



COMPETITIVE SOLICITATION
REQUEST FOR BID PROPOSALS – CONCESSION OPERATIONS

RFP 527-110 DECEPTION PASS STATE PARK – KAYAK TOURS CONCESSIONS

BRIEF DESCRIPTION: The Washington State Parks and Recreation Commission (State Parks) is seeking proposals to identify individuals or businesses qualified to operate and manage sea kayak tour vendor for guided tours and day rentals at Deception Pass State Park on Whidbey Island. The location of the vendor will be located at Bowman Bay with easy access to the water.

Bids are due: Tuesday, December 02, 2025, by 1:00 PM, PST.

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

Procurement Coordinator: Danielle Ansell, contracts@parks.wa.gov

Email Inquiries to: contracts@parks.wa.gov

- See also (special communication instructions) §2.1 (i – iii) §4.6, §4.7

WA State's Official Bid Notification System: Bidders are responsible for properly registering in the Washington's Electronic Business Solutions (WEBS) system, <https://fortress.wa.gov/ga/webs/> and downloading the solicitation document and all appendices and incorporated documents related to this solicitation. WEBS Registration Information:

<https://des.wa.gov/services/contracting-purchasing/doing-business-state/webs-registration-search-tips>.

WEBS is the system of record for this competition. Alternatively, you can also access the bid documents for reference purposes at www.parks.wa.gov/contracts by clicking on the State Purchasing link. However, please note that the official channel for notifications and updates is through WEBS and any RFP addenda, amendments or Bidders' questions-&-answers will only be provided to those bidders who have registered with WEBS. Failure to do so may result in a Bidder having incomplete, inaccurate, or otherwise inadequate information.

It is each Bidder' responsibility to fully read and understand all provisions of this RFP. If a Bidder does not fully understand any portion of this RFP, the Bidder should contact the Procurement Coordinator.

It is the responsibility of each Bidder to carefully read, understand, and follow all of the instructions contained in this RFP and all amendments hereto.

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1 INTRODUCTION

This section describes the purpose of the competitive solicitation and provides information about this procurement, including the potential scope of the opportunity.

1.1 ACQUISITION AUTHORITY AND PURPOSE

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.

1.2 WASHINGTON STATE PROCUREMENT PRIORITIES & PREFERENCES

State Parks will prioritize Washington State procurement goals by evaluating bids based on best value and awarding a specific point preference to businesses that meet eligibility criteria as either a Washington-certified small business or a certified veteran-owned business. To qualify as a Washington small business, bidders must demonstrate that their principal place of business is located in Washington, meet size requirements based on employee count or revenue thresholds, and be certified through the Washington Electronic Business Solution (WEBS).

Certified veteran-owned businesses must meet requirements for ownership, control, and incorporation, provide verification from the Washington Department of Veterans Affairs (WDVA), and be certified in WEBS.

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

These procurement preferences and inclusivity goals are designed to promote business inclusion and create opportunities for small, diverse, and veteran-owned enterprises within Washington State

1.3 OBJECTIVE

The project seeks a sea kayak tour vendor for guided tours and day rentals at Deception Pass State Park on Whidbey Island. The location of the vendor will be located at Bowman Bay with easy access to the water. The contract period will be for five years with the possibility of one additional 5-year term.

Contractor will be responsible for their share of utilities which include water and electricity and must provide their own internet/WIFI

There is no structure to operate from at this location. The contractor must be able to provide their own small, non-permanent building/structure/caging to operate from and store necessary gear.

1.4 MINIMUM QUALIFICATIONS

REQUIRED: Bidder must be registered to do business in the state of Washington (hold a Universal Business Identifier (UBI)). If awarded the contract, the successful bidder must obtain a UBI number within 24 hours to avoid being considered non-responsive.

Bidder/Contractor must have ten or more years' experience managing guided kayak tours on tidal waters during both day and nighttime hours.

Bidder/Contractor and their guides must demonstrate familiarity with Deception Pass's strong currents and whirlpools and understand tide charts, eddies, and safe navigation routes.

Bidder/Contractor shall ensure that all guides are trained in ACA or BCA standards and are proficient in self-rescue, assisted rescue as well as rescue in fast moving water. All guides must have a current First Aid/CPR card.

