



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
LANSING



KEITH CREAGH  
DIRECTOR

November 1, 2018

To Whom It May Concern:

The Department is seeking bids for the operation of a mobile food concession at Dodge #4 State Park. The selected candidate will operate a food concession on the brick patio near the restroom building. This contract includes all labor, equipment, and product required to provide the service and begins with the 2019 season. Enclosed you will find bid documents for that contract.

This will be a competitive bid process. Bids are due and will be opened at the Roscommon Customer Service Center, 8717 North Roscommon Road, Roscommon, MI 48653 on **January 16, 2019 at 2:00 pm.**

Please call Lori Ruff at (989) 275-5151, extension 2722006 for questions relating to the bid documents. Questions specific to the terms and conditions of the contract should be directed to Rowdy Perry at (248) 682-7323.

# **AN INVITATION TO BID**

Michigan State Park Concession

**Dodge #4 State Park**

**Mobile Food Concession**

## **Bid Package Enclosures**

Section 1. Standard Bid Requirements

Section 2. Specific Bid Information

Section 3. Bid Forms

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Bank Statement of Credit

Section 4. Sample Documents

- Sample Performance Bond
- Sample Contract

# **SECTION 1**

## **Standard Bid Requirements**

## STANDARD BID REQUIREMENTS

### MICHIGAN DEPARTMENT OF NATURAL RESOURCES PARKS AND RECREATION DIVISION

#### INVITATION TO BID - STATE PARK CONCESSION

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

Bids must be enclosed in sealed envelopes. **Bid envelopes must be plainly marked** on the outside, "**Bid for Concession at Dodge #4**". Other larger documents such as development plans must be enclosed and appropriately labeled. Only Sealed Bids properly addressed and identified can be accepted.

This bid will be opened on **January 16, 2019** at **2:00 p.m.** Bid documents received after this date and time will not be accepted. Incomplete bids will not be accepted. Bids will be opened in the Roscommon Customer Service Center. You may either hand deliver your bid or mail it to:

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

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

1. Submit bid prior to **2:00 p.m.** on **January 16, 2019**
2. Bid Proposal Form
3. Concession Bidder Qualification Statement
4. Bid Guarantee Payment in the amount of **\$200**
5. Bank Statement of Credit in the amount of **\$2,000**
6. Bid must be in a sealed envelope and marked as "Bid for Concession at Dodge #4"

## **BIDDER SELECTION:**

**The bids will be evaluated on previous experience, financial ability and monetary payment to be paid to the State.** Personal interviews may be required to assist in evaluating each bidder's proposal and qualifications. If such interviews are required, bidders will be contacted to make arrangements. Each bidder may select one (1) additional representative to monitor the interview.

## **GENERAL BID INFORMATION:**

1. Act 451, Public Acts of 1994, requires that the Director of the Department of Natural Resources shall provide that each concession is awarded at least every seven(7) years based upon extension, renegotiation or competitive bidding. The bids will be evaluated on previous experience, financial ability and monetary payment to be paid to the State.
2. The successful bidder will be required to sign a contract. The terms and conditions stated in the enclosed sample contract are to be considered as requirements for this Invitation to Bid. Contractors must pay the Department a fee for the privilege of operating concessions.
3. It is recommended that applicants make a personal visit to the park and the concession facilities to determine the conditions to be encountered, plus any factors affecting the operation. In so doing, it is best to contact the Unit Supervisor or representative. Bids received from applicants who fail to do this do not, as a rule, receive favorable consideration.
4. Bidders must accept all concession facilities in their present condition. Do not expect that the Department will perform any repairs or remodeling unless specifically stated in this Invitation to Bid.
5. The submission of a bid shall be deemed evidence that the bidder has carefully examined these instructions, the proposal form, and the sample contract terms and is fully aware of the responsibilities of the contractor. In addition, the bidder agrees to abide by all applicable laws relating to the operation of the concession if granted this concession contract.
6. Bids are to be made only on the basis of the Invitation to Bid. A bidder shall not be relieved of their bid because of mistakes.
7. Deviations from the specific terms, qualifications and requirements, as set forth in the Invitation to Bid are not permissible as a part of the bid. But, alternate or additional bids or suggested revisions, if any, may be submitted separately and apart from, but enclosed with, the proposal. Such alternate proposals will be reviewed only as to their merit and potential benefits to the

public and the Department, and may or may not have a bearing in the selection of a bidder.

8. The Department of Natural Resources reserves the right to reject any or all bids.
9. Performance Bond: The bidder that is awarded a contract must provide the Department with a Performance Bond for the amount specified in the specific information and requirements for this concession sheet **within ten(10) days of receipt of the contract award**. Failure to do so will result in the forfeiture of the award. The bond guarantees that the bidder will perform all requirements and provisions in this Invitation to Bid. The Performance Bond will be due within 10 days of the Contract award. The Performance Bond for the Contract will be **\$500**. A sample Performance Bond form is provided in Section 4. For more information, please see Page 17 of this Invitation to Bid.
10. Bid Guarantee: The Bid Proposal form must be accompanied by either a certified or cashier's check on an open, solvent bank in the amount of \$200. Guarantee of the three (3) highest bidders will be retained until the Department has awarded the contract. Guarantee payments of all other bidders will be returned within three weeks of the bid letting. If the successful bidder fails to provide a Performance Bond or open the concession on the date set by the Parks and Recreation Division, the guarantee payment shall be forfeited to the State.
11. Statement of Credit: Reflects a conservative estimate of what it will cost to set up and begin operations. The Statement of Credit amount required for this contract shall be **\$2,000**. To meet this requirement, the bidder must have a bank or comparable financial institution complete the Statement of Credit Form (Section 3) or provide an acceptable alternative financial document that meets this criteria.

