

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

**REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. 719-357**

**PROJECT TITLE: MULTIPLE MOBILE FOOD CONCESSIONS AT DECEPTION
PASS STATE PARK**

PROPOSAL DUE DATE: 5:00PM, THURSDAY, FEBRUARY 28, 2019

EXPECTED TIME PERIOD FOR CONTRACT: 1 TO 3 Years dependent upon the contractor's preference, with the possibility of extension to a maximum contract length of five years.

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

AVAILABILITY OF DOCUMENTS: The RFQQ, along with any amendments and bid results will be available only through WEBS (Washington's Electronic Business Solution). For more information, go to:
<http://www.des.wa.gov/services/ContractingPurchasing/Business/BidOpportunities/Pages/bidNotification.aspx>

CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS:

- 1. Introduction**
- 2. General Information for Contractors**
- 3. Proposal Contents**
- 4. Evaluation and Award**
- 5. Exhibits**
 - A. Letter of Submittal**
 - B. Certifications and Assurances**
 - C. Quotation Form**
 - D. Concession Contract with General Terms and Conditions**

TABLE OF CONTENTS

| | | |
|-------|--|----|
| 1 | INTRODUCTION..... | 3 |
| 1.1 | PURPOSE AND BACKGROUND | 3 |
| 1.2 | OBJECTIVE..... | 3 |
| 1.3 | MINIMUM QUALIFICATIONS..... | 3 |
| 1.4 | PERIOD OF PERFORMANCE | 3 |
| 1.5 | DEFINITIONS | 3 |
| 1.6 | ADA | 4 |
| 2 | GENERAL INFORMATION FOR CONSULTANTS..... | 5 |
| 2.1 | RFQQ COORDINATOR..... | 5 |
| 2.2 | ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES | 5 |
| 2.3 | SUBMISSION OF PROPOSALS | 6 |
| 2.4 | PROPRIETARY INFORMATION/PUBLIC DISCLOSURE..... | 6 |
| 2.5 | REVISIONS TO THE RFQQ..... | 7 |
| 2.6 | MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION..... | 7 |
| 2.7 | ACCEPTANCE PERIOD..... | 7 |
| 2.8 | RESPONSIVENESS..... | 7 |
| 2.9 | MOST FAVORABLE TERMS | 8 |
| 2.10 | CONTRACT AND GENERAL TERMS & CONDITIONS..... | 8 |
| 2.11 | COSTS TO PROPOSE..... | 8 |
| 2.12 | NO OBLIGATION TO CONTRACT..... | 8 |
| 2.13 | REJECTION OF PROPOSALS | 8 |
| 2.14 | INSURANCE COVERAGE | 8 |
| 3 | PROPOSAL CONTENTS..... | 11 |
| 3.1 | LETTER OF SUBMITTAL (MANDATORY)..... | 11 |
| 3.2 | CERTIFICATIONS AND ASSURANCES (MANDATORY) | 11 |
| 3.3 | QUALIFICATIONS SECTION..... | 11 |
| 3.3.1 | BUSINESS INFORMATION (MANDATORY) | 12 |
| 3.3.2 | BUSINESS PLAN (SCORED) | 12 |
| 3.4 | QUOTATIONS SECTION..... | 13 |
| 3.4.1 | IDENTIFICATION OF COSTS (SCORED) | 13 |
| 4 | EVALUATION AND CONTRACT AWARD | 14 |
| 4.1 | EVALUATION PROCEDURE | 14 |
| 4.2 | CLARIFICATION OF PROPOSAL..... | 14 |
| 4.3 | EVALUATION WEIGHTING AND SCORING | 14 |
| 4.4 | NOTIFICATION TO PROPOSERS..... | 14 |
| 4.5 | DEBRIEFING OF UNSUCCESSFUL PROPOSERS | 14 |
| 4.6 | PROTEST PROCEDURE | 15 |
| 5 | RFQQ EXHIBITS | 17 |

1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The purpose of the State Parks Concessions is to provide quality services, programs, and facilities that enhance the convenience, enjoyment, education, and recreational experiences of State Parks visitors. The purpose of this RFQQ is to select up to four unique mobile food and/or beverage concessions at Deception Pass State Park.

