it is the responsibility that the Bidder provide a working email. Make sure the email address is legible; State Parks accepts no responsibility for the Bidder's receipt of the Announcement of ASB.

The announcement is called the Announcement of Apparent Successful Bidder. Notification that a Firm(s) was selected as the ASB simply means that at this point in time WSPRC believes the ASB was the responsive and responsible Bidder offering the best value, but designation as the ASB is not a guarantee of a contract and/or WSPRC Purchase Order, or purchase. WSPRC reserves the right to reevaluate the ASB's bid and determine whether or not the ASB's bid was responsive and responsible and successful as first thought. ASBs are cautioned not to commit funds, resources, and effort prior to receiving an actual executed contract and/or WSPRC Purchase Order. Bidders and ASBs that commit funds, resources, and effort prior to a contract and/or WSPRC Purchase Order do so at its own risk and peril.

#### **4.6 DEBRIEFING OF BIDDERS**

- A. Send Debrief Requests to: [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov).
- B. Subject line must include **"325-180 Debrief"**
- C. Also refer to Section 2.2 - Schedule of Procurement Activities

Following the Announcement of the ASB and upon request, a debriefing conference will be scheduled with an unsuccessful Bidder. **The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the day of the Announcement of Apparent Successful Bidder.** The debriefing will be scheduled by State Parks and it will be likely held within a few days of the Announcement. State Parks will not allow the Bidder to delay the Debriefing conference.

Discussion will be limited to a critique of the requesting Bidder's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of ½ hour.

#### **4.7 PROTEST PROCEDURE**

**NOTE: Protests received before or after the five (5) business day window described below will be disqualified and found to have no merit.**

- A. Send Protest Filings to: [contracts@parks.wa.gov](mailto:contracts@parks.wa.gov)
- B. Subject line must include **"325-180 Protest"**
- C. Also refer to Section 2.2 - Schedule of Procurement Activities



This procedure is available to Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. **Upon completing the debriefing conference, the Bidder is allowed five (5) business days to file a protest of the acquisition with the RFP Coordinator.** Protests may be submitted by email, but should be followed by the original document.

Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Bidders under this procurement.

All protests must be in writing and should be signed by the protesting party or an authorized Agent (a scanned PDF will suffice). The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on the quality of a proposal, or 2) State Parks' assessment of its own and/or other agencies' needs or requirements.

Upon receipt of a protest, a protest review will be held by State Parks. The State Parks will assign a person who was not involved in the procurement, who will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold State Parks' action.
- Find only technical or harmless errors in State Parks' acquisition process and determine State Parks to be in substantial compliance and reject the protest.
- Find merit in the protest and in which case State Parks options may include:
  - Correct the errors and re-evaluate all proposals
  - Reissue the solicitation document and begin a new process
  - Make other findings and determine other courses of action as appropriate

If State Parks determines that the protest is without merit, State Parks will enter into a contract with the Apparent Successful Bidder (ASB). If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

**PAGE LIMITATION:** WSPRC does not currently mandate any page limitation. However, the Protest must be succinct, organized, logical, and professional. Protests that do not clearly fall into one of the three categories above, or, that are rants, attacks, contain disparaging remarks, include multiple attachments or references to other material (document dumping, document overload), or any Protest submission that appears to require the reader to weigh through voluminous amounts of material to verify the argument being made or piece together voluminous amounts of material to decipher the argument being made WILL BE administratively rejected by the Procurement Coordinator who will notify the Protesting Party that the communication received by WSPRC purporting to be a Protest did not follow procedure and is therefore found to have no merit and will have no opportunity to cure and resubmit. Keep it succinct, organized, logical, and professional.

**REVIEW OF PROTEST BY STATE PARKS:** The purpose of a Protest review is to give enhanced consideration to the argument being made by the Protesting party and the agency's need to meet the mission of State Parks. Protests will be reviewed by a State Parks manager who is not involved with this action and who will determine if State Parks needs reasonably requires the methodology employed. When a decision is reached, a response will be sent to the protesting party.

## 5 RFP SUBMITTALS SUMMARY

- **Submittal A – Bidder Declaration & Certification (use and submit form below).**
- Submittal B – Business Information (placeholder only, bidder will submit a self-authored document).
- Submittal C – Business Plan (placeholder only, bidder will submit a self-authored document).
- Submittal D – Experience (placeholder only, bidder will submit a self-authored document).
- Submittal E – References (placeholder only, bidder will submit a self-authored document).
- Submittal F – OMWBE, Veteran, Small Business (placeholder only, bidder will submit self-authored document).
- **Submittal G – Quotation (use and submit form below).**

**6 SUBMITTAL A – BIDDER DECLARATION & CERTIFICATION (MANDATORY):**

**Bidder Complete Table Below (be legible)**

<p>Bidder declares under penalty of perjury under the laws of the State of Washington that the Bidder is the Firm's representative and is authorized to bind its Firm, and the information the Bidder provides in its bid response to the Washington State Parks &amp; Recreation Commission (WSPRC) is true and correct, and the Bidder does not take exception to the State's Instructions, Terms &amp; Conditions, and has not altered the WSPRC language which includes, but is not limited to, the Instructions, Terms &amp; Conditions, and certifies that continued compliance with the requirements of the Certifications and Assurances are conditions precedent to the award or continuation of the related contract, has reviewed WA's Prevailing Wage Laws and has accounted for prevailing wage (if any) in its bid response, and also makes this Firm Offer for WSPRC's consideration and acceptance.</p>	
Bidder's Printed Name	
<b>Wet Signature</b> (use blue ink)	
Place of Signature (City & State)	
Date	
Business Name	
Street Address	
City, State, Zip Code PLUS Four (+4)	
Federal Taxpayer ID (do not include if a SSN#)	
WA State UBI #	
WA State payment Statewide Vendor Number (SWV) #	
Bidder's Name	
Bidder's Title	
Bidder's Phone #	
Bidder's Email	

**7 SUBMITTAL G – QUOTATION (PRICE SHEET)**

Guaranteed Minimum Return to State Parks from (select only one method):

**1) Percentage of Gross Sales:** \_\_\_\_\_/percent

(Failure to indicate a percentage will result in disqualification)

NOTE: State Leasehold tax will be additionally charged.

- The leasehold excise tax applies in **lieu of county property tax when persons or businesses lease or occupy publicly-owned real or personal property**. Public property is property owned by the federal government, state of Washington, counties, school districts and other municipal corporations.
- Link: <https://dor.wa.gov/taxes-rates/other-taxes/leasehold-excise-tax>

Person Legally Authorized to Bid:

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

## **8 EXHIBIT A – SAMPLE CONTRACT**

The sample contract is provided here as an embedded file and may have also been posted on WEBS as a separate file under the name Sample Contract.