**SECTION 2**  
**Specific Bid Information**

## SPECIFIC BID INFORMATION

### Dodge #4 State Park Mobile Food Concession

The Department of Natural Resources is seeking a qualified operator for a Mobile Food Concession at Dodge #4 State Park.

#### **Contract Requirements:**

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

General Aggregate:	\$500,000
Product Aggregate:	\$500,000
Personal Injury.....:	\$250,000
Occurrence.....:	\$250,000
Fire Damage Limit:	\$ 50,000
  
2. Workers Compensation Insurance pursuant to Sample Contract Section XI.B.
  
3. A **minimum** Contract Fee of **5% of Gross Annual Sales** pursuant to Sample Contract Section II.B.

#### **General Information:**

Dodge #4 State Park is a 139-acre day use park located in Oakland County, northern Metro Detroit. The park consists of a one-mile shoreline on Cass Lake and offers swimming, a playground, sand volleyball, a fishing pier, picnic area and shelter, restroom facility, and a boat launch.

<u>Year</u>	<u>Day Use Visitors</u>
2015	262,772
2016	545,776
2017	560,547

#### **Concession Facilities:**

The selected candidate will place a mobile food concession in the Day Use area, on brick patio near the restroom building. The mobile food unit may be transported on site at the beginning of the day and removed from the site at the end of the day. Water and electrical hook-ups are available.

#### **Products and Services:**

The Department retains the right to approve the sale of all products and services. The Contractor shall not sell any product or service of which the Department does not



approve. Products and services, which are permitted, are identified in the sample contract.

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

**Minimum Season:**

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

**Equipment:**

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

**Utilities and Telephone:**

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

**Maintenance Responsibilities:**

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

**Inspection of Facilities:**

To arrange for a personal inspection of the facilities, contact the Park Supervisor of Dodge #4 State Park at (248) 682-7323.

# **SECTION 3**

## **Bid Forms**

**BID PROPOSAL FORM**

**OFFER TO OPERATE STATE PARK CONCESSION BY SEALED BID**

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

**BID DUE DATE**  
**DATE: January 16, 2019**  
**TIME: 2:00 pm**

To Whom It May Concern:

I offer to operate and maintain the concession at **Dodge #4 State Park**, for the convenience of the public, in accordance with requirements set forth in the Invitation to Bid, dated **January 16, 2019**, for a term of three (3) years, which may be extended for an additional four (4) years, and to make payment to the Michigan Department of Natural Resources, for the privilege of so doing, the following:

**A Percentage of Gross Sales Fee, in the amount of \_\_\_\_\_%, payable to the State, as identified in Sample Contract Section II.B.**

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

Attached are the following documents and references to support my offer:

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Bid Guarantee Payment in the amount of **\$200**
- Bank Statement of Credit in the amount of **\$2,000**
- Other: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_

## CONCESSION BIDDER QUALIFICATION STATEMENT

Check One: \_\_\_ An Individual, \_\_\_ A Co-Partnership, \_\_\_ A Corporation

Submitted by: \_\_\_\_\_

With principal office at: \_\_\_\_\_

The completion and submission of this questionnaire and the required attachments reflects accurate and truthful statements of the signatory. Attach additional pages if necessary.

1. Describe the experience you/your organization has had in businesses related to the one being bid.
2. If you plan to use a manager, describe the manager's experience and qualifications.
3. Do you plan to sublet or assign any portion or the entire contract to another party? If yes, explain.
4. Describe your marketing, advertising, and sales promotion plans including the annual budget specifically for each activity.
5. Describe the menu, merchandise, and/or services you would offer. Make the list as comprehensive as possible. If applicable, attach a menu.
6. List all major equipment you will supply to provide products and services required in this bid document.
7. Describe your methods for daily bookkeeping, accounting, and recording revenues on a daily basis.
8. Submit your plans for maintenance and repair of the property.
9. How much working capital, for the initial inventory investment are you prepared to provide?  
\$ \_\_\_\_\_

10. Approximately what portion of the aggregate of initial investment and working capital do you plan to finance?

\$ \_\_\_\_\_

11. In what other businesses are you financially interested?

12. Liens, suits, judgments, defaults, and contingent liabilities: Explain fully any affirmative answers to the following on the reverse side.