All guides should have a working knowledge of the area's natural and cultural history and knowledge of the park, its rules and laws.

All guides are expected to model and teach environmentally responsible practices.

Bidder/Contractor must be able to provide their own structure in which to store equipment and operate from. Structure must be approved by Washington State Parks and can be no larger than 200 square feet and must adhere to all permitting for installation of supporting equipment (i.e., archeological, shoreline, park permitting). Cannot operate fully out of a pull behind or mobile trailer.

Bidder/contractor must provide all necessary equipment to operate, including single and tandem sea kayaks, stand-up paddleboards, paddles, lifejackets, safety equipment and all other necessary items.

Bidder/Contractor must be able to provide services starting with all weekends in May then seven days a week from Memorial Day Weekend through Labor Day. Some schedule adjustments are negotiable.

Attendance for Deception Pass for the last two seasons was as follows:

	2025*	2024*	2023
May	280,000	265,000	387,000
June	315,000	326,000	306,200
July	414,000	437,000	559,700
August	418,000	405,000	506,400
September	Report not available	288,000	319,800

*Drop in visitation after 2023 is due major storm damage at the West Beach Day-use area. The Bowman Bay location was not affected by the storm.

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.

1.5 PERIOD OF PERFORMANCE

The current concessionaire's contract will end when the new concessionaire is signed. The period of performance of any contract(s) resulting from this RFP is tentatively scheduled to begin May 1, 2026, and 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.

2 GENERAL INFORMATION FOR BIDDERS

This section identifies important deadlines for this Competitive Solicitation, where to direct questions regarding the Competitive Solicitation, and the process for potential amendments or modifications to the Competitive Solicitation.

2.1 COMMUNICATION REGARDING THIS COMPETITION

All communication should be directed to the State Parks Contracts and Grants Program (CGP) via the Procurement Coordinator's email listed on the face page. Contacting other State Parks staff may result in disqualification. Only responses posted on WEBS are official; all other communications are unofficial and nonbinding. State Parks reserves the right to amend this solicitation.

i. Prebid Conference:

Bidders are invited to a virtual prebid conference via Microsoft Teams, where they can ask questions and request changes. Interested bidders must RSVP to contracts@parks.wa.gov by the date specified in Section 2.2 – Procurement Schedule, with the bid identification number and "RSVP" in the subject line (e.g., "**RFP # RSVP**"). A meeting link will be sent the next day. The conference date and time are also in Section 2.2.

Attendees should not display video and keep their microphones muted if not speaking. If the conference fails or you have additional questions, send them by 3 PM (PST) on the same day. Responses will be posted on WEBS. State Parks is not responsible for technical issues or participation failures. Questions raised at the pre-bid conference and during the Q&A period will be answered and responses posted to WEBS. State Parks reserves the right to amend and modify this Competitive Solicitation.

ii. Question Period:

Bidders may ask questions at any time, but responses must be posted on WEBS before the bid's due date to allow bidders to respond. The final day for questions to receive a formal response is in Section 2.2 – Procurement Schedule.

Send questions to contracts@parks.wa.gov with the bid identification number and "Question" in the subject line (e.g., "**RFP # Question**"). Only responses posted on WEBS are official; all other communications are unofficial and nonbinding.

iii. Complaint Period:

Bidders should first address concerns during the Question-and-Answer period. If a complaint is necessary, refer to Section 2.2 – Procurement Schedule for the Complaints Period. Complaints outside this period will not be considered. Send complaints to contracts@parks.wa.gov with the bid identification number and "Complaint" in the subject line (e.g., "**RFP # Complaint**"). Failure to mark correctly may result in the complaint being missed. Responses will be posted on WEBS; only these responses are official.

To be considered, complaints must be submitted in writing to the Procurement Coordinator by the deadline, using the specified email address and subject line. Complaints must state their basis, propose a remedy, and address one of the following issues:

- Unnecessary restriction of competition.
- Unfair or flawed evaluation/scoring.
- Inadequate solicitation requirements for preparing a response.