Sample Contract

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## CERTIFICATIONS, ASSURANCES, AND WAIVER

- a) I/my Firm make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):
- b) I/we declare that all answers and statements made in the proposal are true and correct.
- c) The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
- d) The attached proposal is a firm offer for a period of 90 days following receipt, and it may be accepted by Washington State Parks and Recreation Commission (WSPRC) without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
- e) In preparing this proposal, I/my Firm have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
- f) I/my Firm understand that WSPRC will not reimburse me/my Firm for any costs incurred in the preparation of this proposal. All proposals become the property of State Parks, and I/my Firm claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
- g) Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
- h) I/my Firm agree that submission of the attached proposal constitutes acceptance of the competition document's contents, the attached sample contract and general terms and conditions, any other instructions, Terms & Conditions, AND competition amendments to the same. Further:
  - 1. Alterations to WSPRC Documents: I/my Firm understand and agree that I/my Firm shall not and has not altered or deviated from the original competition and any follow-on competition amendments and if my/my Firm's bid response received by WSPRC materially alters or deviates from the competition or competition amendments (if any) then the bid response may be disqualified. Whether the alteration is noticed or not noticed by WSPRC, any resulting contract (including any type of order placement) SHALL continue with the altered portions or deviations being ignored in favor of the WSPRC official language (original competition and any follow-on competition amendments) as posted on the Washington Electronic Business Solutions (WEBS) which acts as the system of record for this competition. The awarded Contractor understands, agrees, and accepts this provision and SHALL hold harmless and save harmless the WSPRC.
  - 2. Unrequested Supplemental Materials in Bidders Bid Response: I/my Firm understands and agrees that I/my Firm shall not and has not supplemented my/my Firm's Bid Response with unrequested materials. Whether the unrequested material is noticed or not noticed by WSPRC, any resulting contract (including any type of order placement) SHALL

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continue with the unrequested material being ignored in favor of the WSPRC official language. The awarded Contractor understands, agrees, and accepts this provision and SHALL hold harmless and save harmless the WSPRC.

- i) No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
- j) I/my Firm grant State Parks the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.
- k) If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

**l) Bidder's Waiver And Release Of Information, Public Disclosure Is Authorized And Not Restricted:**

I/my Firm grants to the State of Washington and the Washington State Parks and Recreation Commission a full and complete release of information of my/my Firm's bid response and other documents or information pertaining to the same and if also awarded the contract then to the contract and any documents or information involving or pertaining to the contract. Markings of "confidential", "proprietary" or similar term are unintentional and SHALL be ignored. Further, these materials or bid response may be publicly disclosed with no advanced notice to the Bidder/Contractor (me/my Firm). The Bidder/awarded Contractor (me/my Firm) understands, agrees, and accepts this provision and SHALL hold harmless and save harmless the State of Washington and WSPRC.

**m) Certification - Wage Theft Prevention:**

*Prior to awarding a contract, agencies are required to determine that a Bidder is a 'responsible Bidder.' See RCW 39.26.160(2) & (4). Pursuant to legislative enactment in 2017, the responsible Bidder criteria include a Bidder/contractor certification that the Bidder/contractor has not willfully violated Washington's wage laws. See Chap. 258, 2017 Laws (enacting SSB 5301).*

I/my Firm certifies under penalty of perjury under the laws of the state of Washington the following is true and correct: No Wage Violations. This Firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082. any provision of RCW chapters 49.45, 49.48., or 49.52 within the three (3) prior years to the date of this competition's date of issue.

**n) Certification - Supporting Workers' Rights:**

Pursuant to the Washington State Governor's Executive Order 18-03 (dated June 12, 2018), the Washington State Parks and Recreation Commission is seeking to contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.

I/my Firm certifies under penalty of perjury under the laws of the state of Washington the following is true and correct: No Mandatory Individual Arbitration Clauses and Class or Collective Action Waivers for Employees. This firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.





# Washington State Parks And Recreation Commission Concession Agreement



Agreement Number \_\_\_\_\_

\_\_\_\_\_ State Park and \_\_\_\_\_

THIS CONCESSION AGREEMENT (“Agreement”), by and between the State of Washington, acting through the WASHINGTON STATE PARKS AND RECREATION COMMISSION (“State”) and \_\_\_\_\_ (“Concessionaire”), grants non-exclusive and nonpossessory concession rights of use in \_\_\_\_\_ State Park in \_\_\_\_\_ County, Washington (“Park”), SUBJECT TO the terms and conditions contained in this Agreement, including exhibits to this Agreement, which are incorporated into and made a part of this Agreement by reference.

State enters into this Agreement to permit and facilitate Concessionaire’s operation \_\_\_\_\_ as described in Exhibit A (“Business”), from those State-owned facilities shown on Exhibit B (“Concession Facilities”). The purpose of this Agreement is to provide enhanced and expanded visitor experiences with the Park.

## Definitions:

**Contractor:** A person or company that undertakes a contract and/or is under contractual obligation to provide materials or labor to perform a service or do a job.

**Concessionaire:** A Contractor that the State has authorized to use, on a non-possessory basis, a state-owned structure or location. A Concessionaire is always a Contractor and for purposes of this agreement the terms may be used interchangeably. Concessionaire is not a lessee of State and this Agreement is not intended and shall not be construed as a lease or as granting to Concessionaire any leasehold or possessory interest.

## 1. TERM

**1.1 Term.** This Agreement shall commence on Date of Execution (date of last signature) and shall expire coterminous with and in accordance with Section 1.2 – Concessionaire’s Performance.

**1.2 Concessionaire Performance.** This Concessionaire shall commence performance on \_\_\_\_\_, or on the date signed by State, whichever is later (“Commencement Date”), and expire on \_\_\_\_\_, unless terminated earlier under another provision of this Agreement (the period from the Commencement Date to the date of expiration or termination is the “Agreement Term”).

## 2. OPERATION OF THE BUSINESS

**2.1 Concessionaire’s Operation of the Business.** Concessionaire shall operate the Business as described in Exhibit A (as may be modified by State under section 12.2, below) and shall perform all work, provide all labor, and provide all, equipment, furnishings, and supplies sufficient for the operation of the Business,

except that equipment, furnishings, and supplies identified in Exhibit A as being provided by State. At all times during the Agreement Term, Concessionaire shall use reasonable efforts in operating the Business.

- 2.2 Additional Services.** State may, at its sole discretion, authorize Concessionaire to provide other directly related concession services, all subject to space availability and approval in writing by State. Any such expansion of concession services shall be documented in an amendment to the description of the Business contained in Exhibit A.
- 2.3 Pricing of Goods, Services, and Rentals.** Concessionaire shall adhere to the list of prices for goods, services, and rentals (“Price List”); Concessionaire may not charge more than the price listed on the Price List for any goods, service, or rental. The Price List shall describe each major category of goods for sale, services, or rentals, and the price range or rental rates of each category. All prices must be displayed in a conspicuous location at the Concession Facilities. An initial Price List is attached to Exhibit A; this initial Price List shall be in effect until a revised Price List is approved by State. Concessionaire may submit a proposed revised Price List to the Area Manager for review and approval prior to April 1 of each year during the Agreement Term. At its discretion, State may approve or deny the proposed revised Price List. At its discretion, State may limit or disapprove certain goods, services, or rentals, or the proposed sales prices or rental rates.
- 2.4 Qualifications of Concessionaire and Concession Personnel.** Concessionaire and Concessionaire’s employees and agents shall be qualified to operate the Business, including, but not limited to, operating and maintaining any necessary equipment. Concessionaire and Concessionaire’s employees and agents shall perform in a businesslike and courteous manner and strive to provide quality service to park visitors. As required by state or local law, Concessionaire and employees must be in possession of all health or food and/or alcohol handling permits. If directed to do so by the Area Manager, Concessionaire or Concessionaire’s employees must, at all times, when on duty wear a name tag and clothing approved by State in order to be recognized as an employee of Concessionaire and any limitations or disapprovals will be communicated to Concessionaire in writing which may include email.
- 2.5 Background Checks.** A criminal background check shall be performed on each and every person working on behalf of Concessionaire under this Agreement, including, but not limited to, each employee, agent, and volunteer of Concessionaire, and Concessionaire him- or herself (if a natural person), except that a person who neither interacts with Park visitors nor enters Park lands is not subject to a background check. Background checks required under this section shall be performed at Concessionaire’s expense or at the expense of the person subject to the background check. Background checks required under this section shall be completed prior to the person initially commencing work on behalf of Concessionaire and prior to resuming work on behalf of Concessionaire in each subsequent season, or a background check shall be performed at least annually for

persons working year-round on behalf of Concessionaire. Concessionaire may not allow any person for whom a background check is required under this section to work on Concessionaire's behalf if the person's background check reveals information suggesting that the person poses a danger to the person or property of any Park visitor or Park staff or volunteers, or a danger to State's property. At State's request, Concessionaire shall provide State with copies of any, and all background checks conducted under this section.

