

Indiana State Parks  
402 W Washington St, Rm W298  
Indianapolis, IN 46204

## CONCESSION OPPORTUNITY ANNOUNCEMENT

### Non-Motorized Boat Rental – Paddleboard / Kayak / Canoe Mounds State Recreation Area Brookville Lake

Franklin County, Indiana



### Mission

*The mission of Indiana State Parks is to conserve, manage, and interpret our resources while creating memorable experiences for everyone.*

### Vision

*The vision of Indiana State Parks is excellence in stewardship, recreational diversity, interpretation, service, and growth resulting in unique places that people respectfully use, enjoy, and cherish.*

## The Setting

Brookville Reservoir—a part of the Brookville Lake-Whitewater Memorial State Park complex—lies in the historic east fork of the Whitewater River Valley. Traces of prehistoric Native American mounds are still found throughout this valley. The area is known by some worldwide for its significant deposit of Ordovician fossils. These 450-million-year-old fossils, reminders of a primeval inland sea, can still be seen today.

Home to two State Recreation Areas—Mounds SRA (*not to be confused with Mounds State Park in Anderson*) and Quakertown SRA—and more than 25 miles of hiking trails, the lake property is an ideal family vacation spot with more than 400 campsites available for camping.

Brookville Lake's 5,260 acres offers nationally known recreational and sport fishing, boating opportunities, and two swimming beaches.

Purchased by the federal government for flood control and a place for wildlife and recreation, Brookville Lake offers more than 11,000 acres of diverse habitats for flora and fauna. Managed by the Indiana Department of Natural Resources, Brookville is one of the few sites in Indiana where walleye grow big enough for fisheries biologists to milk the females of eggs and supply walleye fry to lakes throughout the state.





## Park Activities

Archery  
Boating [9 launch ramps]  
Fishing / Ice Fishing  
Hiking Trails  
Horseshoe Pits  
Hunting  
Interpretive Services  
Marinas  
Picnicking / Picnic Shelters  
Playgrounds  
Shooting Range  
Swimming / Beach  
Volleyball  
Water Sports

Camping  
Electric [388 sites]  
Full Hookup [ 62 sites]  
Water Fill / Dumping Stations  
Camp Store & Gift Shop  
State Recreation Areas  
Mounds  
Quakertown



## Gate Fees

Indiana State Parks has a philosophy of user fees and has collected gate fees ever since its inception in 1916. Gate fees not only provide self-generated revenue from users, but gate operations also provide a form of property security.

Currently, the gate fees at Brookville Lake (Mounds & Quakertown State Recreation Areas) are \$7.00 per vehicle with an Indiana license plate, and \$9.00 per vehicle with an out-of-state license plate. This rate is subject to change at any time, with approval of the Indiana Natural Resources Commission. Once a guest pays the entrance gate fee, or shows an annual entrance pass, they are allowed to use other services in accordance with property rules and regulations. If there are charges for other services in the park, guests are required to pay for these charges in addition to entrance gate fees.

Guests with camping reservations pay an entrance gate fee (*or show their annual entrance pass*) upon initial entry into the property and receive a camping reservation hang tag upon check-in; this camping reservation hang tag allows overnight guests to enter the property without paying additional gate fees for the duration of their camping stay. Only registered campers are allowed entry into the park after 11:00 PM.

Employees reporting for work and commercial vehicles making deliveries or providing service and maintenance to the park and its facilities and concessions, do not need to pay the entrance gate fee, but must identify themselves and sign in at the gate house. Employees wishing to use the property facilities on personal time will be required to pay the daily gate fee or present an annual entrance pass.

## I. The Offering

This is a Concession Opportunity Announcement offered by the Indiana Department of Natural Resources (DNR). This announcement solicits expressions of interest from individuals, corporations, or partnerships who wish to be considered for the **Non-Motorized Boat Rental Concession** at Mounds State Recreation Area of Brookville Lake.

This announcement is intended to publicize the availability of the contracting opportunities described herein. Concession Opportunity Announcement is not an Invitation to Bid, nor is it a Request for Proposal under the Indiana Procurement Code.

The State of Indiana creates no obligation, expressed or implied, by the issuance of this announcement or by the receipt of any proposals requested herein. The award of any contract, resulting from this announcement, shall be at the sole discretion of the issuing agency. Neither this announcement nor any proposal submitted in response hereto are to be construed as legal offers.

### **Brookville Lake (Mounds SRA)** **Non-Motorized Boat Rental** **Concession Revenue History**

2024	\$ 8,407
2023	\$ 13,991
2022	\$ 13,711
2021	\$ 14,627
2020	\$ 12,921
2019	\$ 13,783
2018	\$ 16,272
2017	\$ 9,298
2016	\$ 11,611

## II. Services to be Provided

### **Non-Motorized Boat Rental**

The Concession Operator shall operate a non-motorized boat rental concession (e.g., paddle board, kayak, canoe, paddleboat, etc.) at Mounds State Recreation Area of Brookville Lake. Concession operator will have the right to offer equipment rentals, lessons, tours, and programs within the scope of the concessions license agreement; additional items and services (e.g., branded merchandise, apparel, beach supplies, food & beverages, etc.) are negotiable and subject to prior approval required by the Department.

This is an existing concession opportunity with no concession building, physical structure, or rental inventory. Concession operator will be assigned a small portion of the Mounds SRA beach to operate the non-motorized rental concession; it is fully understood that operator is restricted to the licensed area and no other area or place on the property. Concession operator will provide a variety of equipment and services at reasonable market pricing.

The operating season for this concession begins the Saturday of Memorial Day Weekend through Labor Day, operating a minimum of Saturdays and Sundays each week and for a specified schedule each day; additional operating days/times are negotiable and subject to prior approval required by the Department.

The operator shall employ suitable employees to operate the concession, maintain the facility in a clean and inviting manner, and carry out all terms and conditions as indicated in the Concession Agreement.

The DNR reserves the right to accept or reject any item offered for sale by the concession, if the item is either harmful or of a questionable nature. It is suggested that gifts, apparel, and souvenirs be nature-oriented, promote outdoor recreation, and support natural resources and conservation.

If vending is specified as part of the Concession Agreement, machines must be kept serviced and clean. If a machine breaks down, it must be repaired and fully operational within 24 hours of service request.

The attached **EXAMPLE ONLY Exhibit A – Concession Agreement** details specific duties, responsibilities, and other areas, such as prohibited items and reporting requirements for concessions operations; therefore, it is suggested that all potential proposers become familiar with this agreement and how it may affect the proposal.