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

All submitting firms are encouraged to register in Washington's Electronic Business Solution Application (WEBS) at: <https://fortress.wa.gov/ga/webs>

1.2 OBJECTIVE

The project proposes to bring multiple mobile food concessions to Deception Pass State Park. Contracts will range from one to three years, dependent upon Contractor's preference and experience. An additional term may be added at the end of the contract period. The location of the concessions will be at the West Beach Day-Use area. Water and electrical will be available for a small fee. Storage may be available for additional food related items.

Contractor must be able to provide services at the park through the busier seasons of the year (May through September). Exact schedule is negotiable, but preference is given to those available on weekends.

1.3 MINIMUM QUALIFICATIONS

The Contractor must be licensed to do business in the state of Washington and have at least one (1) year experience in the mobile food and beverage business.

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

1.4 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about May 15, 2019 and shall have a duration of one (1) to three (3) years, dependent upon the Contractor's preference and experience. State Parks reserves the option at its sole discretion to extend the contract for up to a maximum total contract length of five (5) years.

1.5 DEFINITIONS

Definitions for the purposes of this RFQQ include:

Contractor. Individual or company whose proposal has been accepted by State Parks and is awarded a fully executed, written contract.

Proposal. A formal offer submitted in response to this solicitation.

Request for Qualifications and Quotations (RFQQ). Formal procurement document in which services needed are identified and firms are invited to provide their qualifications to provide the services and their hourly rates.

State Parks. State Parks and Recreation Commission is the agency of the state of Washington that is issuing this RFQQ.

WEBS. Washington's Electronic Business Solution is an Internet vendor registration and bid notification system. The system offers one online site where vendors can register to receive government bid notifications. Governmental buyers will be able to go to the same site to post bidding opportunities and amendments. For further information, please contact the WEBS Customer Service Help Desk at 360-902-7400 or webscustomerservice@des.wa.gov.

1.6 ADA

State Parks complies with the Americans with Disabilities Act (ADA). Contractors may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2 GENERAL INFORMATION FOR CONSULTANTS

2.1 RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in State Parks for this procurement. All communication between the Consultant and State Parks upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

| | |
|-----------------|--|
| Name | Jacque James |
| Mailing Address | PO Box 42650, Olympia, WA 98504-2650 OR |
| Street Address | 1111 Israel Road SW, Tumwater, WA 98501-6512 |
| Phone Number | (360) 902-8838 |
| Fax Number | (360) 664-0278 |
| E-Mail Address | jacque.james@parks.wa.gov |

Any other communication will be considered unofficial and non-binding on State Parks. Contractors are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

| | |
|---|-------------------------|
| Issue Request for Qualifications and Quotations | 01/31/2019 |
| Question & answer period | 02/01/2019 – 02/14/2019 |
| Issue addendum to RFQQ (if applicable) | 02/15/2019 |
| Proposals due | 5:00PM, 02/28/2019 |
| Evaluate proposals | 03/04/2019 – 03/08/2019 |
| Announce “Apparent Successful Contractor” and send notification via fax or e-mail to unsuccessful proposers | 03/11/2019 |
| Hold debriefing conferences (if requested) | TBD |
| Negotiate contract | 03/12/2019 – 04/30/2019 |

State Parks reserves the right to revise the above schedule.

2.3 SUBMISSION OF PROPOSALS

Contractors are required to submit two (2) copies of their response, one a paper copy that must have original signatures and one digital copy, submitted on a thumbdrive or CD-Rom. The response, whether mailed or hand delivered, must arrive at State Parks no later than 5:00 p.m., local time, on **Thursday, February 28, 2019**

The proposal is to be sent to the RFQQ Coordinator at the address noted in Section 2.1. The envelope shall be clearly marked to the attention of the RFQQ Coordinator.

Contractors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFQQ Coordinator. Contractors assume the risk for the method of delivery chosen. State Parks assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using facsimile transmission.

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

2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of State Parks. All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the Director of State Parks, or his Designee, and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Consultant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information" State Parks will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, State Parks will release the requested information on the date specified. If a Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, State Parks shall maintain the confidentiality of the Consultant's information per the court order.

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

2.5 REVISIONS TO THE RFQQ

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

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

2.6 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in RCW 39.19, the State of Washington encourages participation in all of its contracts by minority and woman-owned businesses firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community. In addition, the state welcomes participation by self-identified minority and woman owned firms and strongly encourages such firms to become certified by OMWBE.