- 2.6 Compliance with Laws, Rules, and Regulations.** Concessionaire shall comply with all laws, ordinances, and rules relating to the use and occupancy of the Concession Facilities and conduct of the Business. Concessionaire will not permit any objectionable action which would constitute a nuisance or commit any waste upon the Concession Facilities.
- 2.7 Permits and Licenses.** Concessionaire shall obtain and keep in force all permits, licenses, permissions, consents, and approvals required by governmental agencies or third parties in connection with Concessionaire's operation of the Business and occupation of the Concession Facilities. Application for permits shall be at the sole risk, cost, and expense of Concessionaire. A copy of UBI licensing must be submitted to State prior to commencing operation of the Business, and copies of all other permits shall be supplied to State upon request. Concessionaire shall pay on a timely basis all taxes as may be lawfully imposed and will comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Agreement.
- 2.8 Independent Contractor:** Concessionaire operates the Business as an independent contractor of State. Operation of the Business is not in any way a partnership, agency, franchise, or joint venture between State and Concessionaire. Except as expressly provided in this Agreement, neither party shall be bound, with respect to third parties, by any representation made by the other party. State has no obligation with respect to Concessionaire's debts or other liabilities. Concessionaire has the sole and exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, and discharge its employees and contractors and Concessionaire has the sole and exclusive control over its labor and employee relations policies and its policies related to wages, hours, and working conditions of its employees and contractors. In performing under this Agreement, neither Concessionaire nor Concessionaire's employees or contractors are employees of State.
- 2.9 [INSERT ONLY FOR WATERCRAFT RENTAL CONCESSIONS] Watercraft Rental.** If renting watercraft, Concessionaire shall provide Coast Guard approved personal flotation devices and a whistle to all watercraft rental customers and shall require in rental agreements, and in practice, their use by all persons in or on the watercraft as a condition of rental. The sale, rental, or provision of flotation devices not approved by the U.S. Coast Guard is prohibited. Rentals shall only be offered during daylight hours and must be returned by sundown. No rentals shall be taken out during inclement weather (such as high winds or chance of lightning).

### 3. FACILITIES

- 3.1 Use of Facilities.** State authorizes Concessionaire to use the Concession Facilities as more particular described and assigned to Concessionaire in Exhibit B, as may be modified by State under section 12.2, below, for purposes of operation of the Business. The assignment of Concessionaire to the use of the Concession Facilities is not intended and shall not be construed as creating a leasehold or possessory interest in the Concession Facilities or any other portion of the property. Accordingly, Concessionaire's use of the Concession Facilities is nonpossessory and nonexclusive, and Concessionaire may not displace or exclude any overlapping use of the same space or facilities by State or as permitted by State to the visiting public or other third parties. Concessionaire shall use the Concession Facilities only for the operation of the Business as authorized in this Agreement. Concessionaire is prohibited from conducting other commercial or non-commercial activities, or allowing the use and occupancy by other parties of the Concession Facilities not directly related to Concessionaire's operation of the Business unless approved in advance and in writing by State.
- 3.2 Condition of Concession Facilities.** Concessionaire accepts the Concession Facilities in its present condition, after renovation work by State and removal of trade fixtures and other personal property of State's predecessor concessionaire, if any, as set forth in Exhibit B. The condition of the Concession Facilities shall be verified by the Concessionaire's inspection of the Concession Facilities prior to the commencement of this Agreement.
- 3.3 Access to Concession Facilities.** Concessionaire shall have access to the Concession Facilities as necessary to operate the Business over established Park roads and driveways during all normal Park operating hours, and during other times as may be approved by the Area Manager. Concessionaire may park vehicles and equipment only in those areas designated by the Area Manager. Concessionaire's access rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of the Park or business conducted by other concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between State and a third party.
- 3.4 Parking.** Concessionaire shall be issued [REDACTED] Concession Parking Passes by the Area Manager. Each Concession Parking Pass authorizes one vehicle to park within the Park, subject to limitations specified by the Area Manager, including designated parking places and times. Concession Parking Passes are subject to expiration, as specified by the Area Manager, and must be relinquished upon expiration or termination of this Agreement. Concession Parking Passes must be visibly displayed in the front windshield, or otherwise in a prominent location for motor vehicles without a windshield. Concession Parking Passes may only be used while Concessionaire, or its employees or agents, are operating the Business under this Agreement. All other parking within the Park, including by Concessionaire, its agents, employees, contractors, and customers, is subject to RCW 79A.80 and a Discover Pass or day-use permit is required.

- 3.5 Management.** Concessionaire shall manage and maintain the Concession Facilities and all improvements thereon in accordance with the customary standards of the industry.
- 3.6 Maintenance and Repair.** Concessionaire shall perform all minor maintenance and repairs, as defined herein, to keep the Concession Facilities in a safe, inviting, sanitary, and usable condition. Minor maintenance and repairs shall include, but is not limited to, routine maintenance; cleaning; removal of debris, litter, and obstructions; painting the inside of buildings; replacing light bulbs; and performing other minor interior maintenance, including minor electrical and plumbing repairs. Concessionaire shall immediately notify Area Manager in writing of any other maintenance or repair needs in the Concession Facilities. Other maintenance and repair necessitated by the failure of Concessionaire to perform minor maintenance and repair shall be the responsibility of Concessionaire.
- 3.7 Damage.** Concessionaire shall, at its own expense, repair to State's satisfaction any damage to State's property resulting from actions or omissions by Concessionaire or its agents or employees, beyond normal wear and tear.
- 3.8 Signs and Advertisements.** All signs of Concessionaire, whether affixed to the Concession Facilities, or placed upon or adjacent to the Concession Facilities, or used in any manner by Concessionaire, must fit into the Park's aesthetics and agency sign policy, and shall be subject to the Area Manager's prior approval.
- 3.9 Sanitation.** Concessionaire is responsible for the cleanliness of the Concession Facilities, including all equipment, appliances, storage areas, and grounds used by Concessionaire. Concessionaire is responsible for removal and disposal of all garbage and refuse generated in the operation of the Business and shall participate in State's recycling programs. As may be specified in Exhibit A, Concessionaire is responsible for disposal of all garbage and refuse in the area adjacent to the Concession Facilities as designated by the Area Manager. If serving food is part of the Business, Concessionaire shall use recyclable food and beverage containers as practicable. Concessionaire shall promptly provide to the Area Manager a copy of any and all health department inspection reports conducted by or on behalf of any governmental authority.
- 3.10 Hazardous Substances Prohibited.** Except as expressly allowed in writing by State in Exhibit A as essential to the operation of the Business, Concessionaire shall not bring or keep in, on, or about the Concession Facilities, any hazardous substances. For purposes of this Agreement, hazardous substances include any that have been designated as hazardous, toxic, dangerous, or harmful, or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state, or local law, regulation, statute, or ordinance. Concessionaire is liable for all cleanup costs and damages associated with the use, disposal, transportation, or generation of hazardous substances by Concessionaire or its employees, agents, assigns, contractors, subcontractors, licensees, or invitees. This provision shall survive the expiration or termination of the Agreement.