### III. DNR Concession Agreement

The DNR Concession Agreement is expected to be awarded based upon the proposals submitted in response to this announcement.

**The Concession Agreement will be awarded for a minimum of two (2) years and a maximum of four (4) years, covering the 2025-2028 contractual seasons.** A renewal option under the same terms and conditions of the original contract may be granted by approval of the State Department of Administration and the DNR.

DNR expects the Concession Agreement will be fully negotiated and available for execution on or before **April 1, 2025**. The Agreement will require that the concession operator be prepared and available to commence operations on or before **May 15, 2025**.

Depending upon the nature of the concession and the circumstances of the operator, the State may require that the operator post a performance bond or other assurance of performance.

Under the Agreement, the operator will be required to provide and secure all rental equipment, supplies, merchandise, services, employees, and other resources needed to successfully operate the concession. The availability of State-owned equipment for use by the concession operator varies by property and concession.

**It is strongly recommended that interested parties contact the Property Manager (*\*see following contact info*) to arrange a visit to the property and view the layout of the concession area and facility building(s) prior to submitting a proposal.**

Steven DeLorenzo  
Property Manager  
Brookville Lake  
Office: 765-647-2657  
Email: [sdelorenzo@dnr.in.gov](mailto:sdelorenzo@dnr.in.gov)

The State of Indiana creates no obligation, expressed or implied, by the issuance of this announcement or by the receipt of any proposals requested herein. The award of any contract, resulting from this announcement, shall be at the sole discretion of the issuing agency. Neither this announcement nor any proposal submitted in response hereto are to be construed as legal offers.

## IV. Proposal Submission

All parties who desire to be considered for the DNR Concession Agreement **must submit a concessions business proposal no later than 4pm Monday, December 23, 2024.**

The proposal should address each of the following points described under **Section V. Proposal Content** of this announcement. All information included in the proposal shall be considered a matter of public record, unless specifically exempted by Indiana Statutes, I.C. 5-14.

Proposals may be submitted by **electronic mail or courier/postal mail delivery** to the following contact:

**Tessa Manuel**  
**Concessions & Contract Manager**  
Indiana Dept. of Natural Resources  
Division of State Parks  
402 W Washington Street, Rm # W298  
Indianapolis, IN 46204  
Email: [tmanuel@dnr.in.gov](mailto:tmanuel@dnr.in.gov)

Proposals submitted by **electronic mail** are limited to 35MB size and must be received in a digital document format (e.g., PDF, PNG, GIF, Flipbook, HTML) and electronically signed. **All documents contained in the proposal submission must be locked for editing.**

All parties (“Proposer” and “Solicitor”) agree that the proposal submission and any other documents to be delivered in connection herewith will be electronically signed, and that any electronic signatures appearing on the proposal submission or other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Proposals submitted by **courier/postal mail delivery** should be clearly marked with ***“DNR Concession Proposal – Brookville Lake – Non-Motorized Boat Rental”*** in the lower left-hand corner of the mailing envelope and delivered to the address listed above.

**All proposals must be received by 4pm Monday, December 23, 2024. Proposals received after the submission deadline will not be accepted.**

## V. Proposal Content

Proposal should address the following points:

### 1. **Identification of Interest**

The concession desired must be specifically identified. If more than one concession operation is requested, proposals may be combined for concessions located within the same DNR property. Combined proposals must address each element of information requested for each concession. Each combined proposal must also indicate whether the operator is interested in operating each concession individually **or** whether the proposal must be considered on an *“all or none”* basis. If not indicated as *“all or none”* the award may be split between proposers as deemed in the best interest of the State.

## **2. Description of Good and Services**

The proposal shall describe the goods and services to be offered to the public by the operator. The description must be in sufficient detail to permit an evaluation of the scope of the concession offered. The proposal shall be as complete as possible.

## **3. Payment to the State**

The proposal must describe the proposed payment and basis for payment (i.e., percentage of gross receipts or other method) to be made to the State of Indiana in consideration for the Agreement. The terms of the payment and any limitations or conditions must be clearly described. The proposal should include an estimate of the total payment to be made under the agreement.

## **4. Concession Operations**

### **a) Operations**

The proposal shall include a pro forma statement for the operation of the concession. This statement shall include all projected revenues and expenses for the operation. This statement shall provide enough detail for the State to determine the validity of the projections and to ascertain that the operator has a viable opportunity to make a profit. The proposer shall also provide detailed information regarding the operation of the concession.

The minimum level of information required will include the following items:

- **Pro forma statement** with projected gross receipts, expenses, and anticipated net profit
- Statement of days and hours of operations
- Number of employees utilized, categorized by job function and schedule (shift) assignments
- Equipment to be supplied by the operator
- Equipment to be supplied by the State
- Anticipated inventory levels
- Detailed action to be taken to improve the appearance of the concession operation and area (e.g., indicate if employee uniforms will be required)

### **b) Management**

The proposal should contain a description of the management method to be utilized in maintaining the highest possible level of service to the public.

A detailed description of the duties of key personnel should also be outlined, along with the resumes of key personnel; a listing of key personnel should include the employee's name, address, and date of birth. Limited background and criminal history checks will be performed by the State and DNR, and as such, signed statements from the owner/operator and key personnel granting permission to conduct said checks should also be included. By submitting a proposal, the proposer also gives permission for additional background checks, including but not limited to, financial and business entity checks, to be conducted.

If appropriate, the proposal should address training to be provided to employees. The proposal should describe any plans or policies to be implemented by the operator to provide for the participation of minorities in the concession operation.

### **c) Finance**

The proposal should describe the method by which the concession operation will be financed and the levels of capital to be devoted to the concession operation. The proposal must indicate the range of prices to be charged to the public for the offered goods and services. The operator's commitment, if any, to the individual retail price levels should be stated.

The proposer shall indicate the source of funds needed to operate the concession. If the funds are from a commercial source, the proposer must include a letter of commitment from the financial institution.

The State may require the proposer to submit a financial statement upon request.

**d) Efficiency**

The proposal should describe the operator's innovative approach to improving the level of service to the public at the concession. Any prior experience in the implementation of service-oriented suggestions must be described. The proposal must also indicate the experience that the owner/operator and key personnel have in operating the type of concession described herein and length of service in this type of operation. The proposal must also list professional references, noting the name, address, phone number, and email address for each.

## **VI. Proposal Evaluation**

Each proposal submitted in response to this announcement will be reviewed and evaluated by individuals designated by the Director, Department of Natural Resources.