A. Have you ever failed in business or compromised with creditors?  
Yes \_\_\_\_\_ No \_\_\_\_\_

B. Have you or your company ever failed to fulfill the requirements of a contract?  
Yes \_\_\_\_\_ No \_\_\_\_\_

C. Have any liens ever been filed against any of your work?  
Yes \_\_\_\_\_ No \_\_\_\_\_

D. Are there any judgments, suits, or claims pending against you?  
Yes \_\_\_\_\_ No \_\_\_\_\_

E. Are you acting as endorser for others on their notes or accounts?  
Yes \_\_\_\_\_ No \_\_\_\_\_

F. List names, address, phone number, and contact person of insurance carrier who will provide your liability and vehicle insurance.

F1. What is coverage deductible if any?

F2. Provide a copy of the operational limitations required by your proposed insurance carrier.

13. Provide financial statements prepared by a Certified Public Accountant in accordance with generally accepted accounting principles for your organization's last fiscal year demonstrating the firm's ability to operate.

14. List a minimum of two (2) personal and two (2) business references, with addresses and telephone numbers on the following page:

	Personal Reference 1	Personal Reference 2
<b>Name:</b>		
<b>Address:</b>		
<b>Phone:</b>		
	Business Reference 1	Business Reference 2
<b>Name:</b>		
<b>Address:</b>		
<b>Phone:</b>		

15. You may, if you desire, provide a narrative that would include anything you feel might assist the Department in evaluating your experience or plan of operation. If appropriate, describe plans you may have for refurbishing, including projected expenditures. Attach additional sheets if necessary.

The subscriber of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories herein made.

\_\_\_\_\_  
**SIGNATURE OF BIDDER**

State of Michigan, County of \_\_\_\_\_

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, for Bidder.

\_\_\_\_\_  
Notary Public Printed Name

\_\_\_\_\_  
Notary Public Signature

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_

**BANK STATEMENT OF CREDIT**

A credit letter shall be submitted from your bank for the purpose of establishing your financial qualifications. This page, properly executed, may be used as a bank credit letter. If more than one bank credit letter is being submitted, the second or subsequent letters must be in this form on regular bank letterhead. They should be attached to this page.

NAME OF BANK \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATE \_\_\_\_\_

Dear Sir:

A line of credit in the maximum of \$ \_\_\_\_\_ has been placed at the disposal of \_\_\_\_\_ for use when, as, and if, needed throughout the six(6) month period beginning \_\_\_\_\_.

The line of credit mentioned above has been given with full knowledge of accommodations extended by other banks.

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_ being duly sworn, deposes and says that he/she is \_\_\_\_\_ of the \_\_\_\_\_, the bank named in and which executed the foregoing statement.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Bank Officer's Signature)

\_\_\_\_\_  
(Notary Public)

# **SECTION 4**

## **Sample Documents**



**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENT, That We \_\_\_\_\_  
of \_\_\_\_\_ as Principal, and  
\_\_\_\_\_ as Surety, are held and firmly bound unto the State of  
Michigan, Department of Natural Resources, in the penal sum of \$\_\_\_\_\_ for  
the payment of which we bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these present.

The condition of this obligation is such, that whereas a license has been entered into  
between the State of Michigan, Department of Natural Resources, and  
\_\_\_\_\_, the license being in connection with the contract and  
concession for the operation of the \_\_\_\_\_, for the  
following term \_\_\_\_\_ through November 30, 20\_\_\_\_\_.

NOW THEREFORE, if the Principal shall comply with and faithfully perform the terms of  
the contract, which is made to form a part hereof as fully as if quoted herein at full  
length, then this bond shall be null and void, otherwise to be in full force and effect.

The bond is executed by the Surety and accepted by the Obligee subject to the  
following conditions:

1. That, if the Surety shall so elect, the Surety may cancel its obligation on this bond by  
filing no less than thirty(30) days written notice of such cancellation to: Parks and  
Recreation Division, Department of Natural Resources, Attn: Concession and Lease  
Manager, 8717 North Roscommon Road, Roscommon, MI 48653, but the Surety so  
filing said notice shall not be discharged of any liability already accrued or which  
shall accrue hereunder for the expiration of said thirty(30) day period.
2. Any action or suit to recover on this bond shall be commenced within five(5) years  
from the date when the wrongful act, failure, or omission on the part of the Principal  
occurred on account of which the Obligee seeks to enforce a claim against the  
Surety.
3. This bond may be extended by continuation certificate signed by Principal Surety to  
cover renewal(s) of this license. Regardless of the number of years this bond may  
be in force, the liability of the Surety shall not be cumulative, and the aggregate  
liability of the Surety for any and all claims under this bond shall not exceed the  
above bond amount.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Principal Signature

\_\_\_\_\_  
Surety Signature

\_\_\_\_\_  
(Print Surety Name)

\_\_\_\_\_  
Telephone Number

## **Performance Bond Information Sheet**

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

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

### **Types of Performance Bonds:**

1. Surety Performance Bond issued by a bonding company. This type of Bond shall be executed by a surety company authorized to do business in the State of Michigan. The Bond shall be payable to the State of Michigan.
2. Cash bonds can be paid by check or money order made payable to the State of Michigan, or currency of the United States of America.
3. Certificates of Deposit (CD) shall have a minimum maturity of one (1) year. Certificates must be negotiable and must be of a type that pays interest on maturity only. The CD should be automatically renewable and must be registered as follows:

Chief, Parks and Recreation Division  
Michigan Department of Natural Resources

The State's Federal employee I.D. number (38-6001134) should be used on all certificates.

