



**STATE OF TENNESSEE  
CENTRAL PROCUREMENT OFFICE**

**REQUEST FOR QUALIFICATIONS  
FOR  
PUBLIC – PRIVATE PARTNERSHIP FOR STATE PARK HOSPITALITY OPERATIONS**

**RFQ # 32701-02523**

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## 1. INTRODUCTION

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The State of Tennessee, Central Procurement Office, hereinafter referred to as “the State,” has issued this Request for Qualifications (“RFQ”) to define mandatory goods or services requirements; solicit responses; detail response requirements; and, outline the State’s process for evaluating responses and selecting a Respondent for contract award to provide the needed goods or services.

Through this RFQ or any subsequent solicitation, the State seeks to buy the requested goods or services at the most favorable, competitive prices and to give ALL qualified businesses, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, the opportunity to do business with the state as contractors or subcontractors.

### 1.1. Statement of Procurement Purpose

The State of Tennessee – Central Procurement Office issued this RFQ on behalf of the Tennessee Department of Environment and Conservation (“TDEC”), which manages the Tennessee State Parks system.

The mission of Tennessee State Parks is to “to preserve and protect, in perpetuity, unique examples of natural, cultural, and scenic areas and provide a variety of safe, quality, outdoor experiences through a well-planned and professionally managed system of state parks.”

The purpose of this RFQ is to engage a concessionaire for a public-private partnership for operation of certain hospitality facilities located in 11 state parks. TDEC’s objective includes engaging a strategic partner who possesses private sector hospitality best management practices, aligns their service delivery with the Tennessee State Parks mission, and agrees to place under a concession contract the greatest number of park locations containing the specified hospitality facilities. The intent of this RFQ is to award a single concession contract covering the specified hospitality operations in up to 11 state parks.

The hospitality operations located in the 11 parks covered by the RFQ generally include inns, restaurants, cabins, marinas, gift shops, and golf courses (collectively referred to as the “Portfolio”). Specific details regarding the individual parks and hospitality operations included in the RFQ are found in the Business Opportunity document attached as RFQ Attachment H.

Tennessee State Parks has experienced limited funding for many years, contributing to deferred maintenance and operating challenges. Given those challenges, TDEC’s priorities for the proposed public-private partnership include:

- (1) Delivery of high-quality visitor services;
- (2) Sensitivity to the park environment in which the Concessionaire will be operating;
- (3) Daily management and maintenance of the assets;
- (4) Investments in real and personal property; and
- (5) On-going asset stewardship, including establishing maintenance and personal property reserves.

In order to place the greatest number of hospitality operations under a single concession contract, TDEC encourages Respondents, as the prime contractor, to engage subcontractors to operate any Asset Class that is not within the Respondent’s field of experience and expertise. The scope and portions of the work each subcontractor will perform must be clearly described in the Respondent’s Response.

Additional Information. TDEC will provide potential Respondents access to due diligence materials in an online information portal. Potential Respondents must contact the Solicitation

Coordinator identified in RFQ § 4.1.1 to receive login information to access the online information portal.

All statistical and fiscal information contained in this RFQ and its exhibits and due diligence materials, including amendments and modifications thereto, are provided “as is”, without warranty as to the accuracy or adequacy of the data or information so provided, and reflect the department’s best understanding based on information or belief available to the department at the time of RFQ preparation. No inaccuracies in such data or information shall be a basis for delay in performance or a basis for legal recovery of damages, actual, consequential or punitive.

**1.2. Pre-Response Conference**

Pre-Response Conferences for potential Respondents will be hosted as site visits at all locations featured in the Portfolio on the dates generally identified in the RFQ Schedule of Events, RFQ § 2 and as detailed in the itinerary that can be found in the online information portal. Any costs associated with the evaluation of the Portfolio shall be the sole responsibility of the potential Respondent and shall not become the obligation of the State for any reason.

Pre-Response Conference attendance is not mandatory, and potential Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

Potential Respondents must register for the Pre-Response Conferences online at: [https://www.surveymonkey.com/r/TDEC\\_RFQ\\_Pre-Response\\_Conference\\_Registration](https://www.surveymonkey.com/r/TDEC_RFQ_Pre-Response_Conference_Registration). Please direct all questions concerning the Pre-Response Conferences to the Solicitation Coordinator.

The Pre-Response Conferences will be held on the following dates and locations:

- August 17, 2015: Montgomery Bell State Park
- August 18, 2015: Henry Horton State Park  
David Crockett State Park
- August 19, 2015: Pickwick State Park
- August 20, 2015: Natchez Trace State Park
- August 21, 2015: Paris Landing State Park
- August 22, 2015: Break (Option to revisit previous parks upon request)
- August 23, 2015: Tims Ford State Park  
Harrison Bay State Park
- August 24, 2015: Fall Creek Falls State Park
- August 25, 2015: Cumberland Mountain State Park  
Warriors Path State Park

**1.3. Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in RFQ § 2, Schedule of Events, potential Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond in the form of a simple e-mail or other written communication. Such notice should include the following information: the business or individual’s name (as appropriate), a contact person’s name

and title, the contact person's mailing address, telephone number, facsimile, number, and e-mail address. Filing a Notice of Intent to Respond is not a prerequisite for submitting a Response; however, it is necessary to ensure receipt of notices and communications relating to this RFQ.