The proposal evaluation will consider the following factors:

- Level of the service to the public
- Adequacy of resources to fulfill the operating plan (including management plans, personnel, financial resources, etc.)
- Consideration to be paid to the State
- Level of commitment to develop the facility

The DNR Director will, in exercise of their discretion, determine which proposal presents the opportunity to satisfy the best interests of the Department and the State. The Director's decision, in exercise of their discretion, will be considered final. Following the selection of the intended concession operator, the precise contractual terms and conditions will be negotiated, which may reflect all items discussed in the proposal, in addition, but not limited to, all terms and conditions set forth by the Department and State.



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State of Indiana Professional Services Contracts will include the following contract language detailing supplier requirements and administrative conditions. Contract boilerplate is available for review at <https://www.in.gov/idoa/procurement/contract-administration/contract-forms-manuals-and-templates/>. The Contractor shall agree to all considerations, covenants, and terms and conditions set forth in executed Contract.

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## PROFESSIONAL SERVICES CONTRACT

### Contract #%%CONTRACT\_ID%%

This Contract ("Contract"), entered into by and between %%AGENCY\_NAME%% (the "State") and %%VENDOR\_NAME%% (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- 1. Duties of Contractor.** The Contractor shall provide the following services relative to this Contract:
- 2. Consideration.** The Contractor will be paid at the rate of \_\_\_\_\_ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \$%%CONTRACT\_MAX\_AMT%%.
- 3. Term.** This Contract shall be effective for a period of \_\_\_\_\_. It shall commence on %%CONTRACT\_START\_DATE%% and shall remain in effect through %%CONTRACT\_END\_DATE%%.
- 4. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
- 5. Assignment; Successors.**
  - A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
  - B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.
- 6. Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- 7. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.331 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2

C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

**8. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDO) following the procedures for disputes outlined herein. A determination by IDO shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do

so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC § 5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

**11. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

**13. Continuity of Services.**

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and

2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

#### **14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

#### **16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the



Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

**17. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Eligibility Verification.** As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.** As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**23. HIPAA Compliance.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

**24. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

**25. Independent Contractor; Workers' Compensation Insurance.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**26. Indiana Veteran Owned Small Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract:

IVOSB	PHONE	COMPANY NAME and Contact's email	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION DATES	PERCENT

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**27. Information Technology Enterprise Architecture Requirements.** If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/policies-procedures-and-standards/> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

**28. Insurance.**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be

named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.

4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.

5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.

6. Surety or Fidelity Bond(s) if required by statute or by the agency.

7. Cyber Liability addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.

4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

**29. Key Person(s).**



A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are %%KEY\_PERSON\_1%%.

**30. Licensing Standards.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**31. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**32. Minority and Women's Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by Division of Supplier Diversity and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract:

MBE/ WBE	PHONE	COMPANY NAME and Contact's email	SCOPE OF PRODUCTS and/or SERVICES	UTILIZATION DATES	PERCENT

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to Division of Supplier Diversity, 402 W. Washington Street, Room W-462, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**33. Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**34. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

B. Notices to the Contractor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
E-mail: \_\_\_\_\_

As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana State Comptroller.

**35. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) RFP #\_\_\_\_\_, (4) Contractor's response to RFP #\_\_\_\_\_, and (5) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**36. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

**37. Payments.**

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana State Comptroller. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**38. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**39. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**40. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**41. Renewal Option.** This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

**42. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**43. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**44. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**45. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**46. Termination for Default.**

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**47. Travel.** No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the *Indiana Department of Administration Travel Policy and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Travel Policy* guidelines.

**48. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.



**49. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**50. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the most current *State of Indiana SCM Template*) in any way except as follows: \_\_\_\_\_

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

**Agreement to Use Electronic Signatures**

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

<https://secure.in.gov/apps/idoa/contractsearch/>

**In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

%%VENDOR_NAME%%	%%AGENCY_NAME%%
By:	By:
Title:	Title:
Date:	Date:

Electronically Approved by: Indiana Office of Technology  By: _____ (for) Chief Information Officer <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	Electronically Approved by: Department of Administration  By: _____ (for) Commissioner <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>
Electronically Approved by: State Budget Agency  By: _____ (for) State Budget Director <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	Electronically Approved <b>as to Form and Legality</b> : Office of the Attorney General  By: _____ (for) Attorney General <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>

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**Following Exhibit A to a Concession Agreement is an EXAMPLE ONLY. All details contained herein represent sample verbiage only and should not be construed as the terms and conditions of an eventual contract resulting from this business opportunity announcement. All dollar amounts, percentages, and hours of operation may be considered negotiable, are subject to change, and can vary by contract.**

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## **EXAMPLE ONLY**

### **Non-Motorized Boat Rental - Paddle Board / Kayak / Canoe**

#### **EXHIBIT A: GENERAL CONCESSION REQUIREMENTS**

##### **1. AUTHORITY**

Pursuant to IC 14-19-1-2, the State provides facilities for the use and enjoyment of the public. The responsibility of the State is to either operate or contract for the operation of the facilities so as to maximize service and benefit to the public according to approved standards. Duties set forth herein outline the granting of this Contract for the operation of a **NON-MOTORIZED BOAT RENTAL (Paddle Board/Kayak/Canoe) at Brookville Lake – Mounds State Recreation Area** (“Concession”) according to those standards of maximum use, service, and benefit to the public in a manner that does not impact the State adversely in any way. This Contract grants the right to the Contractor to provide only the goods and services specified within this Contract for only the operations and areas for the Concession specified within this Contract. It is understood that the State shall make all decisions related to the management of the property where the Concession is located, including which concession operations shall or shall not be located on the property.

This Contract is also issued under the terms and conditions of the United States Department of Army Lease: DACW27-1-74-077 on the Brookville Lake Project.

##### **2. COMPLIANCE WITH REGULATIONS**

- A. DNR Regulations.** The Contractor shall adhere to all DNR General Property Regulations as found in 312 IAC 8, 312 IAC 5 (if applicable), and 312 IAC 9, and successor regulations. These rules and regulations are duly promulgated pursuant to IC 4-22-2 and have the force and effect of law.