4. Letters of Credit issued by a bona fide financial institution. Letters shall have a minimum maturity of one (1) year. They must be registered as follows:

Chief, Parks and Recreation Division  
Michigan Department of Natural Resources

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

**CONCESSION CONTRACT**

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

**PROPERTY:**                    **Dodge #4 State Park**

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

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

**EXPIRES:**                        **November 30, 2021**

**PREFACE**

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

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

**I. GRANT OF CONCESSION CONTRACT**

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

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

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

Telephone number at concession: \_\_\_\_\_

At home: \_\_\_\_\_ Cell: \_\_\_\_\_

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

(“Contractor”), this Contract to operate a concession at **Dodge #4 State Park in Oakland County** (the “Property”). This Contract is subject to the right of the Department to terminate this Contract upon the Contractor’s failure to perform the required services in a satisfactory manner.

## **II. CONDITIONS**

**A. Contract Term.** The Contract term shall begin at 12:01 a.m. local time on the date the Contract is executed by the Department, and end at midnight, local time, on **November 30, 2021.**

**B. Contract Fee.**

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

A Percentage of Gross Income in the amount of \_\_\_\_\_ %, payable on the following schedule:

<u>Sales Month</u>	<u>Payment Due</u>
May	June 15
June	July 15
July	August 15
August	September 15
September	October 15

2. Payment of the Contract Fee shall be paid to the Department and made payable to the “State of Michigan” according to the above schedule.

3. A \$10 per day Late Fee must be paid to the Department by the Contractor for every day beyond the designated day of the month that the Contract Fee is paid late.

4. Failure to pay the Contract Fee on time will be grounds for the Department to terminate the Contract.

5. For purposes of this Section, Gross Income shall be the total amount of all receipts in cash, credits, property, or interest of whatever kind received by the Contractor from all business done under the provisions of this Contract, but it shall not include Recreational Passport sales, fishing and hunting licenses sales, internal sales, state lottery tickets, soft drink container deposits, sales tax receipts, or other taxes.

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

1. The Department has provided the below listed property, buildings, and items of equipment, for the use of the Contractor for this Contract. The area included within this Contract (“Premises”) shall be:

**A designated location in the Day Use area on the brick patio near the restroom building. The mobile food unit may be transported on site at the beginning of the day and removed from the site at the end of the day. All other travel to and from the concession by the Contractor shall be on foot. Motor vehicles shall be parked legally in the parking lot.**

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

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

**D. Operation of Concession.**

1. The Department grants the Contractor the exclusive rights to provide the goods and services authorized by this agreement and identified in Section IV.

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

**F. Operating Schedule.**

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

**Mid-May through Mid-September  
Saturdays, Sundays, and Holidays  
11:00 am to 8:00 pm**

2. The Contractor may operate during other days and times of the week as weather and Day Use area activity warrants.
3. The Contractor must not operate for lesser periods without the prior written approval of the Department unless circumstances beyond the control of either party make it necessary to take emergency action. In such cases, the Contractor must report the circumstances in writing to the Department at the earliest possible moment. In case of inclement weather, the concession may close early with the Department's permission.

**G. Posting of Operation Schedule.** The Operating Schedule of this concession shall be posted at the park office, on the park bulletin boards, and in an exposed location at the Premises.

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

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

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

**B. No Unnamed Partners.** The Contractor represents that there are no unnamed partners legally interested in or having authority over the entity, operation or management of the concession and further represents that the Contractor is the only person/entity responsible for carrying out the Contractor's duties as written in the Contract.

**C. Assignment and Delegation.**

1. The Contractor shall not sell, mortgage, rent, assign or parcel out the Contract hereby granted, or any interest therein, or allow or permit any other person or party to use or occupy any part of the Premises, building, or spaces, covered by this Contract for any purpose whatsoever without first obtaining the prior written consent of the Department. Such action by the Contractor without the prior written approval of the Department shall be cause for the immediate termination of this Contract.
2. The Contractor may not assign this Contract or any of its obligations under this Contract to any other party (whether by operation of law or otherwise) without the prior written consent of the Department. Any purported assignment violating this Section is void. Further, the Contractor may not assign the right to receive money due under this Contract without the prior written consent of the Department.

**D. Subcontractors.**

1. The Contractor cannot delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid without the prior written consent of the Department.
2. The Contractor is responsible for performing all of its obligations under this Contract, whether the obligations are performed by the Contractor or subcontractor. The Contractor is exclusively responsible for the adherence by subcontractors to all provisions of this Contract. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including but not limited to payment of any costs resulting from the Contract.
3. The State reserves the right to approve any subcontractor hired to perform the Contractor's obligations under this Contract and the right to require the Contractor to replace any subcontractor found unacceptable by the Department.

**E. Relationship of the Parties.** The relationship between the Department and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the Department for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

- F. **Contracts.** The Contractor may execute contracts or agreements as the operator of the concession. The language of the contracts or agreements shall not obligate the Department or conflict with the terms of this Contract, and must contain a provision for automatic termination upon the termination of this Contract. The Contractor shall indemnify, defend, and exculpate the Department from any liability which may accrue or be asserted against the Department under such contracts or agreements.