2.2 PROCUREMENT SCHEDULE

Any stated time is Pacific Time Zone (local time)

Activity	Due Dates	Time
RSVP Prebid Conference	11/10/2025 See additional details in Section 2.1 (i) – Prebid Conference.	COB
Prebid Conference	11/12/2025 See additional details in Section 2.1 (i)– Prebid Conference	10:30AM-11:00AM PST
Question Period	10/16/2025 – 11/14/2025 See additional details in Section 2.1 (ii)– Question and Answer Period.	NA
Answer Period	11/03/2025 – 11/20/2025 , anticipated but may take longer. All Answer Responses will be posted on WEBS. See Section 2.1 (ii) – Question and Answer Period	
Complaint Period	11/13/2025 – 11/21/2025 See additional details in Section 2.1 (iii) – Complaint Period. Complaints received before or after the Complaint period will not be considered.	NA
Bidder's Proposal – Deadline	12/02/2025 See also: Section 2.3 – Submission of Proposals	1:00PM PST
Evaluate Proposals	Anticipate one to two weeks	
Announcement of Apparent Successful Bidder (ASB)	After the Bid's due date (deadline to submit bid responses) and following the evaluation, the state will Announce the Apparent Successful Bidder (ASB). See additional details in Section 4.5 – Announcement of Apparent Successful Bidder.	
Debriefing of Bidders	The Bidder wanting a Debrief must request a Debrief within three business days following the day of the Announcement of Apparent Successful Bidder (ASB). See additional details in Section 4.6 – Debriefing of Bidders	
Protest	The DEBRIEFED Bidder wanting to submit a protest must submit a Protest within five business days following the day of the Debrief. See additional details in Section 4.7 - Protests	

State Parks reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

Bids must be complete, legible, signed, and follow all instructions stated in the Competitive Solicitation (including the appendices, and exhibits). Unless otherwise specified in writing by documents included with an electronic bid must be prepared in MS Word, MS Excel, or Adobe PDF. Where required to do so, bidders may sign using either a physical or electronic signature.

Bidder's electronic bid must be emailed to the Procurement Coordinator at the following email address: BidBox@parks.wa.gov. The email subject line should include the bid identification number, "Bid," and your company name (e.g., "**RFP # Bid ACME**"). Ensure the email, including attachments, is less than 30MB. It's recommended to keep it under 25MB. Zipped files are not accepted. All responses and any accompanying documentation become the property of State Parks and will not be returned.

State Parks will send an automatic acknowledgment of bid receipt. This acknowledgment does not determine the bid's responsiveness. If the bidder does not receive an acknowledgment within a reasonable time, it is the bidder's responsibility to contact State Parks for confirmation.

VERIFICATION: Bidders are welcome to contact the State Parks Contracts and Grants Program 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. Send verification requests to:

contracts@parks.wa.gov

The email subject line should include the bid identification number, "Verification," and your company name (e.g., "**RFP # Verification ACME**")

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 submissions will be considered non-responsive and may be rejected. ---

2.4 RESPONSE LAYOUT REQUIREMENTS

The Bidder's bid response should be logically assembled so that the evaluators can easily understand what they are reading and relate what they are reading back to the competition document's requirement. Evaluators appreciate landmarks or references using the competition document's section numbers and section titles. One mistake that Bidders make is that they have a previously prepared statement or materials that don't precisely relate to the competition document's individual requirement (it wasn't tailored or designed for the requirement), or that the previously prepared statement (or material) is supposed to relate to two or more requirements of the competition document. That can be confusing and may result in a negative impact to the evaluation of the Bidder's bid response.

NOTE: If evaluators cannot easily identify the statement/material or cannot easily link it to the competition's section reference, requirement, or question the statement/material may be misunderstood, disregarded, or may negatively impact the evaluation of the response.

3 PROPOSAL CONTENTS

This section outlines the information required for the Competitive Solicitation and specifies the details that must be provided for a bid to be considered responsive.

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. Submittal A must be signed and is evaluated on a pass/fail basis.

3.2 SUBMITTAL B - BIDDER PROFILE (MANDATORY)

The Bidder’s Profile (Submittal B to this RFP) provides general information about the bidder and/or its corporate entity. It is important to fully read the Bidder’s Profile, as there may be additional pages that the bidder must self-author and attach, depending on the bidder’s response. Bidder’s Profile must be substantively completed and is evaluated on a pass/fail basis. **Note:** The Bidder’s Profile must be complete. Where there are choices, the bidder must check a box.