##### **3. STANDARDS OF ABILITY**

- A. Financial Competence.** The Contractor assures competence and financial ability to perform the work contemplated in the Contract and agrees, upon request, to furnish the State with evidence of competency and financial ability before the granting of the Contract, and anytime during the term of this Contract.
- B. Operational Supervision.** The Contractor shall give the business daily, personal supervision and shall operate the business under the Contract according to law. The Contractor shall be present at the Concession at all times that it is open for business or shall be represented by a responsible person. The Contractor shall establish, maintain, and operate the Concession in such manner as to provide the prescribed services to the public according to the best

standards prevailing for a similar business. State operational standards of the Concession with respect to the quality of service rendered, hours the concession is open, accepted sanitation, proper exterior building maintenance, and other operational matters as the State may designate shall be determined by IDNR Property Management.

#### 4. STANDARDS OF RESPONSIBILITY

- A. **No Unnamed Partners.** The Contractor assures there are no unnamed partners legally interested in or having authority over the operation or management of the concession and further assures that the Contractor is the only person responsible for carrying out the duties as written in the Contract.
- B. **Outside Vendors.** Only with prior agreement and written approval from the State, the Contractor may periodically have an outside vendor work for a specified, limited time on the property, only when such events fulfill Contractor responsibilities and expand daily Concession operations beyond standard capabilities. Written approval must be granted by the State thirty (30) days in advance of the Contractor hiring the outside vendor.
- C. **Subcontracts.** The Contractor may execute subcontracts for services as the manager of the business authorized under the terms of this Contract. The subcontracts must include provisions that absolve the State of any obligation to the subcontract, and that automatically terminates the subcontract upon the termination of this Contract. Furthermore, any and all such subcontracts must include language for automatic termination in the event that the State enters into a direct agreement of exclusivity with a specific provider. The Contractor shall indemnify, defend and exculpate the State from any liability which may accrue or be asserted against the State under all contracts or agreements.

#### 5. CONCESSIONAIRE FEES

- A. **Fee Structure.** The Concessionaire Fees ("Fees") payable by the Contractor to the State for the rights and privileges conveyed in this Contract shall be as marked below. Fees may be negotiated for subsequent contract terms.

A sum equal to the percentages indicated below of the gross income of the business. Payment of the Fees shall be the first charge among all operating expenses incurred and shall be received by the State on or before the eighth (8<sup>th</sup>) day of each month for the entirety of the preceding calendar month or it shall be paid at such other times for such other periods as the State may direct below:

*License fee shall be: 12% of gross income derived from services or products as described in section 9A (scope) of this License. The rental fee paid to the Department for all gross income is a cost of doing business and may not be added on as any kind of fee to the customer. All business conducted within the scope of this concession license agreement and taking place on public lands shall be considered gross income for the concession and calculated into the applicable concessionaire fees.*

- B. **Gross Income.** Gross income shall be the total amount of all the receipts in cash, credits, property, or interest of whatever kind received by the Contractor from all business done under the provisions of this Contract. However, gross income shall not include tips & gratuities to be paid to employees, deferred credits, internal sales, sales tax receipts, nor other taxes which may be required to be collected from guests, nor any part of the receipts which constitute repayment by guests of monies advanced on their behalf and for their convenience by the Contractor.
- C. **Reporting.** By the last day of the first month of a new concession year, the Contractor shall provide a sales and income report by revenue department for the Contractor's previous year of

operation. Contractor shall include in this report the amount collected from customers for all sales during the previous year.

- D. Late Payment Interest.** Rental fees due and payable to the State which are not paid in accordance with this section of the Contract shall bear and accrue interest daily until paid at the rate of 1-1/2% per month, or a flat late fee of \$50.00, whichever is greater. Repeated violations of timely payment may result in the termination of this Contract by the State as defined within this Contract.

## **6. STATE BUILDINGS, GROUNDS, AND EQUIPMENT**

The State is responsible for the general management of the property on which the Concession is located. The granting of this Contract to the Contractor for the operation of the Concession **DOES NOT GRANT THE CONTRACTOR EXCLUSIVE RIGHTS TO THE ENTIRE PROPERTY** where the Concession is located.

- A. Designated Buildings and Equipment.** The State has provided the below-listed buildings and items of equipment for use by the Contractor for the sole purpose of conducting the Concessions outlined within this Contract.

*Not Applicable.*

- B. Concession Area.** The licensed premises and assigned boundaries (“Concession Area”) – that are to be used by the Contractor for the sole purpose of conducting the Concessions operations in strict accordance with all terms and provisions imposed by this Contract – are as follows:

*A 1000-foot area of beach at Mounds State Recreation Area. The exact area will be approved by the Property Manager prior to the start of each season.*

- C. Agreement of Use.** The Contractor is aware of and agrees that it shall use, occupy, and maintain the Concession Area in a business-like, careful, clean, and non-hazardous manner that conforms to all State and Federal laws, regulations, and/or requirements. Written approval by the State shall be required for other proposed use in conjunction with or in addition to those specified in this Contract. Contractor will practice all environmental and usage controls as outlined within the Contract and incorporated herein. Contractor further agrees that it shall permit no waste, nor suffer the same to be committed, nor injure, nor misuse the Buildings, Grounds, and Equipment owned by the State.
- D. Equipment.** The Contractor agrees to accept equipment on an “as-is” basis. Any repairs required shall be at the sole expense of the Contractor. Any items of equipment that the Contractor does not wish to accept shall be removed by the State in a timely manner. The Contractor agrees to furnish the concession at the Contractor’s own expense with additional items of equipment as directed by the State. The State shall not be responsible for any loss of product or sales due to the malfunction of any equipment owned by the State.
- E. Alteration of Buildings and Equipment.** The Contractor shall not modify water supply lines, waste lines, electric lines, or other utility, machinery, or fixtures except upon written permission from the State. The Contractor shall not install, move, or alter any permanent or temporary equipment belonging to the State in or about the Concession Area.
- F. Return and Disposition.** The Contractor shall return State-owned buildings, supplies, and equipment to the State at the termination of this Contract in a condition equivalent to that in which they were received by the Contractor. If the State determines the need for cleaning after the Contractor returns the use of the Concession, the Contractor must reimburse the State for all costs

incurred for such cleaning.