- 3.11 Personal Property.** State is not to be liable in any manner for or on account of any loss of damage sustained to any property in or about the Concession Facilities, except for such claims or losses which may be caused by State or its authorized agents or employees.
- 3.12 Condition at End of Agreement Term.** Concessionaire shall, at its sole expense, clean and repair the Concession Facilities and restore it to the condition it was in upon delivery of the Concession Facilities to Concessionaire at the Commencement Date, reasonable wear and tear excepted.
- 3.13 Non-Applicability of Relocation Assistance.** Concessionaire acknowledges that this Agreement does not at any time entitle Concessionaire to assistance under the Uniform Relocation and Real Property Acquisition Policy (RCW 8.26).

#### **4. FINANCIAL RECORD KEEPING AND REPORTING**

- 4.1 Reporting and Cash Handling.** Concessionaire shall adhere to written cash handling procedures. If Concessionaire currently does not have written cash handling procedures, it must establish them prior to beginning operation of the Business. Such cash handling procedures shall be commercially reasonable given the nature of the Business and sufficient to ensure safe and accurate accounting of all monies received by Concessionaire through operation of the Business.
- 4.2 Credit and Debit Cards.** Concessionaire's payment and record-keeping systems must be fully compliant with all Payment Card Industry Data Security Standards (PCI DSS) issued by the official Payment Card Industry Security Standards Council. Concessionaire acknowledges that it is responsible for the security of cardholder data that it possesses, or otherwise stores, processes, or transmits on behalf of the customer.
- 4.3 Review and Audit.** At any time during the Agreement Term, State may review and audit Concessionaire's financial records and other records related to Concessionaire's operation of the Business. Concessionaire shall maintain a true account of all receipts and disbursements and other commercially reasonable financial and accounting records related to operation of the Business. Concessionaire shall make available for review and audit any and all financial and accounting records related to operation of the Business, including, but not limited to, individual transaction receipts, daily records of gross sales, annual financial statements (balance sheet and income statement), and Excise Tax Returns submitted to the Washington State Department of Revenue. State may require a review or audit of Concessionaire's books and records by an authorized independent certified public accountant. If such review or audit shows a discrepancy in gross sales of ten percent (10%) or more, Concessionaire must pay for the cost of the review or audit; if such discrepancy is less than ten percent (10%), the cost of the review or audit will be borne by State. Failure to properly report all gross revenue is grounds for immediate termination of this Agreement.

#### **5. REQUIRED PAYMENTS**



**5.1 Fee.** Concessionaire shall pay to State annual concession fee (“Concession Fee”) for the use of Concession Facilities. The term “Concession Fee” may also mean to include a portion of or percentage of gross revenue.

**5.2 Amount of Concession Fee.** [Option 1 – up front, flat amount] Concession Fee shall be \$ [redacted] which is due on or before the Commencement Date and in each subsequent year (if any) during the Agreement Term on or before April 1. This amount is subject to adjustment for subsequent years (if any) during the Agreement Term as provided below. Additionally, pursuant to Washington State RCW 82.29A.030 all rent[s] are subject to State leasehold tax which is currently 12.84% of rent. This Agreement is expressly not intended and shall not be construed as a lease or as granting any leasehold or possessory interest; however, to the extent the Concession Fee is deemed taxable under RCW 82.29A.030, Concessionaire shall pay all applicable leasehold tax now or hereafter assessed on Concessionaire’s use of the Concession Facilities.

**Periodic Adjustment.** Concession Fee shall be renegotiated and adjusted [annually] or [every other year] or [every five years] on or before March 1. At State’s option, Concession Fee will be adjusted using one of the following methods:

- a. Concession Fee will be increased annually by three percent (3%).
- b. State will adjust Concession Fee based on an appraisal conducted by the State.

When Concession Fee is adjusted as provided in this section, State shall give notice to Concessionaire that an adjustment to Concession Fee has been made, including the amount of the adjusted Concession Fee. Such notice shall be provided on or before March 1. Failure by State to adjust Concession Fee when it is permitted to do so is not a waiver by State of the opportunity to adjust Concession Fee in future years.

**OR**

[Option 2 – percent of revenues] Concessionaire shall pay to State Concession Fee based on a percentage of the gross annual revenue derived from operation of the Business under this Agreement. Such Concession Fee shall be due on the fifteenth (15th) day of November each year. Concession Fee shall be [redacted] percent of gross revenue from operation of the Business collected between the Commencement Date and October 31 (in the first year of operation of the Business) or between November 1 and October 31 (in any subsequent year). The formula for calculating Concession Fee is total gross revenue, exclusive of sales tax collected, times [redacted] percent. Additionally, pursuant to Washington State RCW 82.29A.030 all rent[s] are subject to State leasehold tax which is currently 12.84% of rent. This Agreement is expressly not intended and shall not be construed as a lease or as granting any leasehold or possessory interest; however, to the extent the Concession Fee is deemed taxable under RCW 82.29A.030,

Concessionaire shall pay all applicable leasehold tax now or hereafter assessed on Concessionaire's use of the Concession Facilities.

Concessionaire must also submit to State, a copy of the excise tax report filed with the Washington State Department of Revenue. If the report includes activity at non-concession locations, Concessionaire shall include a supplemental report segmenting the activity authorized under this agreement.

**OR**

[Option 3 – percentage first year, flat rate in subsequent years] In the first year of operation of the Business under this Agreement, Concessionaire shall pay to State Concession Fee based on percentage of gross annual revenue derived from operation of the Business under this Agreement. Concession Fee for the second and subsequent years shall be an amount determined by State as provided below. This Agreement is expressly not intended and shall not be construed as a lease or as granting any leasehold or possessory interest; however, to the extent the Concession Fee is deemed taxable under RCW 82.29A.030, Concessionaire shall pay all applicable leasehold tax now or hereafter assessed on Concessionaire's use of the Concession Facilities.

**First Year.** Concessionaire shall pay to State Concession Fee based on a percentage of the gross annual revenue derived from the operation of the Business during the first year of operation. Such Concession Fee shall be due on or before November 15. Concession Fee shall be [redacted] percent of gross revenue from the Business collected between the Commencement Date and October 31. The formula for calculating Concession Fee is total gross revenue, exclusive of sales tax collected, times [redacted] percent.

**Second and Subsequent Years.** Concession Fee for the second year of operation shall be determined by State at its discretion. State shall give notice to Concessionaire of its determination of the amount of Concession Fee, including the Concession Fee amount. Such notice shall be provided on or before March 1. The second year Concession Fee amount shall be renegotiated and adjusted [annually] or [every other year] or [every five years] on or before March 1. At State's option, Concession Fee will be adjusted using one of the following methods:

- a. Concession Fee will be increased annually by three percent (3%).
- b. State will adjust Concession Fee based on an appraisal conducted by the State.

When Concession Fee is adjusted as provided in this section, State shall give notice to Concessionaire that an adjustment to Concession Fee has been made, including the amount of the adjusted Concession Fee. Such notice shall be provided on or before March 1. Failure by State to adjust Concession Fee when it



is permitted to do so is not a waiver by State of the opportunity to adjust Concession Fee in future years.