3.3 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:

3.3.1 SUBMITTAL C - BUSINESS PLAN (SCORED)

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

Provide a clear description of the concession’s purpose, service concepts, and rationale for success. Include sufficient detail, as evaluators are not required to seek clarification or provide interviews. Lack of information may negatively impact evaluation. Submittal C includes three scored sections: a business plan explaining the concession’s purpose, service concepts, and rationale for success; a menu presenting creative, practical options to attract customers and state park patrons; and additional ideas and proposals highlighting innovative ways to enhance the concession’s value and appeal.

3.3.2 SUBMITTAL D - EXPERIENCE (MANDATORY)

Up to six (6) 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.

3.3.3 SUBMITTAL E – TRAINING AND SAFETY (MANDATORY)

State Parks is looking for a training program outline that showcases the core courses required for all guides. This should also detail emergency response protocols and include a list of essential safety gear.

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

3.4 SUBMITTAL F - 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: State Parks reserves the right to not check references. State Parks also reserves the right to request additional references if determined as necessary to evaluate the bidder.

3.5 SUBMITTAL G – WASHINGTON SMALL BUSINESS AND/OR CERTIFIED VETERAN-OWNED BUSINESS (SCORED)

Bidder this part of your bid response is self-authored by you; no form is provided.

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

Include proof of certification issued by the Washington State Department of Veteran Affairs or self-certify as a small business through WEBS at the time of competition. You may also include proof of certification from the Washington State Office of Minority & Women's Business Enterprises (OMWBE), though no points will be awarded for OMWBE certification. If you are a small business registered in Washington's Electronic Business Solution (WEBS), we will verify your registration to determine eligibility

3.6 SUBMITTAL H - 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

This section outlines how bids for this Competitive Solicitation will be evaluated. It includes information about the announcement of the apparent successful bidder, and the applicable requirements for complaints, debriefings, and protests.

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	P/F	Yes	N/A	Signed and included.	3.1
B	Bidder Profile	P/F	Yes	N/A	Completed and included.	3.2
C	Qualifications - <i>Business Plan</i>	Scored: up to 20 points	No; self-authored by the Bidder	Up to 2 Pages	SP seeks a plan showcasing expertise, capability, and a realistic approach to serving park patrons, prioritizing thoughtful detail over exaggerated promises.	3.3.1
D	Qualifications - Experience	Scored: up to 30 points	No; self-authored by the Bidder	Up to 6 Pages. Bidder may attach proving documents such as copies of licenses, etc.	Submittal must clearly demonstrate that Bidder is licensed to do business in the State of Washington and has at least ten (10) years' experience in activity sought by this competition.	3.3.2
E	Qualifications- Training and Safety	Scored up to 20 points	No; self-authored by the bidder	Up to 6 Pages.		
#	Submittal	Method	Form Provided	Page Limit	What is of value to State Parks (SP)	Reference Section
F	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.	3.4
G	Small Business /Veteran Owned	Scored: 10 points	No; self-authored	Proof of WA-Small/Veteran, Business Certification. If you are		3.5

	Business Certification		by the Bidder	a small business registered in Washington's Electronic Business Solution (WEBS), we will verify your registration to determine your eligibility.		
H	Quotation	Scored: 10 points for greatest return and pro rata for remaining Bidders.	Yes	N/A	Greatest return to SP.	3.6

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 State Parks 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 State Parks Purchase Order, or purchase. State Parks 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 State Parks Purchase Order. Bidders and ASBs that commit funds, resources, and effort prior to a contract and/or State Parks Purchase Order do so at its own risk and peril.

4.6 DEBRIEFING OF BIDDERS

- A. Send Debrief Requests to: contracts@parks.wa.gov.
- B. Subject line must include "RFP # 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
- B. Subject line must include **"RFP # 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. 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: State Parks does not currently require a page limit for Protests but emphasizes the need for submissions to be succinct, organized, logical, and professional. Protests must clearly fall within one of the allowable categories. Submissions that contain irrelevant material, rants, disparaging remarks, excessive attachments, or require the reader to piece together arguments from large volumes of material will be administratively rejected. The Procurement Coordinator will notify the protesting party of the rejection, and no opportunity to cure or resubmit will be provided.