- G. Option to Purchase.** Upon the termination of this Contract for any reason, the State, or any person designated by the State, shall have the first option to purchase from the Contractor all on-hand supplies and equipment of the Contractor at the original cost or at their market value, whichever is less. However, the State or such designated persons are not obligated to purchase such items.
- H. Lien and Inspection.** To secure the payment of the Concessionaire Fees, the State is given a lien on all personal property belonging to the Contractor, which may be located on the assigned premises and used in the operation of the business conducted under the Contract. The Contractor hereby authorizes the State to file a Financial Statement, UCC-1. The State and/or any Federal parties with an interest in this Contract, at any and all reasonable times reserves the right to enter the Concession Area, without prior notification, for inspection and/or investigative reasons. This includes, but is not limited to, the State's right to install and operate surveillance equipment in or on the premises within the Concession. Evidence obtained through personal, mechanical, electronic, or any other technological or other means may be used by the State in civil and/or criminal actions brought against the Contractor. The Contractor shall keep the Concession Area free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Contractor during the term of this Contract or any extension or renewal thereof.
- I. No Sublets.** The Contractor shall not assign this Contract or any interest therein, nor let or sublet the said premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person. Said let or sublet shall be grounds for termination of the Contract by the State.
- J. Coin-Operated Amusement Machines.** The Contractor shall not permit or provide for the installation of mechanical rides, pinball machines, coin-operated amusement machines, jukeboxes, (music boxes, record players), or similar devices in or about the Concession Area.
- K. Vending Equipment.** The Contractor shall secure written approval from the State prior to installation within the Concession Area of any vending equipment not owned by the State. The plan of operation of vending equipment, including the percent of revenue paid to the State, shall be on a basis satisfactory to the State. Revenue shall be entered on the records in the same manner as other revenue is reported.
- L. Utilities.** The Contractor shall pay all utilities used in or about the Concession Area as marked below, whether billed to the Contractor by the State or billed directly to the Contractor by any utility provider.
- |                  |                 |                       |
|------------------|-----------------|-----------------------|
| _____ Electric   | _____ Telephone | _____ Natural Gas     |
| _____ Sewage     | _____ Water     | _____ Trash Removal   |
| _____ Television | _____ Internet  | _____ Security System |
- Not Applicable.*
- M. Snow Removal.** The Contractor is responsible for all snow removal within the Concession Area.
- N. Alcohol.** At no time shall the Contractor or employees sell, display, store, or consume alcohol in the Concession Area or anywhere within the property where the Concession operation is located. Failure to comply with this provision may result in immediate termination of this Contract.
- O. Parking.** The Contractor and all employees of the Contractor shall park in areas designated by



Property Management. The designated parking area may be changed by the State to facilitate construction or to protect the public or the property. The State is not responsible for damage or theft to vehicles of the Contractor or the Contractor's employees.

## **7. MAINTENANCE AND SANITATION**

The Contractor is responsible during the term of this Contract for routine maintenance, repair, sanitation, and cleanliness as defined herein of the identified buildings and items of equipment listed in above Section 6(A) of this Exhibit. The Contractor shall follow all standards and rules for sanitation and safety, as established by the Indiana State Board of Animal Health, the State Department of Health, and the State Fire Marshal.

- A. State Responsibilities.** The State shall be responsible for maintenance, repairs, and sanitation not assigned to the Contractor, including major repairs or replacement of the structure of the buildings, and the heating, air conditioning, ventilation, and other utility systems.
- B. Fixtures and Furnishings.** The Contractor shall maintain, keep in repair and redecorate, whenever necessary, the interior of the building(s) and shall maintain and keep in repair all fixtures, furnishings, and equipment of the State provided for use by the Contractor. The maintenance, repair, and decorating of the interior of all buildings and the maintenance and repair of plumbing, heating, lighting, and other fixtures, as associated with daily use, shall be done by the Contractor to the approval and satisfaction of the State.
- C. Cleaning and Janitorial Services.** The Contractor shall perform cleaning and janitorial services within the Concession Area. These services include, but are not limited to, the cleaning of all floors, windows, and fixtures, and the replacement of light bulbs.
- D. Cleanliness.** The Contractor shall maintain standards of cleanliness, which will reflect favorable public opinion on the Contractor and the State. The State may perform or have others perform the duties of the Contractor under this Section, if the State determines the Contractor has failed to maintain an acceptable standard of cleanliness. The Contractor shall pay the cost of such work, whether performed by the State or by others, at the discretion of the State.
- E. Trash Removal.** The Contractor shall collect and deposit, in approved sanitary containers for disposal by the State's representative, all garbage, waste, and debris from the building and grounds within and surrounding the Concession Area. The Contractor shall keep the Concession Area in a clean and sanitary condition and in conformity with standards and rules for sanitation and public health. Contractor agrees to either pay, as billed by the Property Manager, the cost of trash removal for the assigned area, or remove trash from the property in another fashion agreed upon by the State. Perishable trash shall be removed daily.
- F. Recycling.** The Contractor shall make an aggressive and affirmative effort to implement the use and sale of recyclable or biodegradable items including, but not limited to, paper plates, cups, napkins, and non-toxic cleaning supplies. Trash shall be separated into types of recyclable materials: glass, paper, metal, plastic, aluminum, and disposed of appropriately. The plastic rings on 6-pack cans will each be cut before disposal to prevent small animals from getting caught in them, which causes injury or death.

## **8. OPERATING SCHEDULE**

The Contractor shall be in full and complete operation with a full staff of employees for every business day within the term of this Contract, from the opening on the first day of the term to the closing on the last day of the term.

**A. Hours and Days of Operations.** The State and the Contractor shall keep the boat rental Concession open and available to public patronage in accordance with the following *minimum days/hours of operation*:

*The Saturday of Memorial Day Weekend through Labor Day (Fridays & Saturdays 11am – 6pm, Sundays 11am – 4pm). If the beach at Mounds is closed by the Property Manager, the concession will not be allowed to open during that time.*

- A. Schedule Posting.** The Operating Schedule of the Concession shall be posted and routinely updated in visible, open, and public locations at the Concession Area, and on the Contractor's website (if applicable) no later than the first day of operation outlined in the term of this Contract.
- B. Visitation.** The State does not guarantee a specific number of visitors to the Concession during the Operating Schedule and accepts no responsibility for the lack of visitors for any reason.
- C. Schedule Deviations.** Any non-scheduled deviation from the operational schedule must be approved in advance and in writing by the State, unless circumstances beyond the control of either party make it necessary to take emergency action.
- D. Holidays.** Contractor may close on certain holidays as pre-approved in writing by the State.
- E. Extended Hours of Operation.** The Contractor may operate longer hours than indicated herein without receiving the State's permission. However, the Contractor must not operate before or after the dates of the term of this Contract, unless specifically provided by an authorized and fully executed Amendment to the Contract.
- F. Emergency Closures.** In emergency situations, the Contractor must immediately report the circumstances to the State and provide a written summary to the State within 24 hours after the emergency is concluded. Closures due to weather must be approved or initiated by the State. Emergency closures must be posted immediately in visible locations at the Concession Area, on the Contractor's website (if applicable), and on the telephone voice mail greeting for the Concession.
- G. State Closures.** The State shall keep the Concession open and available for use by the public in accordance with the Operating Schedule, unless the State makes written or verbal determination that funds are not appropriated or otherwise available to support the agreed upon schedule. The State shall notify the Contractor at the earliest possible convenience so that the Contractor can make any necessary changes to the operation of the Concessions.
- H. Failure to Operate.** If the Contractor is not in full operation for the entirety of the term of this Contract (except for causes wholly beyond the control of the Contractor and not involving neglect by the Contractor), this Contract, at the option of the State, may be terminated without notice. Upon termination, the State may re-enter the premises and obtain a new Contractor for the operation of the facilities. In addition, the State may assess liquidated damages of \$50.00 per day, per facility for each day that any facility remains out of service because of non-performance by the Contractor or until a new Contractor is put in place.