- 5.3 Utilities and Other Expenses.** During the term of this Agreement, Concessionaire shall pay all expenses incurred by Concessionaire in the use of the Concession Facilities and operation of the Business, including, but not limited to, all utility charges, including all charges for electricity, water, gas, telecommunications, and all costs of maintaining and repairing, consistent with Section 3.6 above, the Concession Facilities and all improvements thereon whether now existing or hereafter installed. Concessionaire is so obligated whether or not such expenses are billed to Concessionaire, to State, or to any other party. Concessionaire shall indemnify, defend, and hold State harmless against and from any loss, liability, or expense resulting from any failure of Concessionaire to pay all such charges when due. All service lines of such utilities shall be installed and connected to existing public utilities at no cost to State.
- 5.4 Road Use Fee.** [Optional] In addition to Concession Fee, Concessionaire shall pay an annual road use fee of \$ [redacted], subject to adjustment as set forth in this section, on or before the Commencement Date and in each subsequent year of this Agreement (if any) on the anniversary of the Commencement Date.
- 5.5 Taxes and Assessments.** Concessionaire shall pay all taxes and assessments and other governmental charges of any kind applicable or attributable to the operation of the Business or use of the Concession Facilities, including, without limitation, to the extent any leasehold tax is deemed applicable and payable to State pursuant to RCW 82.29A.
- 5.6 Manner of Payment.** All payments, including Concession Fee payments and payments for other sums owed, shall be made by check or money order payable to State and mailed to the address listed in section 12.1 (Notices and Submittals), or to any other payee as directed by State in writing, or mailed to any other address which State, or any successors-in-interest to State, may designate to Concessionaire in writing. Notwithstanding that payments may be made by mail, payments shall in any event be received by State on or before the date due as specified in this Agreement. Payments may also be made to State by electronic funds transfer, per arrangement through State's Financial Services Office.
- 5.7 Charges for Late Payments and NSF Checks.** Notwithstanding State's right to terminate this Agreement for nonpayment of fees, Concessionaire shall pay interest at the rate of one percent (1%) per month on delinquent Concession Fee, other fees, or other sums owing under the terms of this Agreement, commencing with the date originally due. Payment of Fee, other fees, and other sums when due is required under this Agreement and this section does not constitute or imply the extension of credit by State. There shall be a thirty-dollar (\$30.00) handling fee for any check returned by the bank as uncollectible for any reason. The parties agree that such charges represent a fair and reasonable estimate of costs incurred by State by reason of late payments and uncollectible checks.

**5.8 No Counterclaim, Setoff, or Abatement of Concession Fee or Other Sums Owed.** Concession Fee, other fees, and all other sums for which Concessionaire is obligated to pay State under this Agreement shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, and the obligations and liabilities of Concessionaire shall in no way be released, discharged, or otherwise affected (except as expressly provided in this Agreement) by reason of:

- a. Any damage to or destruction of or any taking of the Concession Facilities or any part thereof;
- b. Any restriction of or prevention of or interference with any use of the Concession Facilities or any part thereof;
- c. Any title defect or encumbrance or any eviction from the Concession Facilities or any part thereof by title paramount or otherwise;
- d. Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to State, or any action taken with respect to this Agreement by any trustee or receiver of State, or by any court, in any such proceeding;
- e. Any claim which Concessionaire has or might have against State;
- f. Any failure on the part of State to perform or comply with any of the terms of this Agreement or of any other agreement with Concessionaire; or
- g. Any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Concessionaire or acceptance by State of full or partial Concession Fee during the continuance of any such breach, shall constitute a waiver for any such breach or of any such term.

No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the respective rights of State and Concessionaire with respect to any other then-existing or subsequent breach.

**5.9 Failure to Pay.** In the event Concessionaire fails to pay any expense or amount due under this Agreement, State may, but shall not be obligated to, pay any such amount, and the amounts so paid shall immediately be due and payable by Concessionaire to State and shall thereafter bear interest at the rate of 12% per annum.

**5.10 Late Charge for Failure to Pay.** In the event Concessionaire fails to make any payment due under this Agreement upon the date due, including, but not limited to, payment of Concession Fee, State shall be entitled to collect from

Concessionaire a late charge equal to one percent (1%) of the amount of the delinquent payment.

**5.11 Application of Payments.** Payments made under this Agreement will be applied in the following order: (1) interest, (2) Concession Fee, (3) leasehold tax (if any), and (4) other charges.

## 6. INDEMNITY AND INSURANCE

**6.1 Indemnity.** Concessionaire shall release, indemnify, defend (with counsel acceptable to State), and hold harmless State, its employees, officers, and agents from and against any and all claims arising out of Concessionaire's operation of the Business and the use, occupation, or control of the Concession Facilities by Concessionaire, Concessionaire's sublessees, invitees, agents, employees, licensees, or permittees, or caused by the operation or failure to operate any equipment, improvements, or other property or fixtures on the Concession Facilities, except as may arise solely out of the willful and grossly negligent acts of State or State's officials, employees, or agents. "Claim" as used in this section means any claim of any nature whatsoever for penalties, financial loss, damages (including, but not limited to, bodily injury, sickness, disease, or death, or injury to or destruction of property, land, and other natural resources, including the loss of use thereof), costs or expenses (including, but not limited to, attorneys' fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of State, its officials, employees, or agents, except as provided in this section. To the extent that RCW 4.24.115 is applicable to any indemnification provision of this Agreement, State and Concessionaire agree that provision shall not require Concessionaire to indemnify, defend, and hold State harmless from State's sole or concurrent negligence, if any. Concessionaire waives its immunity under RCW Title 51 to the extent it is required to indemnify State. This subsection is in addition to and does not in any way limit or diminish Concessionaire's liability or indemnity obligations otherwise provided for in this Agreement. If a Concessionaire requires any person to execute a personal release of liability related to use of goods or services provided through the Business, Concessionaire shall include within the release an express release of the State of Washington in addition to any other persons or entities released.

**6.2 Liability Insurance.** At all times during the Agreement Term, Concessionaire shall keep in full force a commercial general liability insurance policy, acceptable to State, insuring Concessionaire and providing coverage for liability for both bodily injury and property damage arising out of any and all of Concessionaire's actions or omissions related to operation of the Business or use of the Concession Facilities. Said commercial general liability insurance policy shall also name State as an additional insured under the policy and provide coverage as well against any liability arising out of the use, occupancy, or maintenance of the Concession Facilities and all areas appurtenant thereto, including, but not limited to, liability arising out of any and all activities described in Exhibit A. Such insurance must be provided on an occurrence basis of not less than one million

dollars (\$1,000,000) combined single limit per occurrence, with a general aggregate limit of not less than two million dollars (\$2,000,000). Purchase of these minimum limits does not relieve Concessionaire from liability for losses greater than these amounts. The amount of the insurance required may hereafter be increased or decreased by written notice of State at its sole option. A certificate evidencing such coverage referencing the Park and Agreement shall be provided to State at its address of record provided in this Agreement. All policies shall specify that any legal expenses incurred by any claim against the insured shall be covered over and above said liability limit, such that said liability limit represents a “net” liability limit. In the event insurance containing such specifications cannot be acquired, then Concessionaire shall purchase insurance with liability limits which are fifty percent (50%) higher than set forth above.

- 6.3 Cancellation.** The Certificate(s) of Insurance must provide a minimum of 30 days’ written notice to State by the insurer before cancellation, non-renewal, or any material change of any insurance coverage included therein. No reduction in the amount of coverage shall be made without the prior written approval of State.
- 6.4 Industrial Insurance Coverage.** Concessionaire shall obtain and maintain at all times during the Agreement Term industrial insurance coverage as required by the Department of Labor & Industries for itself and its employees prior to commencing operation of the Business under this Agreement. State will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Concessionaire, or any subcontractor or employee of Concessionaire, which might arise under the industrial insurance laws during Concessionaire’s operation of the Business under this Agreement.
- 6.5 Automobile Insurance.** Concessionaire shall obtain and maintain at all times during the Agreement Term business auto liability as required by state law and, if necessary, commercial umbrella liability insurance with a limit of not less than one million dollars (\$1,000,000) per accident. Such insurance shall cover liability arising out of “Any Auto.”
- 6.6 Fire Insurance.** Unless expressly waived, Concessionaire shall obtain and maintain at all times during the Agreement Term insurance for fire and casualty. Such insurance shall be a fire legal liability policy in the amount of full replacement value or fifty thousand dollars (\$50,000), whichever is higher, naming State as the beneficiary. The amount of insurance required may hereafter be increased or decreased at the option of State. All policies shall carry a minimum 30 days’ notification of cancellation clause.
- 6.7 Other Insurance.** In addition to that insurance specifically required by this Agreement, Concessionaire shall obtain and maintain at all times during the Agreement Term such other insurance as is typically or customarily maintained for the Business.
- 6.8 Evidence of Insurance.** Concessionaire must furnish evidence of all insurance required under this Agreement in the form of a Certificate of Insurance

satisfactory to State (such as ISO form CG 00 01 or equivalent), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, and shall be sent marked "Concession Program" to State's address shown herein.