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 ADDITIONAL GENERAL PROVISIONS FOR ALL BIDDERS

This section provides additional information regarding doing business with the State of Washington, including State Parks' efforts to enable Washington's small, diverse, and veteran-owned businesses to compete for and participate in state procurements for goods/services.

5.1 SMALL AND DIVERSE BUSINESS PARTICIPATION.

State Parks strongly encourages the participation of minority and women-owned businesses, Veteran owned businesses, and small businesses, as Contractor.

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. Bidders may go to <https://omwbe.wa.gov/directory-certified-businesses> to obtain information on certified firms

5.2 ALTERATIONS TO STATE PARKS 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 State Parks 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 State Parks, any resulting contract may be cancelled by State Parks (only State Parks) and the Bidder/Contractor shall hold State Parks HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE). Or, State Parks may allow the contract to continue with the altered portions being ignored in favor of the State Parks official language. The awarded Bidder/Contractor understands, agrees, and accepts this provision and SHALL hold State Parks HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).

5.3 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 State Parks 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 State Parks includes unrequested materials it may be disqualified. Whether the supplemental material is noticed or not noticed by State Parks, any resulting contract may be cancelled by State Parks (only State Parks) and the Bidder/Contractor shall hold State Parks HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).. Or, State Parks may allow the contract to continue with the supplemental material being ignored in favor of the State Parks official language. The awarded Bidder/Contractor understands, agrees, and accepts this provision and SHALL hold State Parks HARMLESS, SAVE HARMLESS, INDEMNIFY AND DEFEND (AT BIDDERS EXPENSE).

5.4 PUBLIC DISCLOSURE/ PROPRIETARY INFORMATION & WAIVER

Procurement records for this competition cannot be released or viewed until after the Announcement of Apparent Successful Bidder (ASB); see Section 4.5 – Announcement of Apparent Successful Bidder. A Bidder may request copies of the competition records, including the solicitation and evaluation documents, or may inspect the competition records.

State Parks has a [Public Records Officer](#) and webpage for this purpose. If you'd like copies of these records, please click on the link(s) below for agency instructions.

- [Public Records Request Info](#)
- [Public Records Center](#)

When completing your request, it is helpful to identify it clearly to avoid delays. The email subject line should include the bid identification number and project name (e.g., "RFP # Procurement Name")

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 State Parks a full and complete Release of Information should the Bid Response contain any Confidential or Proprietary information.

5.5 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.

5.6 ACCEPTANCE PERIOD

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

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 NO OBLIGATION TO CONTRACT

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

5.12 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.

5.13 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 from 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.

6 RFP SUBMITTALS SUMMARY

- Submittal A – Bidder Declaration & Certification (use and submit form below).
- Submittal B – Bidder Profile (use and submit form below).
- 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 – Training and Safety (placeholder only, bidder will submit a self-authored document).
- Submittal F – References (placeholder only, bidder will submit a self-authored document).
- Submittal G – Small Business/ Veteran owned Business (placeholder only, bidder will submit self-authored document).
- Submittal H – Quotation (use and submit form below).

7 SUBMITTAL A – BIDDER DECLARATION & CERTIFICATION (MANDATORY):

Bidder, through the duly authorized undersigned, makes this certification as a required element of submitting a responsive bid. Bidder certifies, to the best of its knowledge and belief that the following are true, complete, correct, and made in good faith:

1. I/My Firm make the following certifications and assurances as a required element of the proposal (bid response) 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):
2. Bidder certifies that Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Competitive Solicitation. Bidder further certifies that Bidder's bid prices have been arrived at independently, without engaging in collusion, bid rigging, or any other illegal activity, and without for the purpose of restricting competition any consultation, communication, or agreement with any other bidder or competitor relating to (a) those prices, (b) the intention to submit a bid, or (c) the methods or factors used to calculate the prices offered. Bidder further certifies that Bidder has not been and will not knowingly disclose its bid prices, directly or indirectly, to any other bidder or competitor before award of a Contract, unless otherwise required by law. Bidder further certifies that Bidder has made no attempt and shall not make any attempt to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition. Bidder, however, freely may join with other persons or organizations for the purpose of presenting a joint bid. Whether done directly or indirectly, communicating bid information with other bidders, collusion, or anti-competitive actions among bidders are prohibited. If there is evidence of such communication, collusion, or anti-competitive activities among bidders, State Parks reserves the right to disqualify such bidders
3. I/we declare that all answers and statements made in the proposal are true and correct.
4. 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.
5. 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 (State Parks) without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
6. 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.
7. I/My Firm understand that State Parks 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.
8. Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
9. I/My Firm agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions (if

any), and any other instructions, Terms & Conditions, AND competition amendments to the same. Further:

- a. Alterations to State Parks 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 State Parks 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 State Parks, any resulting contract (including any type of order placement) SHALL continue with the altered portions or deviations being ignored in favor of the State Parks 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 State Parks.
 - b. 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 State Parks, any resulting contract (including any type of order placement) SHALL continue with the unrequested material being ignored in favor of the State Parks official language. The awarded Contractor understands, agrees, and accepts this provision and SHALL hold harmless and save harmless the State Parks.
10. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
 11. I/My Firm grant State Parks the right to contact references, systems, sources, and others, who may have pertinent information regarding the Bidder's prior experience and ability to perform the services contemplated in this procurement.
 12. 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.
 13. Bidder (including Bidder's officers) certifies Bidder has not, within the three (3) year period preceding the date of this Competitive Solicitation, been convicted or had a civil judgment rendered against Bidder for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. Bidder further certifies that it is not presently indicted or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in this paragraph.
 14. Bidder certifies Compliance with Statutory Nondiscrimination Clauses for State Contracts. During the term of an awarded Contract, Bidder, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). Bidder, including any subcontractor, also shall give written notice of this nondiscrimination requirement to any labor organizations with which Bidder, or subcontractor, has a collective bargaining or other agreement. In addition, Bidder, including any subcontractor, shall cooperate with any Washington state agency investigation regarding any allegation that Bidder, including any subcontractor, engaged in prohibited discrimination set forth in RCW 49.60.530(3).
 15. Bidder complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

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16. Bidder certifies No Termination For Default or Cause. Bidder has not, within the three (3) year period preceding the date of this Competitive Solicitation, had one (1) or more federal, state, or local governmental contracts terminated for cause or default.
 17. Bidder certifies, Taxes Paid. Except as validly contested, Bidder is not delinquent and has paid or has arranged for payment of all taxes due to the State of Washington and has filed all required returns and reports as applicable.
 18. Bidder certifies, Financially Solvent. Bidder is financially stable and solvent, has adequate cash reserves to meet all financial obligations, has not commenced bankruptcy proceedings voluntarily or otherwise, and is not subject to any judgments, liens, or encumbrances of any kind affecting title to any Goods or Services that are the subject of this Competitive Solicitation.
 19. 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 State Parks.

20. 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.

21. 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.

22. ELECTRONIC SUBMISSION OF DOCUMENTS ARE LEGALLY BINDING:

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

For purposes of this competition document State Parks is accepting a PDF scan (or similar representation) of the Bidder's wet-ink signature in the signature space below. For clarity: Print out the competition document(s), review it, include any other required document, 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 State Parks, scan it as a PDF file and attach the file to your business email and send it to State Parks. For expanded details see Section 2.3 – Submission of Proposals.

I/My Firm certifies under penalty of perjury under the laws of the state of Washington that submission of my/my Firm's bid response and accompanying copy of my signature is legally binding on me/my firm, and that the State Parks may rely upon its authenticity.

I, acting as my Firm's authorized representative declare on behalf of me/my firm under penalty of perjury under the laws of the State of Washington forgoing Certification and Assurances and Waiver is true and correct.

BIDDER NAME: _____

Print Name of Bidder – Print full legal entity name of the firm submitting the Bid If Bidder is a sole proprietor, print the full legal name of the individual who is the Bidder submitting the Bid

By: _____

Signature of Bidder's authorized person

_____ Print Name of person making certifications for Bidder

Title: _____

Title of person signing certificate

Place: _____

Print city and state where signed

Date: _____

8 SUBMITTAL B – BIDDER PROFILE (MANDATORY):

Bidder must provide all requested information in the space provided next to each numbered section below.

Many of the questions require information if you answer “yes”. Please provide your response in the space provided unless otherwise directed to submit on a separate page (note: the spaces provided can expand to allow for more text to be typed in if necessary). If you are directed to provide answers on a separate page, please identify the question and corresponding number that you are responding to, and attach that document to this Submittal B.