## 9. ADMINISTRATION

### A. Scope

The concession granted under the provisions of this Contract is as follows:

*The right to offer non-motorized boat rentals, lessons, and tours, which may include stand-up paddle boards, kayaks, canoes, and the right to offer limited merchandise sales such as apparel related to the Licensee's operation. All merchandise offered for sale must be approved in writing by the Property Manager or the Concessions / Contracts Program Manager. All business conducted within the scope of this concession license agreement and taking place on public lands shall be considered gross income for the concession and calculated into the applicable concessionaire fees.*

If food sales are permitted under this agreement, food may be prepared only if the Contractor provides at least the minimum facilities necessary for the safe preparation and service of foods in accordance with IC 16-42-5. Contractor must request and obtain the approval of the Concessions & Contract Manager and the Indiana Department of Health prior to installation and use of such food facilities.

**B. Vending**

Vending machines should blend into each property's natural surroundings. All efforts shall be made by the concessionaire to achieve this directive.

**C. Cash Register and Tapes**

The Contractor shall furnish at least one (1) cash register(s) equipped with the following cash control features:

- a. Cumulative, Non-Resettable Totals – originally designed, or mechanically adapted, with “tied-up” totals. Totals that cannot be reset with a key or otherwise.
- b. Audit Tape – shall include provision for printing of total-to-date (sub-total) on itemized tape (Sales Journal).
- c. Sales Indication Window – visible from both sides.
- d. Closed-Drawer Operation – originally designed or mechanically adapted to closed-drawer operation only. Not convertible to open-drawer operation with a key or otherwise.

Cash registers shall be kept in full view of the public. Sales shall be registered in the presence of the customer. All cash register journal tapes shall be sent to the Department of Natural Resources, Division of State Parks & Reservoirs, with the applicable monthly report and the Employee Cash Count Receipts (DNR 92). All cash, long or short, shall be entered on the monthly report.

A Department representative must approve the cash register furnished by the Contractor.

**D. Non-Resettable Reading Totals**

At locations where it is deemed feasible by the Concessions & Contract Manager for the operation of a cash register with the above listed features, the Contractor and a representative from the property shall take a reading from the non-resettable totals when the concession both opens and closes for the season. These readings will be sent to the Concessions & Contract Manager to be filed with the Contractor's file.

**E. Pre-numbered Tickets or Receipts**

If the Department determines the requirements for cash register equipment described in Section D (5) are not practical, the Contractor shall issue a receipt or pre-numbered ticket. If the Department approves the use of a receipt, such receipt form shall be supplied by the Department and charged to the Contractor. If pre-numbered tickets approved by the Department are used, the Contractor shall account for all pre-numbered tickets.

**F. Use of State Form DNR 92**

An Employee's Cash Count and Department Receipt (Form DNR 92) shall be written at the end of each shift or daily to cover all receipts for the period. The original is to be given to the employee and the duplicate copies of all Form DNR 92's issued during the month shall accompany the monthly report to the Department.

**G. Use of State Form DNR 352**

The Contractor shall complete a DNR 352 Boat Rental Receipt, or another 3-part pre-numbered boat rental receipt for any boat rental at the facility. Any receipts other than a DNR 352 goat rental receipt, must be approved by the Concessions & Contract Manager and shall be a 3-part form to provide a copy to the customer, the Contractor, and the Department; these forms shall be pre-numbered by the printing company. The printing company shall provide directly to the Department a confirmation of forms numbered which shall indicate all series of numbers printed, inclusive of the beginning and ending numbers.

**H. Monthly Reports**

By the eighth (8th) day of each month, the Contractor shall have in the Department office a monthly report for the preceding calendar month showing all income, the Employee Cash Count Receipts (DNR 92), which shall be used for each day of operation at each location, and the corresponding cash register tapes or DNR 352 receipts, whichever is appropriate to the operation. All overages and shortages shall be entered on the monthly report. All sums due to the Department shall be attached to the monthly report in the form of checks made payable to the Department of Natural Resources. The required forms supplied by the Department shall be charged to the Contractor.

**I. Accounting Records**

Regardless of the method of payment of the Contract Fee, the Contractor shall keep or cause to be kept accurate books, records, and accounts of its operations under the Contract separate and apart from other operations. The Contractor shall make all reports concerning the operation available to the Department at such times at the Department may require. Separate accounting records shall be maintained for each facility operated under the terms of this agreement.

Books and records of account shall be kept in a form and manner satisfactory to the Department. The Contractor's records of operation shall be open to inspection and audit by the Department and its designated representative at all reasonable times during business hours. The right of inspection and audit shall exist during the term of the Contract Agreement and for a period of three (3) years after the term of the Contract.

**J. Audits**

Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

**K. Lien and Inspection**

To secure the payment of the Contract Fee, and/or damages the Department is given a lien on all personal property belonging to the Contractor, which may be located on the premises licensed and used in the operation of the business conducted under the Contract and Contractor hereby authorizes the Department to file a Financial Statement, UCC-1. The Department reserves the right to enter the licensed premises, without prior notification, at any time for inspection and/or investigative reasons. This includes, but is not limited to, the right to install and operate surveillance equipment in or on the premises within the licensed area. Evidence obtained through personal, mechanical, and electronic or any other technological or other means may be used by the Department in civil and/or criminal actions brought against the Contractor.