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

- A. The Department reserves the right to approve the sale of all products and services. The Contractor agrees to conduct and use the Premises for no other purpose than those stated in this Contract.
- B. **Products and Services.** The concession granted under the provisions of this Contract is as follows:

##### **Products to include: food, beverages, and ice cream products.**

- C. **Food and Beverages.**

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

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



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

1. Undesignated soft drinks;
2. Personal watercraft;
3. Tobacco products of any kind;
4. Flotation devices such as air mattresses, paddle boards, water wings, life jackets (other than Coast Guard approved), inflated floats, and inner tubes;
5. Pornographic pictures, books, magazines, or other such products;
6. Fireworks of any kind, including Bag Bombs, Firecrackers, Sparkers, and Smoke Bombs;
7. Firearms or ammunition, BB or C02 powered devices, slingshots, bows and arrows;
8. Alcoholic beverages, “mocktails”, or controlled substances;
9. No children products that promote or portray unmoral, unethical, or unhealthy activities (i.e. candy cigarettes);
10. All knives, except those with folding blades of 3” or less;
11. Balloons; and
12. Other items added to this list by the Department provided Contractor has been given written notification of the additional items.

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

1. The Contractor shall furnish Point of Sales system (POS). The POS shall be kept in full view of the public and all sales shall be registered in the presence of the customer and have the capability of providing the customer with a receipt.
2. POS must be approved in writing, by the Department. Cash registers shall be equipped with the following cash control features when practical:
  - a. Sales indication windows which are visible from the front and back of the register.
  - b. Non-resettable grand total counter. Total cannot be reset with a key or by any other means.

3. The POS system shall provide the following required reports:
  - a. Daily, weekly, monthly, and annual report on specific product name and units sold.
  - b. Daily, weekly, monthly, and annual summary to specific type of transaction. System needs to show total credit card sales, coupon transactions, and direct cash operations.
  - c. Inventory summary of products sold and what should be on hand.
  - d. Products purchased from third party vendors.

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

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

1. Ten (10) days before starting, the Contractor shall submit to the Department for approval a listing of the products.
2. Product list must include proposed prices.
3. All prices charged are subject to approval of the Department.
4. The Contractor shall maintain on public display, a neat and legible sign showing the approved prices for the sale of goods/services. If practicable, such prices shall be comparable to prices charged for similar merchandise in the locality in which the concession is operated.

**V. ADDITIONAL TERMS**

- A. Annually, Contractor must submit a proposed menu (identifying “Healthy” food choices) for Department approval.
- B. Contractor cannot play music the outside of the building/mobile unit.
- C. No on site storage will be allowed, unless written authorization from the Park Manger has been granted.
- D. Department is not responsible for any delays or cancellations due to power outages or weather-related issues.

- E. Contractor is responsible to maintain equipment in a safe and workable condition at all times.
- F. Contractor may set up tents/tables/chairs at the concession area with prior Department approval. Tents/tables/chairs may be for daily event use only and must be removed prior to daily close of the Premises.
- G. Contractor acknowledges that Department is not liable for any theft, vandalism, or damage that may occur to Contractor equipment/supplies.
- H. No motor vehicles will be allowed off paved surfaces.
- I. Contractor is responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises.
- J. If using a vehicle, Contractor driver(s) must carry valid operators' license in their possession at all times.
- K. Contractor vehicles accessing the Premises will be required to have a valid Recreation Passport affixed.
- L. Department and/or the Friends Group reserve the right to sell merchandising products within the Premises.
- M. Contractor may not prohibit visitors and/or Department staff from bringing food from home or ordering food outside of the Premises and having it delivered to the Premises.
- N. Contractor and concession staff must wear uniforms identifiable by the public, complete with employee name tag. No short shorts, skorts, sleeveless tank tops, dirty or torn clothing may be worn.

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

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

1. All POS tapes, attraction logs, pre-numbered tickets and receipt registers shall be kept by the Contractor with the applicable monthly sales reports for audit by the Department for the life of the Contract, plus one (1) year.
2. The Contractor shall keep or cause to be kept accurate books, records, and accounts of its operations under the Contract, separate and apart from other operations.
3. All such records shall be maintained in accordance with generally accepted accounting practices (GAAP).

4. The Contractor shall make all bank deposits, cash register tapes, pre-numbered tickets, permits, customer receipts, attraction logs and reports concerning the operation available to the Department at such times as the Department may require.
5. Separate accounting records shall be maintained for each facility or operation in the Contract.

**B. Monthly Reports.**

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

**C. Annual Profit and Loss Statement.**

1. No later than sixty (60) days following the yearly closing of the concession, the Contractor shall submit an annual Profit and Loss Statement for that season's operations on forms furnished by the Department.
2. This report is to be sent directly to Department of Natural Resources, PRD, Roscommon Customer Service Center, Attn: Concession and Lease Manager, 8717 North Roscommon Road, Roscommon, MI 48653.

**D. Lien.** To secure the payment of all Contract Fees and liquidated damages, the Contractor acknowledges that the Department may place a lien on all personal property owned by the Contractor which is located in the Premises used in the operation of the concession.