Participation may be either on a direct basis in response to this solicitation or as a subcontractor to a contractor. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the original solicitation, no preference will be included in the evaluation of bids, no minimum level of MWBE participation is required as condition for receiving an award, and bids will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original solicitation will apply. Bidders are encouraged to contact OMWBE for information on becoming a certified firm as set forth in Washington Administrative Code (WAC) Chapters 326-02 and 326-20; or for information on other certified firms for potential sub-contracting arrangements. Nothing in this section is intended to prevent or discourage bidders from inviting participation from non-MWBE firms as well as MWBE firms. Prior to performance, an awarded bidder that is a MWBE or intends to use MWBE subcontractors is encouraged to identify the participating firm(s) to State Parks.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 to obtain information on certified firms.

2.7 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by State Parks from the due date for receipt of proposals.

2.8 RESPONSIVENESS

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

State Parks also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

2.9 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 Consultant can propose. State Parks does reserve the right to contact a Consultant for clarification of its proposal.

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

2.10 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor 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 D. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. State Parks will review requested exceptions and accept or reject the same at its sole discretion.

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

2.11 COSTS TO PROPOSE

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

2.12 NO OBLIGATION TO CONTRACT

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

2.13 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 RFQQ.

2.14 INSURANCE COVERAGE

The Contractor is to furnish State Parks with a certificate of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

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

Liability Insurance

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

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

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

Employers Liability (“Stop Gap”) Insurance

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

Additional Provisions

Above insurance policy shall include the following provisions:

- **Additional Insured.** State Parks, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** State Parks shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the state’s contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best’s Reports. Any exception shall be reviewed and approved by State Parks, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an

insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

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

3 PROPOSAL CONTENTS

Responses must be submitted on eight and one-half by eleven inch (8 ½" x 11") paper with tabs separating the three major sections of the response as noted below. The three major sections of the response are to be submitted in the following order:

1. Letter of Submittal
2. Certifications and Assurances
3. Qualifications
4. References

Responses must 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 Contractor 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.

Note: In a joint effort to save costs, reduce waste and produce energy savings, Contractors are encouraged to use double-sided printing and recyclable materials. Contractors are highly encouraged to refrain from submitting RFQ responses in 3-ring binders or other non-recyclable presentation folders.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Contractor 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. (2 pages maximum)

3.2 CERTIFICATIONS AND ASSURANCES (MANDATORY)

The Certifications and Assurances form (Exhibit B to this RFQQ) must be signed and dated by a person authorized to legally bind the Contractor to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner of a partnership, or the proprietor of a sole proprietorship.

3.3 QUALIFICATIONS SECTION

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

Please submit the following:

- a. Business information (Section 3.3.6) (1 page)
- b. Business Plan
- c. The firm's resume (5 pages, maximum).

3.3.1 BUSINESS INFORMATION (MANDATORY)

- A. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
- B. Provide the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
- C. Indicate how many employees are with the firm. Name the firm principles and their roles.
- D. Identify any state employees or former state employees employed by the Contractor or on the Contractor's governing board as of the date of the response. Include their position and responsibilities within the Contractor's organization. If following a review of this information, it is determined by State Parks that a conflict of interest exists, the Contractor may be disqualified from further consideration for the award of a contract.
- E. If the Contractor's staff or subContractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date.
- F. If the Contractor has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Contractor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
- G. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Contractor's position on the matter. State Parks will evaluate the facts and may, at its sole discretion, reject the response on the grounds of the past experience. If no such termination for default has been experienced by the Contractor in the past five years, so indicate.

3.3.2 BUSINESS PLAN (SCORED)

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

Bidders are encouraged to respond using the outline format below, excerpted from "**A Pocket Guide To Business Planning**," by Frances Brody & Scott Weiser (published by Brody, Weiser & Burns), online at www.brodyweiser.com/pdf/pocketbusforwebsite.pdf; or another standard business plan format.

Outline from "A Pocket Guide To Business Planning"

- | | |
|------------------------------------|--------------------------------|
| 1. Executive Summary | 4. Operations and Management |
| 2. Market and Needs Assessment | 5. Finances |
| 3. Product or Service, Description | 6. Issues and Solutions (Risk) |

4. REFERENCE (MANDATORY)

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business 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 Work Request, the Contractor and team members grant 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.