COMPANY INFORMATION:

(a)	Firm Legal Name*			
	Street Address**			
	Mailing Address			
	City, State, ZIP			
Bidder Organization Type: Check appropriate box		Corporation:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
		Limited Liability Company (LLC):	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
		Partnership:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
		Sole Proprietorship:	<input type="checkbox"/>	
		<i>* Note: A sole proprietorship is an unincorporated business owned and run by an individual with no distinction between the business and the owner. It is not a legal entity. It simply refers to a person who owns the business and is personally responsible for its debts and who pays personal income taxes on profits earned from the business. If you are a bidder who operates a business on your own, you automatically are a sole proprietor unless you have adopted a business structure (e.g., corporation, LLC, partnership).</i>		

*Legal Name: Many companies use a “Doing Business As” name or a nickname in their daily business. However, the State requires the legal name of your company as it is legally registered in the State of Washington or the state in which your company was registered. This should include the type of entity – Inc., LLC, LP, etc.

** RECIPROCITY: For purposes of [RCW 39.26.271](#) (Reciprocity) the Bidder’s physical address will be used. Bidder MUST provide a physical address for his place of business. A post office box IS NOT a physical address.

(b)	DBA (if any)			
	Telephone Number(s)			
	Area Code:	Number:	Extension:	
	Area Code:	Number:	Extension:	

(c)	A list identifying which parties of the organization have the authority to sign contracts/ amendments on behalf of the Bidder’s entity.

(d)	Names, addresses, e-mail addresses and telephone numbers of the sole proprietor, partners, or principal officers as appropriate to the organization		
	Name & Title:		
	Address:		
	Email Address:		
	Telephone Number		
	Area Code:	Number:	Extension:

(e)	Primary Contact Person for Questions/Contract Negotiations, including address if different than above		
	Name & Title:		
	Address:		
	Email Address***:		
	Telephone Number for Contact Person		
	Area Code:	Number:	Extension:

*** Email Address: The email address provided by the Bidder in subsection (e) will be used for officially contacting the Bidder for purposes of the competition. If the email address is left blank, then the email address provided in subsection (d) will be used.

(f)	WA State UBI	
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(g)	Statewide Vendor Number (SWV)	
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Bidder is urged to be registered with the Washington State Office of Financial Management as a statewide vendor. If no current SWV number, affirm that your organization will obtain a SWV number within ten (10) days of executing contract. YES NO

(h)	Federal Tax Identification Number	
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<p>Is your firm certified as a minority or woman owned business with the Washington State Office of Minority & Women's Business Enterprises (OMWBE)?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, provide Bidder's MWBE certification no.: _____</p>
<p>Is your firm a self-certified Washington State Small Business?</p> <p><i>Note:</i> See 5.3 for criteria to qualify as a Washington State Small Business.</p> <p><i>Note:</i> Regardless of size, a qualifying business must be owned and operated independently from all other businesses. In regard to size, the gross revenue thresholds, as reported on Bidder's tax returns, are as follows:</p> <ul style="list-style-type: none"> ▪ Microbusiness: Annual gross revenue of less than one million dollars. ▪ Mini business: Annual gross revenue of more than one million dollars, but less than three million dollars. ▪ Small Business: Annual gross revenue of less than seven million dollars over each of the three prior consecutive years. 	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, provide the location for Bidder's principal place of business:</p> <p>_____</p> <p>Street Address</p> <p>_____</p> <p>City, State, Zip Code</p> <p>If yes, what is your business size (based on annual gross revenue)?</p> <p>Microbusiness <input type="checkbox"/></p> <p>Mini business <input type="checkbox"/></p> <p>Small Business <input type="checkbox"/></p>
<p>Is your firm certified as a Veteran-Owned Business with the Washington State Department of Veteran Affairs?</p> <p><i>Note:</i> See 5.3 for criteria to qualify as a Certified Veteran-Owned Business.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, provide Bidder's WDVA certification no.: _____</p>

9 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

10 EXHIBIT A – SAMPLE CONTRACT

A sample contract with general terms and conditions is provided in this section and/or will be separately posted on WEBS with a file name of “Exhibit A / Sample Contract.” The file name may or may not also include the competition’s number as part of the file name.