**L. Utilities and Connectivity**

The Contractor shall pay all electric current, water, sewage, and other utilities used in or about the concession when billed either by the Department or by any utility company. For utilities with a fixed rate, that rate shall be:

*Not Applicable.*

**M. Taxes**

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

**N. Cancellation by Secretary of the Army**

This Contract may be cancelled in the event of the cancellation, for any reason, of the lease from the Secretary of the Army, to the Department of Natural Resources. The Contractor warrants that he/she is not an employee of the United States government or a member of any governmental body.

**O. Piers**

The Department may provide and install piers; however, the Contractor shall keep all piers in repair, to the satisfaction of the property manager, during the term of this Contract.

**P. Structures Erected by Contractor**

The Contractor may, during the term of this Contract, erect structures and provide equipment upon the premises, which temporary structures and equipment shall be and remain the property of the Contractor, provided; however, that no structure may be erected or altered upon the premises unless and until the design and proposed location or alteration thereof is approved in writing by the Department.

Upon termination of this Contract, the Contractor shall remove his/her property from the premises and restore the premises to a condition satisfactory to the Department; reasonable wear and tear and damages resulting from no fault of the Contractor excepted. If the Contractor fails to do so, the Contractor shall pay to the Department all costs expended by the Department for restoration of the premises.

**Q. Use of Premises**

The Contractor shall not permit or suffer any offensive use of the premises, or the commission of waste thereof; shall not cut timber or native shrubs except as approved in writing by the Department; shall not remove sand, gravel, or kindred substances from the ground or substantially change the contour or condition of the property unless approved in writing by the Concessions & Contract Manager.

**R. Use of Water**

No attempt shall be made by the Contractor to impede the full and free use by the public of the water area of the Reservoir or Lake.

**S. Boating Laws**

The Contractor shall adhere to all Indiana boating laws, rules and regulations. These include, but are not limited to, IC 14-15-2, IC14-15-7-5 et. seq., 310 IAC 2-1, and 310 IAC 2-1-6.

**T. Building Codes**

The Department reserves the right to conduct on-site inspections of the facility to ensure proper adherence to applicable building codes. These include, but are not limited to, the Indiana Electrical Code, the Indiana Building Code, and NFPA 303. The Department has the right to cause the Contractor to cease and desist a portion of or the entire operation of the contract until corrections to the facility have been made to the satisfaction of the Department.

**10. CONCESSION OPERATION**

**A. Standard of Performance**

The Contractor shall give the business daily personal supervision and shall either be present at the concession at all times that it is open for business or shall be represented by a responsible adult person. The Contractor shall establish, maintain, and operate the concession in such manner as to provide the prescribed services to the public according to the best standards prevailing for a similar business.

Standards and rules for sanitation and safety, include, but are not limited to those established by the Indiana State Board of Animal Health, the Department of Health, the Department of Agriculture, and the State Fire Marshal.

**B. Rates, Prices, Charges**

At least fourteen (14) business days before opening the concession, the Contractor shall submit to the Concessions & Contract Manager for approval, a listing of the prices, rates, and charges proposed for use in the operation of this concession. If practicable, such prices shall be no higher than prices charged for similar merchandise in the locality in which the Contract is operated. In any event, such prices shall be within the guidelines established by the Natural Resources Commission. The Contractor shall maintain on public display a neat and legible sign showing the approved prices, rates, and charges for the sale of goods.

**C. Alcohol**

At no time shall the Contractor or employee sell, display, store, or consume alcohol on the License area. Failure to comply with this provision may result in immediate termination of the Contract.

**D. Supervision by Property Manager**

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



## **E. Parking**

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

## **11. STANDARD OPERATING PROCEDURES**

The Contractor shall operate this location in accordance with the Standard Operating Procedures (SOPs) for the Concession outlined herein and/or attached below.

## **12. MERCHANDISE**

- A. Quality of Merchandise.** The Contractor shall exhibit good taste in offering items for sale, which will reflect positively on the State. Efforts shall also be made to provide items, which reflect natural, cultural and historical aspects of the State of Indiana. The State reserves the right to remove any items during site visitations, which the State deems do not reflect a positive image on the State.
- B. Pricing of Merchandise.** A minimum of ten (10) days before opening the Concession, the Contractor shall submit to Property Management for approval, a listing of the prices, rates, and charges proposed for use in the operation of the Concession. Such prices shall be within the guidelines established by the Natural Resources Commission. The Contractor shall maintain on public display, a neat and legible sign showing the approved prices, rates, and charges for the sale of goods. If practicable, such prices shall be no higher than prices charged for similar merchandise in the locality in which the concession is operated so as not to preclude use by members of the general public.
- C. Prohibited Merchandise.** The Contractor agrees by the acceptance of this Contract not to offer for sale prohibited merchandise. Prohibited items include, but are not limited to, those listed below. The State may add items to the list upon written notification to the Contractor.
- No ice picks, hatchets, axes, machetes, or darts.
  - No fireworks.
  - No alcoholic beverages, "mock tails", or controlled substances.
  - No yard darts.
  - No suggestive plaques with off-color sayings, or other such items.
  - No item which can be used to inflict injury on another person or break or deface State properties.
  - No items such as "Fanny Whackers" or "Whoopee Cushions".
  - No items such as animal pelts or skins, claws, feathers or skeletons.
  - No Styrofoam products shall be used or sold by the concession.
  - No environmentally unfriendly paper products shall be used or sold by the concession. All paper products possible, such as toilet tissue, paper towels, etc., shall be made of recycled materials.
  - No improper use, disposal, or sale of environmentally unsafe chemicals shall occur. Much care will need to be used to read labels for proper use and disposal.

## **13. ADVERTISING**

The Contractor is encouraged to conduct a balanced advertising effort directed at developing more business

under the provisions of the Contract.

- A. Advertising Plan.** All contracts, scripts, texts, and layouts must be submitted to the State for written approval at least sixty (60) days prior to execution or implementation, or no later than March 1<sup>st</sup> of each concession year. The Contractor agrees not to advertise in any manner or form, on or about the Concession Area, premises, buildings, or elsewhere, or in any newspaper or otherwise, except by means of signs or forms of advertising approved by the State. The Contractor shall not employ or use any person known as "hawkers", "spielers", "criers", or other noisemakers or means of attracting attention to the Contractor's business.
- B. Website Advertising.** The Contractor shall update its website with information regarding upcoming Concession events at least thirty (30) days prior to the event.

#### **14. CONCESSION EMPLOYMENT**

The Contractor shall employ such persons as may be proper to operate the business in accordance with state and federal labor laws. The Contractor is not an employee of the State of Indiana. This Contract does not vest in the Contractor, or anyone employed by the Contractor, any title, tenure or any property belonging to the State located on or around the Concession Area.