5. OMWBE CERTIFICATION (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.4 QUOTATIONS SECTION

3.4.1 IDENTIFICATION OF COSTS (SCORED)

Submit the Quotation Form (Exhibit C to this RFQQ). It must be signed and dated by a person authorized to legally bind the contractor 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.

Contractors are required to collect and pay Washington State taxes as applicable.

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

4 EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall 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.

4.2 CLARIFICATION OF PROPOSAL

The RFQQ Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

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

| | |
|---|--------------------------|
| Qualifications Section – 70% | 70 points |
| Business Plan.....50 points (maximum) | |
| Experience/References.....20 points (maximum) | |
| Quotation Section – 30% | <u>30 points</u> |
| Grand Total | <u>100 Points</u> |

4.4 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified through WEBS.

4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant'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 one hour.

4.6 PROTEST PROCEDURE

This procedure is available to Contractors who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by email, but should be followed by the original document.

Contractors 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 Contractors under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. 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 RFQQ Coordinator.

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

- A matter of bias, discrimination or conflict of interest on the part of the evaluator
- Errors in computing the score
- Non-compliance with procedures described in the procurement document or State Parks policy

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

Upon receipt of a protest, a protest review will be held by State Parks. The State Parks director or an employee delegated by the director who was not involved in the procurement, will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

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 provide State Parks options which 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 apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5 RFQQ EXHIBITS

- Exhibit A Letter of Submittal
- Exhibit B Certifications and Assurances
- Exhibit C Quotation Form
- Exhibit D Sample Concession Contract Format including General Terms and Conditions (GT&Cs)

LETTER OF SUBMITTAL

PROJECT: I will provide mobile food concession services that State Parks is unable to provide with its own personnel at Deception Pass State Park.

TERM: My services will commence on the execution of any Concession Lease Agreement and expire March 31, 2022 as conditioned in the actual lease agreement. One additional renewal may be based in part upon satisfactory performance and economic feasibility.

SERVICES: I will provide these services on a seasonal (March through September) basis. Off-Seasonal services may additionally be mutually agreed to. I have read, understand, and intend to comply with all sections of the Sample Concession Lease provided as part of the RFQQ. I will pay utility charges and all other direct costs of using the leased facility. State Leasehold Excise Tax is due in addition to any agreed to Lease Fee.

RIGHT OF REJECTION: I understand that the Director, Washington State Parks and Recreation Commission, reserves the right to reject any and all bids.

BID DEADLINE: I understand that sealed proposals will be accepted until 5:00 pm on Thursday, February 28, 2019, at the Headquarters office, Washington State Parks and Recreation Commission, 1111 Israel Road SW, Olympia, Washington 98504-2650.

Bidder Information:

Company Name:

Signature of Person Legally Authorized to Bid:

Printed Name:

Date:

Title:

Physical Address:

Mailing Address (if Different From Above):

Telephone:

Fax or Cellular Phone:

Email:

Website:

CERTIFICATIONS AND ASSURANCES

1. I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):
2. I/we declare that all answers and statements made in the proposal are true and correct.
3. 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.
4. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by State Parks without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
5. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
6. I/we understand that State Parks will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of State Parks, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
7. Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
8. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
9. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we grant State Parks the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.
11. Wage Certification. The bidder certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: within the three-year period immediately preceding the bid solicitation date, the bidder has not been a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction

Signature of Proposer Location Where Signed

Title Date

QUOTATION

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

1) Flat monthly rate/rent \$ _____/month

OR

2) Percentage of Gross _____/percent

NOTE: State Leasehold tax will be additionally charged

Person Legally Authorized to Bid:

Signature

Date

Printed Name

Title

SAMPLE 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 concession rights 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 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.

1. TERM

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

2. OPERATION OF THE BUSINESS

2.1 Concessionaire’s Operation of the Business. Concessionaire shall operate the Business as described in Exhibit A (as may be modified by State under section 12.2, below) and shall perform all work, provide all labor, and provide all, equipment, furnishings, and supplies sufficient for the operation of the Business, except that equipment, furnishings, and supplies identified in Exhibit A as being provided by State. At all times during the Agreement Term, Concessionaire shall use reasonable efforts in operating the Business.