**E. Utilities, Telephone, Internet/Cable.**

1. The Contractor is not required to pay for all utilities used in or about the concession. The Department shall provide: **electric, water, and refuse.**
2. Contractor must have a telephone assigned for concession use, at Contractor's expense, and shall pay all related costs. Contractor is required to provide phone number to Department.

**F. Taxes.** The Contractor shall pay all federal, state, and local taxes, assessments, or fees which are or which may become legally chargeable to the business operated under the terms of the Contract.

**G. Advertising.**

1. The Contractor will conduct a balanced advertising effort directed at developing more business under the provisions of the Contract.
2. All promotions, contracts, scripts, texts, and layouts must be submitted to the Department for written approval prior to execution or implementation.
3. The Contractor shall not employ or use any persons known as “hawkers,” “spielers,” “criers,” or other noisemakers or means of attracting attention to the Contractor’s business.
4. The Contractor must include information regarding the Recreation Passport requirement on all web pages, advertisements, and social media platforms.

**VII. CONTRACT OPERATION**

**A. Standard of Performance.**

1. The Contractor shall provide operation supervision and shall operate the business under the Contract in accordance with the laws of the State of Michigan.
2. Any dispute arising under this Contract must be resolved in the Michigan Court of Claims.
3. In performing services for the State under this Contract, the Contractor must comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with any applicable state agency rules that the Department provides to the Contractor.
4. Use of the Premises for purposes other than those permitted in this Contract shall be grounds for termination of the Contract.

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

**C. Discrimination.**

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

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

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

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

**E. Prevailing Wages.** If execution of this Contract involves work by a construction mechanic, and any part of that work is sponsored or financed in whole or in part by the State, then the following will apply:

1. The rates of wages and fringe benefits to be paid to each class of construction mechanics by the Contractor cannot be less than the wage and fringe benefit rates issued by the Michigan Department of Energy, Labor and Economic Growth, Wage/Hour Division, in its schedule of occupational classification and wage and fringe benefit rates for the locality in which the work is to be performed.

## **VIII. MAINTENANCE**

**A. Alterations.**

1. Alterations and repairs incidental to the operation of the concession may be made by the Contractor at the expense of the Contractor, but only with the specific written approval of the Department.

2. Any additions or improvements made to the buildings or surrounding premises shall become the property of the Department at the termination of this Contract, except as may be otherwise stated in the Contract.

**B. Sanitation.**

1. The Contractor shall collect and deposit, in approved sanitary containers, all garbage, waste and debris within a fifty (50) feet radius surrounding the concession area for disposal in a licensed sanitary landfill.
2. Contractor is responsible for collection, removal, and disposal of all grease products.
3. Contractor shall keep the concession in a clean and sanitary condition and in conformity with established state and local standards and rules for sanitation and public health.

**C. Special Contractor Responsibilities.**

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

**D. Cleanliness.**

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

**E. Environmental.**

1. The parties agree that they will not bring onto the Premises any hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof), other than fuel necessary to operate Contractor's backup generator on the Premises, or underground storage tanks (collectively Environmental Hazards).
  2. For purposes of this Contract, the term hazardous substances shall mean the term as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*, and any subsequent or amended regulations thereto and as defined in the Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*, and any subsequent amendment thereto. The term hazardous wastes shall be as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, and any subsequent or amended regulations thereto.
  3. For purposes of this Contract, the term pollutants shall be as defined in the Clean Water Act, 33 U.S.C. §1251, *et seq.*, and any subsequent or amended regulations thereto.
  4. Each party shall promptly notify the other party in writing of any environmental accident, claim, or complaint involving the Premises or the Contractor's activities thereon.
  5. The Contractor shall not use or permit the storage of any illuminating oils, gas, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, or any substances or things in any buildings erected or any property covered by the Contract except in buildings specifically designated for this purpose.
- F. **Waste.** The Contractor shall not use or permit the storage of any illuminating oils, gas, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, or any substances or things in any buildings erected or any property covered by the Contract except in buildings specifically designated for this purpose.

## IX. EQUIPMENT AND SUPPLIES

### A. Equipment.

1. The Contractor must equip the concession with all needed equipment.
2. All equipment must be in new or like new condition.
3. Annually, the Contractor shall furnish the Department a complete inventory of equipment owned, leased, or loaned to the Contractor, on forms provided for that purpose. Any additional equipment shall be reported as soon as installed.



4. Department equipment in the Premises available for use by the Contractor includes:

**Picnic Tables, electric and water**

5. Contractor acknowledges that any equipment available for use by the Contractor is not the responsibility of the Department to fix and/or replace.
6. Permanent fixtures may be installed only with the written approval of the Department.
7. All equipment and materials used in connections with the concession shall be supplied at the Contractor's own cost and expense.
8. All equipment that becomes a permanent fixture to the building or structure and fastened thereto shall become the property of the Department.