- A. Employee Training.** To promote the facilities of the Department of Natural Resources and to provide quality service to the public, employees of the Contractor must receive thorough training. Concession operators and their employees must attend seasonal training programs on those properties, which have them. Training programs shall acquaint personnel with information about the property and information to disseminate to the general public.
- B. Employment Records.** Personnel records shall be located at the Concession or at another location as approved by the State. Records shall be open to State inspection at any time during the term of this Contract and for a period of one (1) year after the termination date of this Contract.
- C. Moral Conduct.** The Contractor shall prohibit any behavior that violates any federal, state, or local laws, regulations, and ordinances or that fails to conform to a reasonable standard of good conduct. As this Concession is located on property owned or managed by the State of Indiana, and because there is a high recognition and correlation between the services provided and the State, the State has a supreme interest in the quality of service provided and the appropriateness of behavior by Concession employees occurring on and off the premises. As such, the Contractor shall operate the Concession in a business-like manner, maintaining a high standard of conduct by the Contractor and its employees, volunteers, and agents. Furthermore, any act of misconduct by the Contractor or its employees, volunteers, or agents, are prohibited, including but not limited to dishonesty, theft, misappropriation or abuse of State property, moral turpitude, or any act that neglects, injures, abuses, or endangers others, or any act that is prejudicial to or reflects adversely upon the State.
- D. Employee Appearance.** Employees of the Contractor coming in contact with the public shall be neat and clean. Employees shall be identifiable by the public. The State shall approve uniforms.
- E. Background Checks.** The Contractor shall be responsible for conducting background checks of personnel employed in Contractor's operation. The Contractor shall not use or employ persons in Contractor's operation who have a history of anti-social behavior regardless of where such person's anti-social behavior may have occurred.
- F. Corrective Action.** Failure by the Contractor to take action to either correct or stop such behavior

or misconduct may be considered a material breach of this Contract; and may be grounds for immediate termination in addition to other remedies available to the State. The Contractor shall immediately report any allegation or act of misconduct to the State. In the event of an allegation of misconduct against either the Contractor or its employees, volunteers, or agents, the person or persons who are the subject of the allegation shall be removed immediately from the Concession Area and IDNR property pending resolution of the matter. The Contractor shall cooperate with the State in implementing resolutions to the matter.

## **15. VIOLATIONS**

This Contract has been established to provide services and/or goods to the general public and citizens of Indiana. Any failure to comply with all provisions of this Contract delays the administration of the Contract and risks losing the provided goods or services, depriving the State of revenue and diminishing the State's good customer service reputation.

- A. Notice of Violation.** The Contractor will be provided with a "Notice of Violation" stating which provision has been violated and a date by which the stated violation must be corrected. If the violation has not been corrected by the date specified, the Contractor agrees to pay the State liquidated damages in the sum of \$50.00.
- B. Damages.** If the violation has still not been corrected after a period of seven (7) days after the specified date, the Contractor agrees to pay an additional \$100.00 in liquidated damages. An additional \$100.00 fine shall be imposed for each additional 7-day period of time until the violation has been corrected. The State reserves the right to waive damages.
- C. Failure to Correct Violations.** Continued failure to correct violations and comply with the provisions of this Contract may result in immediate termination of the Contract as described herein. Immediate termination of this Contract may occur due to situations that include, but are not limited to, discourteousness to the public, insurance cancellation, surety bond cancellation, alcohol abuse, and other circumstances which could cause harm to the public or the State, or reflect adversely on the State. All decisions of the State are final.

## **16. TERMINATION**

- A. Departure from Premises.** If this Contract is terminated before completion of the term of the Contract, then the Contractor shall vacate the Concession Area within seven (7) days of termination unless a lesser period of time is provided by court order. Contractor and/or his agents shall remove no personal property on which the State is given a lien from the Concession Area unless otherwise directed by court order, until all fees outlined in this Contract and other sums owed to the State have been paid.
- B. Acts of God.** If an Act of God renders this Contract inoperable for more than sixty (60) days, this Contract shall automatically terminate as of the date of that Act. The State shall receive its fees outlined in this Contract on all income to the date of termination, or to the date of sixty (60) days after termination, whichever income is greater, as if the term of the Contract were then completed.
- C. Termination Due to Violations.** If the Contractor fails to make timely cure of repeated violations, the Director may terminate this Contract upon written notice of such termination by certified mail, or this notification may be delivered in person. The State shall receive fees outlined in this Contract on all income to the date of termination as if the term of the Contract were then completed. The Contractor shall further pay to the State, as liquidated damages for breach of performance and for future performance, the sum of \$1,000.00. This sum, plus any fees outlined in this Contract shall

be paid to the State within fifteen (15) days of such termination.

- D. Early Termination by Contractor.** If the Contractor terminates this Contract, the provisions relating to disbursement of income and to liquidated damages described herein shall apply. If, however, the Contractor gives written notice, by certified mail, to the State at least thirty (30) days prior to the date of termination, the amount of liquidated damages shall be \$500.00. This fee, and all fees outlined in this Contract, shall be paid at the time of termination.
- E. Contractor Incapacitation.** If the Contractor dies or becomes incapacitated, this Contract may be deemed terminated by the State and the provisions relating to the disbursement of income described herein shall apply, or, at its discretion, the State may authorize the estate, guardian, or conservator of the Contractor to operate the facilities under the terms of this Contract until completion of the term of the Agreement.
- F. Potential Harm to the State.** The State may, in cases where continued operation by the Contractor may result in significant or irreparable harm to the State and/or the public, terminate this Contract immediately. Examples include, but are not limited to, non-payment of fees, discourteousness to the public, insurance cancellation, bond cancellation, alcohol abuse, and other circumstances which could cause harm to the public or the State or reflect adversely on the State. All fees payable to the State shall be paid within fifteen (15) days of such termination along with a liquidated damages sum of \$1,000.00 for breach of performance.
- G. Court Costs.** If the State finds it necessary to pursue legal action to recover monies owed by Contractor, Contractor shall also pay all court costs, attorney's fees, and other costs incurred as a result thereof.

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**Preceding Exhibit A to a Concession Agreement is an EXAMPLE ONLY.** All details contained herein represent sample verbiage only and should not be construed as the terms and conditions of an eventual contract resulting from this business opportunity announcement. All dollar amounts, percentages, and hours of operation may be considered negotiable, are subject to change, and can vary by contract.

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