2.2 Additional Services. State may, at its sole discretion, authorize Concessionaire to provide other directly related concession services, all subject to space availability and approval in writing by State. Any such expansion of concession services shall be documented in an amendment to the description of the Business contained in Exhibit A.

2.3 Pricing of Good, 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 Park 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 Park 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.
- 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 Watercraft Rental.** If renting watercraft, Concessionaire shall provide Coast Guard approved 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.
- 2.9 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.

3. FINANCIAL RECORD KEEPING AND REPORTING

- 3.1 Reporting and Cash Handling.** Concessionaire shall adhere to written cash handling procedures. 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.
- 3.2 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.
- 3.3 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 termination of this Agreement.

4. REQUIRED PAYMENTS

4.1 Rent. Concessionaire shall pay to State annual rent ("Rent") for the Concession Facilities.

4.2 Amount of Rent. Concessionaire shall pay to State Rent based on a percentage of the gross annual revenue derived from operation of the Business under this Agreement. Such Rent shall be due on the fifteenth (15th) day of November each year. Rent shall be 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 Rent is total gross revenue, exclusive of sales tax collected, times 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.

4.3 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 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.

4.4 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 and occupation of the Concession Facilities, including, without limitation, any leasehold tax payable to State pursuant to RCW 82.29A.

4.5 Manner of Payment. All payments, including Rent 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

EXHIBIT D

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.

4.6 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 Rent, fees, or other sums owing under the terms of this Agreement, commencing with the date originally due. Payment of Rent, 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.

4.7 No Counterclaim, Setoff, or Abatement of Rent or Other Sums Owed. Rent, additional Rent, if any, 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 Rent 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.

4.9 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.

4.10 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 Rent, State shall be entitled to collect from Concessionaire a late charge equal to six percent (6%) of the amount of the delinquent payment.

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

4.12 Performance Bond 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.

5. INDEMNITY AND INSURANCE

5.1 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 or grossly negligent acts of State or State’s officials, employees, or agents. “Claim” as used in this section

EXHIBIT D

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.

- 5.2 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.
- 5.3 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

EXHIBIT D

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.

- 5.4 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.
- 5.5 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."
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.

6. FACILITIES

- 6.1 Use of Facilities.** State authorizes Concessionaire to use the Concession Facilities as described in Exhibit B (as may be modified by State under section

12.2, below) for purposes of operation of the Business. The Concession Facilities shall be used only for the operation of the Business as authorized in this Agreement. Other commercial or non-commercial activities, or use and occupancy by other parties of the Concession Facilities not directly related to Concessionaire's operation of the Business are prohibited unless approved in advance and in writing by State.

- 6.2 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.
- 6.3 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 Park Manager. Concessionaire may park vehicles and equipment only in those areas designated by the Park 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 other concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between State and a third party.
- 6.4 Parking.** Concessionaire shall be issued Concession Parking Passes by the Park Manager. Each Concession Parking Pass authorizes one vehicle to park within the Park, subject to limitations specified by the Park Manager, including designated parking places and times. Concession Parking Passes are subject to expiration, as specified by the Park 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.
- 6.5 Management.** Concessionaire shall manage and maintain the Concession Facilities and all improvements thereon in accordance with the customary standards of the industry.
- 6.6 Maintenance.** Concessionaire shall perform all minor maintenance and repairs to keep the Concession Facilities in a safe, inviting, sanitary, and usable condition. Minor maintenance and repairs includes, 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

EXHIBIT D

shall immediately notify Park Manager in writing of any major maintenance or repair needs in the Concession Facilities. Major maintenance and repair necessitated by the failure of Concessionaire to perform minor maintenance and repair shall be the responsibility of Concessionaire.

- 6.7 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.
- 6.8 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 Park Manager's prior approval.
- 6.9 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 Park 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 Park Manager a copy of any and all health department inspection reports conducted by or on behalf of any governmental authority.
- 6.10 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.
- 6.11 Personal Property.** State is not 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.
- 6.12 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.

6.13 Non-Applicability of Relocation Assistance. Concessionaire acknowledges that this Lease does not at any time entitle Lessee to assistance under the Uniform Relocation and Real Property Acquisition Policy (RCW 8.26).