- B. Coin-operated.** The Contractor shall not permit or provide for the installation of mechanical rides, pinball machines, coin-operated amusement machines, juke boxes (music boxes, record/CD players), or similar devices in or about the Premises.
- C. Alteration of Premises.** The Contractor shall not install, move, or alter any permanent or temporary equipment belonging to the Department in or about the Premises. The Contractor shall not modify water supply lines, waste lines, electric lines, or other utility, machinery or fixtures, except upon written permission from the Department.
- D. Vending Equipment.** The Contractor shall secure the written approval of the Department prior to the installation on the Premises of any vending equipment. All such machines must be equipped with non-resettable, automatic product sale counters. The Department must be permitted to read these counters as needed to audit sales.

**X. EMPLOYEES**

**A. Employment.**

1. The Contractor shall employ and maintain such help and labor as may be necessary to operate the concession in a manner acceptable to the Department.
2. Annually, the Contractor shall provide the Department with the names and position of all employees/volunteers.
3. With the prior approval of the Department, the Contractor may employ a manager who is satisfactory to the Department.
4. If, at any time, the Department shall be of the opinion that any agent/employee/volunteer of the Contractor has engaged in improper conduct on the Premises, the Department shall notify the Contractor and the Contractor shall

take appropriate action to correct the agent/employee/volunteer related problem, including discharge of agent/employee/volunteer or reassigning such agent/employee/volunteer to duties not related to the park concession contract.

**B. Moral Conduct.**

1. The Contractor shall prohibit gambling, drinking, discourtesy to guests, and other illegal and/or undesirable acts by employees/agents/volunteers, whether on or off duty on the Premises.
2. All employees/agents/volunteers must use appropriate (“G” rated) language and actions at all times.
3. Contractor is required to complete background checks (ICHat) and Sex Offender Registry checks on all employees/agents/volunteers prior to them performing work at the Premises. Contractor must provide the information to the Department for review prior to the employee’s/agent’s/volunteer’s start of work.
4. The Department reserves the ability to suspend or remove a concession employee/agent/volunteer who has violated a law or park rule, or performed inappropriate customer service. Department will work cooperatively with Contractor to ensure enough time for proper staffing.

**C. Appearance.**

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

**D. Training.**

1. To promote the facilities of the Department of Natural Resources and to provide quality service to the public, employees/volunteers of the Contractor must receive thorough training.
2. Concession operators and their employees/volunteers must attend seasonal training programs if offered by the Department on the Property where the Premises is located. These training programs will acquaint personnel with information about the property, as well as information to disseminate to the general public.

3. In addition, designated Department staff will be invited to Contractor concession trainings. Department attendees will then share key training information with their staff.

**E. Parking.**

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

**F. Special Conditions.**

1. No motor vehicles will be allowed, without Department prior approval, except on paved surfaces intended for vehicle use.
2. This Contract does not provide Contractor with the ability to go directly to the front of the line when entering the Property. Contractor must wait in line with all other park guests.
3. A valid Recreation Passport is required by all Contractor owned, and employee/volunteer owned vehicles entering the Property.

**XI. INSURANCE AND PERFORMANCE GUARANTEE**

**A. General.**

1. The Contractor is required to provide annual proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.
2. The Contractor hereby releases, waives, discharges and covenants not to sue the State of Michigan, its departments, officers, employees and agents, from any and all liability to Contractor, its officers, employees and agents, for all losses, injury, death or damage, and any claims or demands thereto, on account of injury to person or property, or resulting in death of Contractor, its officers, employees or agents, in reference to the activities authorized by this Contract.

3. The insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductibility amounts for any of the required policies must be approved by the Department.
4. The Department reserves the right to reject insurance written by an insurer the State deems unacceptable.
5. Before starting work the Contractor must furnish to the Department, certificate(s) of insurance verifying insurance coverage. The certificate must be on the standard "ACCORD" form. All such certificate(s) are to be prepared and submitted by the insurance provider and not by the Contractor. All such certificate(s) shall contain a provision indicating that coverages afforded under the policies will not be cancelled or materially changed without thirty (30) days prior written notice having been given to Department.

6. The insurance must include as an additional insured – **State of Michigan and its Natural Resources Commission, Department of Natural Resources and their officers, servants, agents and employees.**

7. The Contractor is required to provide Commercial General Liability Insurance with the following minimum limits:

General Aggregate (other than Products-Completed Operations):	\$500,000
Products-Completed Operations Aggregate Limit:	\$500,000
Personal & Advertising Injury Limit	\$250,000
Each Occurrence Limit	\$250,000
Fire Damage Limit - Any One Fire	\$ 50,000

**B. Workers Compensation.** To the extent as required by law, the Contractor is required to provide Worker's Disability Compensation, disability benefit or other similar employee benefit act with minimum statutory limits. Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable. Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

**C. Automobile/Watercraft Insurance.** The Contractor must maintain automobile and/or Watercraft insurance required by law for claims arising from ownership, maintenance, or use of a motor vehicle or any watercraft equipment as may be required by this Contract.

**D. Proof of Insurance.**

1. All required Insurance shall be kept in force during the period of the Contract and shall be written for not less than the limits of liability specified above.