**6.9 Independent Contractors.** Concessionaire shall require any independent contractors, if any, to obtain and maintain the same insurance coverage required of Concessionaire, at all times such independent contractor is performing work at the Concession Facilities on behalf of Concessionaire during the Agreement Term.

## **7. CONCESSIONAIRE EQUIPMENT, FURNISHINGS, AND SUPPLIES**

**7.1 Equipment, Furnishings, and Supplies.** As set forth in Exhibit A, Concessionaire shall, at its own expense, provide all equipment, furnishings, and supplies necessary for operating the Business beyond any equipment, furnishings, or supplies provided by State at its sole discretion. State shall have no responsibility to provide any equipment, furnishings, or supplies, except as identified in Exhibit A. Concessionaire accepts any equipment, furnishings, or supplies provided by State in its present condition, as-is-where-is. Concessionaire may only attach or fasten (such as by screwing, nailing, welding, gluing, etc.) equipment in or on the Concession Facilities with the prior written approval of State.

**7.2 Maintenance Equipment, Furnishings, and Supplies.** Concessionaire shall, at its own expense, maintain, in good working order and in a safe and sanitary condition, all equipment, furnishings, and supplies necessary for operating the Business, including that equipment provided by State (if any). State shall have no responsibility to maintain any equipment, furnishings, or supplies or for the loss or damage to Concessionaire's equipment, furnishings, or supplies. To mitigate the potential for damage or loss through theft or malicious mischief, Concessionaire shall store equipment and supplies as provided in Exhibit A when not in use.

**7.3 Equipment Replacement.** Concessionaire shall maintain that equipment provided by State (if any) in good working order and shall, at its own expense, replace any equipment provided by State that is not in good working order or that may otherwise pose a hazard. Concessionaire shall maintain any Concessionaire-owned equipment and shall replace, at its own expense, any of its own equipment that is not in good working order or that may otherwise pose a hazard. Equipment purchased by Concessionaire, including equipment purchased by Concessionaire to replace equipment provided by State, shall remain the property of Concessionaire. Except as expressly agreed to in writing by State, the cost of equipment replacement or repair shall in no way reduce or offset Concession Fee or other payments due to State under this Agreement.

**7.4 Ownership of Equipment and Supplies at Agreement Expiration or Termination.** Any personal property owned by Concessionaire used in the

conduct of business by Concessionaire and placed by Concessionaire in or on the Concession Facilities shall not become part of the real property, even if attached or fastened to the Concession Facilities. Such personal property may be removed by Concessionaire at any time during the term of this Agreement, or within 30 days of the expiration or termination of this Agreement, provided Concessionaire is not in default under this Agreement, and provided any damage to the Concession Facilities occasioned by such removal is immediately repaired to the satisfaction of State. All other fixtures, equipment, and improvements constructed or installed in or upon the Concession Facilities shall be deemed to become part of the real property and, upon completion, shall become the sole and exclusive property of State, free of any and all claims of Concessionaire or any person or entity claiming by or through Concessionaire. In the event Concessionaire does not remove its personal property from the Concession Facilities within 30 days of the expiration or termination of this Agreement, State may at its sole election:

- a. Require Concessionaire to remove such property at Concessionaire's sole expense, and Concessionaire shall be liable for any damage to the Concession Facilities;
- b. Treat said personal property as abandoned, retaining the property as part of the Concession Facilities; or
- c. Have the personal property removed and stored or disposed of at Concessionaire's sole expense.

Concessionaire shall promptly reimburse State for damage caused to the Concession Facilities by the removal of any of Concessionaire's personal property from the Concession Facilities, whether removal is by Concessionaire or State.

## 8. IMPROVEMENTS

**8.1 Authorized Improvements.** Concessionaire may, at no cost to State and only with State's prior written approval, make improvements, including additions and modifications to Concession Facilities provided by State to enable provision of the services as set forth in the Agreement. In making any improvements, Concessionaire shall obtain all licenses and permits, and comply with all applicable codes, regulations, and statutes. Concessionaire shall supply such plans, drawings, and specifications as needed by State to evaluate the acceptability of any improvements prior to commencing work. State may condition, limit, or deny approval of proposed improvements at its sole discretion, which approval shall be provided only in writing. Improvements become the property of State upon completion unless otherwise agreed upon by State in writing in advance.

**8.2 Development Plan.** Prior to any development or the construction of any and all improvements on or to the Concession Facilities, Concessionaire must submit a



complete development plan to State for its written approval. The plan shall include, but is not limited to, the following:

- a. Map showing areas to be developed, location of improvements, and location of utility and other easements;
- b. Land clearing, leveling, and erosion control plans;
- c. List of proposed improvements and detailed plans for the improvements;
- d. Estimated itemized cost of proposed improvements; and
- e. Schedule of completion dates for proposed improvements.

After completion of construction, Concessionaire shall provide to State “as-built” drawings showing the exact location of all improvements. In case of incomplete improvements or development, Concessionaire shall restore the land to its original condition unless otherwise directed in writing by State.

**8.3 Unauthorized Improvements.** Any improvements not included in the original or amended development plan as approved by State, or as provided for by Letters of Authorization issued by State, made on or to the site, without the written consent of State, shall immediately become the property of State or at State’ option, must be removed by Concessionaire at Concessionaire’s sole cost. Said removal shall occur within 30 days unless sooner required by Area Manager for reasons of safety.

**8.4 Concessionaire Liens.** Concessionaire must not suffer or permit any lien to be filed against State’s interest in the Concession Facilities, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by, or through Concessionaire. Concessionaire agrees to pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Concession Facilities. Concessionaire must indemnify State for any costs, damages, or expenses (including attorneys’ fees and court costs) incurred in defending any liens or in obtaining their discharge or as a result of such other asserted claims against the right, title, and interest of the State in the Concession Facilities or under the terms of this Agreement, whether such costs, damages, or expenses were incurred prior or subsequent to expiration or termination or cancellation of this Agreement.

## **9. RESERVATIONS BY STATE**

**9.1 State’s Reserved Rights.** State reserves the right to merchandise, through vending machines or other means, at any location within the Park, other than the Concession Facilities, certain items including, but not limited to, snacks, beverages, and educational, recreational, and interpretive materials, as well as

official State memorabilia. State further reserves the right to grant privileges on occasion to certain non-profit groups to sell materials for fund-raising purposes.

- 9.2 Compliance.** State shall have access to the Concession Facilities at all times to secure compliance with this Agreement.
- 9.3 Park Closure.** Concessionaire acknowledges that the Park may be closed, or access to the Park may be limited, from time-to-time. Concessionaire hereby waives any claim against State for any losses suffered or allegedly suffered due to change of fees, park-operating periods or conditions, or closure of the Park for any reason.
- 9.4 Easements.** The State reserves the right to grant easements, permits, and/or other rights (“Easements”) over and across the Concession Facilities and the right for Easement holders to enter upon the Concession Facilities to maintain, repair, and enhance existing facilities and install new facilities. Such rights shall be exercised in such a manner so as to minimize any disruption to Concessionaire.
- 9.5 State Modification/Improvement of the Park or Concession Facilities.** State may at any time, at its discretion and expense, make improvements to, or repairs, maintenance, and/or modifications of the Park or the Concession Facilities. Concessionaire hereby waives any claim against State for any loss of income suffered or allegedly suffered by Concessionaire from State’s improvement to, or repairs, maintenance, and/or modifications of the Concession Facilities.