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 Rent 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

EXHIBIT D

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 with State's prior approval, make improvements, including additions and modifications to Concession Facilities provided by State to enable provision of the services as set forth in the Agreement. In making any improvements, Concessionaire shall obtain all licenses and permits, and comply with all applicable codes, regulations, and statutes. Concessionaire shall supply such plans, drawings, and specifications as needed by State to evaluate the acceptability of any improvements prior to commencing work. State may condition, limit, or deny approval of proposed improvements at its sole discretion, which approval shall be provided only in writing. Improvements become the property of State upon completion unless otherwise agreed upon by State in writing in advance.

8.2 Development Plan. Prior to any development or the construction of any and all improvements on or to the Concession Facilities, Concessionaire must submit a complete development plan to State for its written approval. The plan shall include, but is not limited to, the following:

- a. Map showing areas to be developed, location of improvements, and location of utility and other easements;

- b. Land clearing, leveling, and erosion control plans;
- c. List of proposed improvements and detailed plans for the improvements;
- d. Estimated itemized cost of proposed improvements; and
- e. Schedule of completion dates for proposed improvements.

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

8.3 Unauthorized Improvements. Any improvements not included in the original or amended development plan as approved by State, or as provided for by Letters of Authorization issued by State, made on or to the site, without the written consent of State, shall immediately become the property of State or at State’ option, must be removed by Concessionaire at Concessionaire’s sole cost. Said removal shall occur within 30 days unless sooner required by Park 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 other rights (“Easements”) over and across the Concession Facilities and the right for Easement holders to enter upon the Concession Facilities to maintain, repair, and enhance existing facilities and install new facilities. Such rights shall be exercised in such a manner so as to minimize any disruption to Concessionaire.

9.5 State Modification/Improvement of the Park or Concession Facilities. State may at any time, at its discretion and expense, make improvements to, or repairs, maintenance, and/or modifications of the Park or the Concession Facilities. Concessionaire hereby waives any claim against State for any loss of income suffered or allegedly suffered by Concessionaire from State’s improvement to, or repairs, maintenance, and/or modifications of the Concession Facilities.

10. ASSIGNMENT

10.1 Assignment/Transfer. The rights granted under this Agreement may not be 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 its sole discretion. Concessionaire shall not mortgage, assign, encumber, transfer, sublease, or otherwise alienate this Agreement without the prior written approval of State. 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 Rent, 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 Rent, Concessionaire shall not be in default after receipt of the Breach Notice if Concessionaire cures the breach by paying all outstanding Rent 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 rent payments due, in which case all Rent 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 Rent, 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 rentals 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

EXHIBIT D

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 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 re-lease, 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 an election to terminate this Agreement unless a written notice of termination is given to Concessionaire.

11.5 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).

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.

11.6 Termination of Agreements. Whether or not State elects to terminate this Agreement based on any default by Concessionaire and subject to any non-disturbance and attornment agreements, if any, State shall have a right to terminate any and all subleases, 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 sublease, license, concession, or arrangement, and Concessionaire shall have no further right to or interest in the lease or other consideration receivable thereunder.

11.7 Termination due to exchange, transfer, or sale. Either State or Concessionaire may to 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.

11.8 Vacation of Premises. Concessionaire must give written notice to State at least 30 days prior to vacating 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 Lease 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. The Special Terms and Conditions;
 - c. The General Terms and Conditions;
 - d. Any other provisions of this Agreement, including materials incorporated herein by reference.
- 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 shall 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.

5. CONCESSIONAIRE

By: _____
Date

6. WASHINGTON STATE PARKS AND RECREATION COMMISSION

By: _____
Peter Herzog, Assistant Director Date

APPROVED AS TO FORM ONLY:

OFFICE OF THE ATTORNEY GENERAL

By: *Michael M. Young* *October 21, 2015*
Michael M. Young, AAG Date

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**

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

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

7. **Grounds Maintenance**

8. **Utilities**

9. **Other**

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 | Courteous, helpful, every transaction rung-up | 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 |
| Park/Region | On-Site Review | Annual, written on-site review to ensure compliance with contract requirements performed by either Park or Region Staff. Copy to Fiscal Office for official contract file. | As stated in written findings |
| 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 monthly 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 |