The sample contract is a close representation but not a perfect representation of what the Apparent Successful Bidder (ASB) will be expected to sign. The actual agreement will need to include elements of the ASB’s bid response, the statement of work, performance periods, contractor information, compensation, and any updates to comply with law, regulation, or policy. Should the ASB refuse to sign the State Parks drafted contract, the ASB will be disqualified.



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”).

1.3 Competitive Procurement: Concessionaire and State acknowledge that this Agreement is executed pursuant to Commission policies adopted on June 24, 2010, and was not competitively procured. State reserves the right to terminate

this concession agreement, without cause, and award a concession agreement to any other interested party through a competitive process. Concessionaire may bid for the new concession. This right to terminate, without cause, as provided in this subsection shall expire two (2) years after the date of execution. State shall only exercise this specific right to terminate if State receives a bona fide concession application or application to lease the same premises or provide the services prior to the expiration of the two-year period and the concessionaire to this agreement is not selected to operate the concession through the competitive procurement process. The State shall give the Concessionaire 90 (ninety) days prior written notice of State's intent to terminate the lease, and the Notice shall specify the date of termination.

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 lightening).

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.

5.12 Performance Bond [OPTIONAL] Upon execution of this Agreement, Concessionaire shall furnish to State a good and sufficient corporate surety bond (“Bond”) or other security satisfactory to State in the amount of _____ . Such Bond must secure the full performance by Concessionaire of all the terms and conditions of this Agreement to be performed by Concessionaire, including, but not limited to, the payment by Concessionaire of all amounts now or hereafter due and payable to State during the Term of this Agreement. The Bond must be in a form and issued by a surety company acceptable to State. The amount of the Bond must be adjusted to reflect any modification to any term or condition of this Agreement to be performed by Concessionaire. A new or modified Bond shall be delivered to State not less than 30 days following the effective date of any such modification. Upon any default by Concessionaire of any obligations under this Agreement, any amount of the Bond may be appropriated by State to offset the liability of Concessionaire to State, but such Bond and State’s appropriation thereof or realization thereon shall in no way limit the liability or obligations of Concessionaire or the rights or remedies of State.

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's 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.

9.6 Railbanking. [OPTIONAL] Notwithstanding any other provision of this Agreement, Concessionaire recognizes that State's rights with respect to the Concession Facilities were obtained through railbanking pursuant to 16 U.S.C. § 1247(d) and are subject to rail reactivation. Concessionaire shall ensure that its activities are consistent with State's interim trail use, and acknowledges possible future rail reactivation. Should rail use be reactivated on the Concession Facilities, this Agreement will terminate.

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).

[**OPTIONAL**] In the event Concessionaire either (1) abandons the Concession Facilities, or (2) fails to perform the obligations set forth in this Agreement such that the purpose of this Agreement is not fulfilled, both parties acknowledge that it may be difficult to calculate the damages sustained by State. Therefore, in such an event, in addition to any other rights and remedies accruing to State under this Agreement, and any other damages that State may be able to establish, Concessionaire shall pay liquidated damages in the sum of two thousand five hundred dollars (\$2,500), which sum may be satisfied from the **performance bond as required elsewhere herein**.

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:

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.

13. NONDISCRIMINATION

- a.** Nondiscrimination Requirement. During the term of this Contract, Concessionaire, including any sub-concessionaire, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Concessionaire, including any sub-concessionaire, shall give written notice of this nondiscrimination requirement to any labor organizations with which Concessionaire, or sub-concessionaire, has a collective bargaining or other agreement.
- b.** Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- c.** Default. Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Concessionaire, including any sub-concessionaire, is cooperating with the investigating state agency. In the event Concessionaire, or sub-concessionaire, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Concessionaire, sub-concessionaire, or both, may be referred for debarment as provided in RCW 39.26.200. Concessionaire or sub-concessionaire may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- d.** Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Concessionaire, sub-concessionaire, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from

any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to the Concessionaire or sub-concessionaire, or that thereafter become due, an amount for damages Concessionaire or sub-concessionaire will owe Agency for default under this provision.

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: _____ 10/25/2022
Andy Woo Date
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).

Monitor	Standard	Performance Measure	Correct by
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 11/15	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