## 10. ASSIGNMENT

- 10.1 Assignment/Transfer.** The rights granted under this Agreement may not be assigned or transferred to any other person or entity by act of Concessionaire, operation of law, or other means without the expressed prior written approval of State at State’s sole discretion. Concessionaire’s right of use under this Agreement does not entitle it to and it shall not mortgage, encumber, lease or sublease, or otherwise alienate this Agreement. Concessionaire shall not grant any interest therein or engage in any other transaction that has the effect of transferring or affecting the right of enjoyment of the Concession Facilities without the prior written approval of State, at its sole discretion.
- 10.2 Non-Waiver.** Consent of State to an assignment will not waive its right to approve or deny subsequent assignments. The acceptance by State of payment or performance following an assignment shall not constitute consent to any other assignment, and State’s consent shall be evidenced only in writing.
- 10.3 Assignee Obligations.** Each permitted assignee of Concessionaire shall assume and be deemed to have assumed all obligations of Concessionaire under this Agreement. Notwithstanding any such assignment, Concessionaire shall be and remain jointly and severally liable with the assignee for all obligations under this Agreement, unless released in writing by State. Concessionaire’s obligations shall continue in full force and effect as to include any additional obligations



created by any renewal, amendment, modification, extension, or assignment of the Agreement, whether or not Concessionaire shall have received notice of or consented to the same. Concessionaire waives all surety defenses and waives notice of any breach by a subsequent assignee.

**10.4 Corporations, Limited Liability Corporations, General Partnerships, Limited Partnerships.** If Concessionaire is a corporation, any merger, consolidation, liquidation, or any change in ownership, control, or the power to vote the majority of its outstanding voting stock, shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a limited liability company, the death, withdrawal, or expulsion of a member or members owning, or transfer of interests representing, in the aggregate, more than fifty percent (50%) of the company profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a general partnership, the death, withdrawal or expulsion of a partner or partners owning, or transfer of interests representing, in the aggregate more than fifty percent (50%) of the partnership profits or capital shall constitute an assignment, whether the result of a single transaction or a series of transactions. If Concessionaire is a limited partnership, the death, withdrawal or expulsion of any general partner shall constitute an assignment.

## **11. TERMINATION**

**11.1 Breach and Default.** In the event of any breach of any provision of this Agreement by Concessionaire, the breach shall be deemed a default entitling State to the remedies set forth in this Agreement or otherwise available at law after State has delivered to Concessionaire notice of the alleged breach and a demand that the breach be remedied as required by this Agreement (“Breach Notice”). If the breach pertains to a matter other than the payment of Concession Fee, Concessionaire shall not be in default after receipt the Breach Notice if Concessionaire promptly commences to cure the breach and cures the breach within 30 days after receipt of the Breach Notice. If the breach pertains to the payment of Concession Fee, Concessionaire shall not be in default after receipt of the Breach Notice if Concessionaire cures the breach by paying all outstanding Concession Fee to State within 15 days after receipt of the Breach Notice. If the breach is non-monetary in nature, and as determined by State, is not reasonably susceptible of being cured within 30 days from the date the Breach Notice (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), Concessionaire shall commence to cure such breach within the 30-day period and diligently pursue cure with continuity to completion. If a breach has been cured within the grace periods permitted by this section, it shall not constitute a default. In the event State deems the breach to constitute a threat to safety, life, or property, it may elect to intervene immediately, without notice, to remedy the breach, and Concessionaire hereby agrees to repay the State for any and all costs in remedying the breach upon demand, together with interest thereon from the date of expenditure at the rate set forth in this Agreement. Alternatively, the State may require Concessionaire to

act immediately to remedy the breach should the State deem it a threat to safety, life, or property.

**11.2 Multiple Default.** If Concessionaire breaches any provision of this Agreement three times within any 12-month period, whether the same provision or not, the third breach will be deemed “noncurable” and a default entitling State to the remedies set forth in this Agreement or otherwise available at law.

**11.3 Remedies.** Upon the occurrence of any default, State shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- a. Accelerate all payments due, in which case all Concession Fee payments due will then become immediately due and payable.
- b. Terminate this Agreement, in which event Concessionaire must immediately surrender the Concession Facilities to State, and if Concessionaire fails so to do, State may, without prejudice to any other remedy which it may have for possession or arrearages in Concession Fee, enter upon and take possession of the Concession Facilities and expel or remove Concessionaire and any other person who may be occupying the Concession Facilities or any part thereof, without being liable for prosecution or any claim of damages therefore, and Concessionaire agrees to pay State on demand the amount of all loss and damage which State may suffer by reason of such termination, whether through inability to re-lease the Concession Facilities on satisfactory terms or otherwise.
- c. Enter upon the Concession Facilities, without being liable for prosecution or any claim for damages therefore and do whatever Concessionaire is obligated to do under this Agreement; and Concessionaire agrees to reimburse State on demand for any expenses State incurs in performing Concessionaire’s obligations under this Agreement.
- d. Obtain damages from Concessionaire, including, but not limited to: all Concession Fees lost, all legal expenses, and other related costs incurred by State in restoring the Concession Facilities to good order and condition, or in remodeling, renovating, or otherwise preparing the Concession Facilities for re-leasing, all costs (including, but not limited to, any brokerage commissions and the value of State’s time) incurred by State, plus interest thereon from the date of expenditure until fully repaid at the rate of 12% per annum.

Pursuit of any of the foregoing remedies will not preclude immediate pursuit of any of the other remedies under this Agreement or any other remedies provided by law, such remedies being cumulative and non-exclusive. No waiver by State of any violation or breach of any of the terms, provisions, and covenants of this Agreement will be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this

Agreement. If, on account of any breach or default by Concessionaire in Concessionaire's obligations under the terms and conditions of this Agreement, it becomes necessary or appropriate for State to employ or consult with an attorney concerning or to enforce or defend any of State's rights or remedies hereunder, Concessionaire agrees to pay any reasonable attorneys' fees so incurred.

- 11.4 Termination for Health and Safety.** Notwithstanding any of the foregoing or any inconsistent provision within this Agreement, State may, in addition to any other available remedies and at its sole discretion and option, deem the following as "noncurable" and constituting automatic default by Concessionaire, and terminate this Agreement upon three (3) days written notice to Concessionaire for: (a) any breach of or noncompliance with any provision deemed by State as relating to health or safety, including but not limited to Section 2.9 [*INSERT FOR WATERCRAFTS*], or any insurance requirement, and/or (b) upon the occurrence of any health or safety incident, including but not limited to personal injuries, arising from Concessionaire's operation, whether or not Concessionaire has been adjudged to be at fault.
- 11.5 State's Entry.** In the event of any default by Concessionaire, State shall have the right, with or without canceling this Agreement, to secure and/or enter the Concession Facilities and to remove all persons and property from the Concession Facilities and take whatever actions may be necessary or advisable to protect or preserve the Concession Facilities. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in State's discretion at the expense and for the account of Concessionaire. State shall not be responsible for any damages or losses suffered by Concessionaire as a result of such State entry, removal, storage, or other disposition, and no such action shall be construed as a release of Concessionaire for its obligations or payments due, or an election to terminate this Agreement, unless a written notice of termination is given to Concessionaire.
- 11.6 Liquidated Damages.** State may assert, and Concessionaire shall pay if so asserted, liquidated damages for any repeated failure to perform the terms and conditions of this Agreement, whether or not deemed a default. After the first instance of such a failure, as documented by State to Concessionaire, the next subsequent offense of similar nature may be assessed one hundred dollars (\$100.00), and any further incidents of similar nature shall be assessed the value of their damage to State with a minimum of five hundred dollars (\$500.00) per incident. Such incidents may include, but are not limited to, those enumerated in Exhibit C (as may be modified by State under section 12.2, below).
- 11.7 Termination of Agreements.** Whether or not State elects to terminate this Agreement based on any default by Concessionaire or for health and safety, State shall have a right to terminate any and all assignments, licenses, concessions, or other arrangements for possession affecting the Concession Facilities. Alternatively, State, in its sole discretion, may succeed to Concessionaire's interest in such assignment, license, concession, or arrangement, and

Concessionaire shall have no further right to or interest in the lease or other consideration receivable thereunder.