2. The Contractor is responsible for making each subcontractor comply with these insurance requirements.
3. All certificates of Insurance, or changes in insurance coverage, require approval by the Department and shall be filed with the Department prior to the Contractor's occupancy of the Premises and operation of the concession, for each year of the Contract.
4. The certificates shall contain a provision that the coverage's afforded under the policies will not be modified or cancelled until after at least thirty (30) days written notice to the Department.
5. Failure to comply with all insurance requirements specified in this contract may result in termination of this Contract.

**E. Performance Guarantee.**

1. The Contractor, as a prior condition to any rights under this Contract, shall furnish a performance guarantee in a manner and amount acceptable to the Department.
2. All performance guarantees must be written in such a manner so that they provide continuous coverage for the term of the Contract, or written so that they remain in effect throughout the entire operating season for each year of the Contract.
3. The guarantee shall be in continuous effect during the entire Contract period.
4. The condition of said guarantee shall be that the Contractor will faithfully keep and perform all covenants on the part of the Contractor as set forth in the Contract.
5. Proof of a guarantee currently in force must be kept continuously on file with the Department.
6. If such valid guarantee is not kept in force with written documentation provided to the Department, this Contract will be terminated by the Department.
7. **The guarantee shall contain a provision that it may not be cancelled except by written approval by the Department.** The performance guarantee requirement for this Contract is **\$500**.

**XII. LIQUIDATED DAMAGES**

- A.** This Contract has been established to provide services, goods, or both, to the visitors of the Department's facilities and the citizens of the State of Michigan. The Contractor's failure to comply with the various provisions of the Contract may cause a loss of services or goods to those visitors, and also may cause untimely delays in the administration of this Contract, depriving the Department of the agreed upon services or causing a loss of

revenue. The Contractor's failure to comply with the provisions of this Contract will subject the Contractor to a system of liquidated damages as stated below.

**B. Violations.**

1. The Contractor will be provided with a written "Violation Notice" stating which provision of this Contract has been violated and a date by which the stated violation must be corrected.
2. If the violation has not been corrected by the date specified, the Contractor agrees to pay the Department liquidated damages in the sum of \$50 per day, per violation.
3. If after the seventh (7<sup>th</sup>) day, the violation is still not corrected, the Contractor agrees to pay an additional \$100 per day, per violation. This fee shall increase \$100 per violation every seven (7) days, until corrected.
4. If during the contract period a "Violation Notice" is issued for recurrent violation(s) the initial sum of the liquidated damages shall be \$100 per day, per violation; and increase every seven (7) days in the sum of \$200 per violation, per day.
5. The system of progressive liquidated damages is not intended to be in lieu of the Contractor performing according to the Contract provisions.
6. This liquidated damage provision does not waive or modify any rights the Department has to terminate this Contract pursuant to Section IX for violations of this Contract's terms.
7. The Department reserves the right to waive liquidated damages.

**C. Failure to Open.**

1. The Contractor shall be in full and complete operation with a full staff of employees on the first day of the term of operation as provided in Section II.F.1. of this Contract.
2. If the Contractor is not in full operation on that date (except for causes wholly beyond the control of the Contractor and not involving neglect by the Contractor), this Contract, at the option of the Department, may be terminated without notice. Upon termination, the Department may re-enter the Premises and obtain a new Contractor for the operation of the facilities.
3. In addition to any other remedy, the Department may assess liquidated damages of \$50 per day, per facility, for each day that any facility remains out-of-service because of non-performance by the Contractor.

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

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

1. This Contract is subject to an annual review by the Department.
2. At the expiration date of the Contract, the Department, at its option, may grant an extension of the Contract, or renegotiate the Contract with the Contractor.
3. Every seven (7) years, this Contract must be put out for competitive bids. This Contract must be re-bid in **2025**.

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

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

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

### **IX. TERMINATION**

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

#### **B. Cancellation.**

1. In the event that the Contractor wishes to cancel this Contract, Contractor may do so only with the prior written approval of the Department.
2. If the cancellation request is approved, it is understood that the Contractor will not be considered as a prospective bidder for that concession until after it has been determined that no other party is interested.

3. The Contractor may not cancel and the Department may not approve any request to cancel this Contract where the effective date for cancellation falls during any operating season established in accordance with Section II.F. above.

**C. Termination.**

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

**D. Cancellation for Convenience.**

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

**E. Vacating Premises.**

1. The Contractor shall vacate the Premises by the expiration date of the Contract.



2. If termination shall occur, then the Contractor shall vacate the Premises within fifteen (15) days of termination.
  3. No personal property on which the Department has placed a lien shall be removed from the Premises until all Contract Fees and other sums owed to the Department have been paid.
- F. Waiver of Default.** The failure of a party to insist upon strict adherence to any term of this Contract does not deprive the party of the right to insist upon strict adherence to that term, or any other term, of this Contract.
- G. Integration.** This Contract constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Contract supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction.

SAMPLE

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

\_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Printed Name: \_\_\_\_\_

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

STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_ by Ronald A. Olson, Parks and Recreation Division Chief, for the Michigan Department of Natural Resources.

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

**CONTRACTOR**

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

**Witness**

**Contractor**

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

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

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

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

\_\_\_\_\_  
Title

STATE OF MICHIGAN, COUNTY OF \_\_\_\_\_ The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, for Contractor.

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