- 11.8 Termination due to exchange, transfer, or sale.** Either State or Concessionaire may terminate this Agreement upon 60 days' written notice in the event State includes the Concession Facilities in a land exchange, transfer, and sale or if the Park is closed due to budgetary conditions.
- 11.9 Vacation of Premises.** Concessionaire must give written notice to State at least 30 days prior to terminating and/or vacating its use of the Concession Facilities, and must arrange to meet with State for a joint inspection of the Concession Facilities prior to vacating. Failure to inspect or enforce compliance with Concessionaire's obligations under this Agreement with respect to the condition of the Concession Facilities at the end of the Agreement term will not be construed as a waiver of State's right to declare a breach or relieve Concessionaire of any liability to State for any breach of the terms, conditions, or requirements of this Agreement. In the event Concessionaire fails to vacate the Concession Facilities on the date of expiration or termination of this Agreement, Concessionaire will be liable for any and all costs to State arising from such failure.

**12. MISCELLANEOUS**

- 12.1 Notices and Submittals.** Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as provided in this section. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

**To State:**  
Washington State Parks and Recreation  
Commission  
Attn: Concession Program  
PO Box 42650  
Olympia, WA 98504-2650

**To Concessionaire:**  
[Redacted]  
[Redacted]  
[Redacted]

- 12.2 Exhibits Part of This Agreement.** The Exhibits attached to this Agreement are incorporated into, and are part of, this Agreement. State reserves the right to, from time-to-time and at any time during the term of this Agreement, unilaterally modify the attached Exhibits. Concessionaire acknowledges that but for State's right to modify the attached Exhibits, State would not enter into this Agreement. State modifies an Exhibit by giving written notice of such modification to Concessionaire as provided in paragraph 12.1. The modifications shall become effective 30 days after notice to Concessionaire.
- 12.3 Entire Agreement.** This Agreement, including the attached Exhibits, is the entire agreement of the parties and no other agreement, statement, or promise made by

any party, or by any employee, officer, or agent of any party, will be binding or valid.

**12.4 Modification.** Except where this Agreement expressly provides that specific provisions of this Agreement may be modified by State, this Agreement may not be modified except by mutual written agreement of the parties.

**12.5 Venue.** Venue for any litigation arising out of this Agreement will be brought in the Superior Court of Thurston County, Washington. Any litigation wrongly filed in any other county shall be transferred by court order to the Superior Court of Thurston County with the plaintiff to pay all related attorneys' fees and court costs.

**12.6 Governance.** This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Terms and Conditions relating to health and safety in this Agreement, including the attached Exhibits, or in any applicable amendment, in that order;
- c. Any applicable amendment and its accompanying exhibits (if any), in that order;
- d. This Agreement and the attached Exhibits, in that order;
- e. Any other document incorporated by express reference as part of this Agreement.

**12.7 Severability.** If any provision of this Agreement shall be deemed void or otherwise invalid for any reason, the remainder of the Agreement shall be interpreted in a manner as to be effective and valid to the fullest extent possible. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

**12.8 Interpretation.** This Agreement has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and will be given a fair and reasonable interpretation in accordance with the words of the Agreement, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

**12.9 Disputes.** Whenever Concessionaire and a successor, or Concessionaire and State, cannot agree, the matter at issue may be submitted to arbitration and such

arbitration shall be binding. Each party to the dispute will appoint one arbitrator who together will choose a third arbitrator. The arbitration shall be governed by the State Arbitration Act, contained in RCW 7.04.

**12.10 Attorneys' Fees.** If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, paralegal fees, accountant, and other expert witness fees, and all other fees, costs, and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

**CONCESSIONAIRE**

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

**WASHINGTON STATE PARKS AND RECREATION COMMISSION**

By: \_\_\_\_\_ Date  
Heather Saunders  
Director of Parks Development

**APPROVED AS TO FORM ONLY:**

**OFFICE OF THE ATTORNEY GENERAL**  
ROBERT W. FERGUSON  
Attorney General

By: \_\_\_\_\_ Date  
Andy Woo  
Assistant Attorney General

**Attachments:**

- Exhibit A** Description of Business
- Exhibit B** Description of Concession Facilities and equipment, furnishings, and supplies
- Exhibit C** Concession Agreement Schedule of Liquidated Damages

## Exhibit A

1. **Description**

2. **Season and hours of operation of Business.** The period of operation of the Business shall be from January through December of each year during the Agreement Term. The Business is open seven days a week, hours vary seasonably.

3. **Equipment, Furnishings, and Supplies**

4. **Marketing, Advertising, and Signage**

State Parks, at a minimum, will provide basic information about this concession on the agency website, specifically the **PARK NAME** webpage. From time to time, State Parks may include this concession as part of a Park's blog or social media post.

5. **Pricing List** (attached) On each subsequent anniversary of this contract, the Business shall submit an updated price list to the Area Manager.

6. **Point of Contact**  
Name, phone, e-mail, website

7. **Grounds Maintenance**

8. **Utilities**

## **Exhibit B: Facilities**

### **1. Description of Facilities**

Give Description and Place Photo

### **2. Site Access**

Give access description and map photo



### **3. Fixtures**

### **4. Improvements**



**Exhibit C**  
**Concession Agreement Schedule of Liquidated Damages**

Liquated damages for contract violations:  
 First violation: written notice.  
 Second violation of same standard: one hundred dollars (\$100.00).  
 Each subsequent violation of same standard: the actual dollar value of damage upon State in its sole determination, with a minimum of five hundred dollars (\$500.00).

<b>Monitor</b>	<b>Standard</b>	<b>Performance Measure</b>	<b>Correct by</b>
Park	Operating Days & Hours	Open for business on time per contract	One week
Park	Appropriate inventory	Approved, in-stock, priced at market-rate	One week
Park	Customer service/staff	Courteous, helpful, identifiable	Immediately
Park	Equipment rental - availability	Training for use, safety checks, insurance, waivers	Immediately
Park	Safety	Operating procedures, customer service, maintenance, etc.	Immediately
Park	Maintenance per contract	Maintain facility per contract	One week
Park	Sanitation - interior & exterior	Concession Facilities kept neat and orderly including grounds; refuse properly disposed	One week
HQ	UBI Number prior to initial opening	Copy to Fiscal Office for official contract file	Immediately
Park/HQ	Price List – approval prior to opening	All prices must be displayed in a conspicuous location.	Immediately
Park	Concessionaire/Park Mgr meetings	Participate regularly in scheduled meetings	Negotiated by Park & Concessionaire
Fiscal	Concession Operation Reports & Payment of Fees	Concession Operation Reports Due _____ with correct payment of fees & tax	30 calendar days
Fiscal	Insurance certificate (Exhibit B 5.5)	Current at all times; new certificate due 14 days before old certificate expires. Copy to Fiscal Office for official contract file.	14 calendar days

**End of Exhibit C**