#### 1.4. Definitions and Abbreviations

TERM	DEFINITION
Asset Class	The primary types of hospitality operations included in this RFQ: (1) lodging, (2) food service, (3) marinas, and (4) golf.
Business Opportunity	Attached document that provides specific details regarding the individual parks and hospitality operations included in this RFQ.
Competitive Range	The Technical Response score must attain a combined score of 25 points.
Contract	The contract awarded pursuant to this solicitation.
Concession Portfolio	Those certain hospitality operations and park locations that will be operated by the Concessionaire under a concession contract awarded pursuant to this solicitation.
Concessionaire	A Respondent awarded a contract pursuant to this solicitation.
Cost Proposal	Summary of all proposed costs to the State and the financial commitment of the Respondent for delivery of the services contemplated in this RFQ, as described in RFQ Attachment D.
Evaluation Team	Team selected by the State to review and evaluate the Responses.
Letter of Commitment	The written commitment document signed by the Concessionaire and the State wherein the parties accept the terms of the Contract, accept issuance of the State Capital Grant as a condition precedent to execution of the Contract, and agree to execute the Contract upon satisfaction of the condition precedent.
Mandatory Requirements	The mandatory technical, functional, and experience requirements detailed on RFQ Attachment A.
Oral Presentation	In-person presentation to the State made by Respondents as part of the Cost Proposal evaluation process.
Portfolio	Collective reference to all selected hospitality operations located in the eleven parks included in this RFQ for the purposes of placing them, either in whole or in part, under a concession contract.
Pre-Response Conference(s)	Informational meetings to be held at all locations featured in the Portfolio on the dates specified in RFQ § 1.2.
Qualified	Respondents that are Responsive, Responsible, and within the Competitive Range.
Qualified Respondent	Respondents who attain a Technical Response combined score of 25 points.
Questions and Comments	Any questions, comments, defects, objections, or any other matter requiring clarification or correction that a potential Respondent may have regarding this RFQ, including but not limited to, attachments, the RFQ Attachment G, pro forma Contract, and any amendments.
Respondent	A person, organization, business, or other entity that submits a Response to this RFQ. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives.
Response	All materials submitted by a Respondent in response to this

	RFQ, including the Technical Response, Oral Presentation, Cost Proposal, negotiation documentation, and any clarifications or revisions thereto. Any questions or comments submitted to the State by the Respondent not specifically associated with the aforementioned materials shall not be considered part of the Response.
Response Deadline	Deadline to submit Technical Response and Cost Proposal as specified in RFQ § 2 – Schedule of Events, Item #8.
Responsible	Having the capacity in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.
Responsive	Submitting a Response that conforms in all material respects to the RFQ.
RFQ	Request for Qualifications
Solicitation Coordinator	Point of contact for all Respondents' communication regarding this RFQ, as specified in RFQ § 4.1.1.
State	State of Tennessee
TDEC	Tennessee Department of Environment and Conservation
Technical Response	Collective reference to the Mandatory Requirements, General Qualifications & Experience, Technical Qualifications, Experience & Approach, as specified in RFQ Attachments A, B, and C.

## 2. RFQ SCHEDULE OF EVENTS

The following schedule represents the State's best estimates for this RFQ; however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or cancel and reissue a similar solicitation. Nothing in this RFQ is intended by the State to create any property rights or expectations of a property right in any Respondent.

	EVENT	TIME (Central Time Zone)	DATE (all dates are State business days)
1.	RFQ Issued		July 23, 2015
2.	Disability Accommodation Request Deadline	2:00 p.m.	July 30, 2015
3.	Deadline to Register for Pre-Response Conference	2:00 p.m.	August 10, 2015
4.	Pre-Response Conference	See Itinerary	Aug. 17 – 25, 2015
5.	Notice of Intent to Respond Deadline	2:00 p.m.	August 27, 2015
6.	Deadline to Submit Written "Questions & Comments"	2:00 p.m.	September 1, 2015
7.	State Response to Written "Questions & Comments"		September 29, 2015
8.	RFQ Technical Response and Cost Proposal Deadline	2:00 p.m.	October 12, 2015

9.	State Opens Technical Responses (After Submission Deadline)		October 12, 2015
10.	State Notice of Qualified Respondents Released		October 28, 2015
11.	State Opens Cost Proposals (After Notice of Qualified Respondents Released)		October 28, 2015
12.	State Schedules Respondent Oral Presentations (ONLY Qualified Respondents)		October 29, 2015
13.	Respondent Oral Presentations		Nov.16 - 20, 2015
14.	RFQ Negotiations (optional)		Nov.24 – Dec. 14, 2015
15.	State Evaluation Notice Released		December 15, 2015
16.	Solicitation Files Opened for Public Inspection		December 16, 2015
17.	Respondent Letter of Commitment Signature Date	2:00 p.m.	December 30, 2015
18.	Respondent Contract Signature Deadline	2:00 p.m.	July 15, 2016
19.	Anticipated Contract Start Date (anticipated date for contract to be fully executed and Concessionaire to begin work)		August 1, 2016

### 3. RESPONSE REQUIREMENTS

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3.1. **Response Contents:** A response to this RFQ should address the following:

- 3.1.1. **Mandatory Requirements:** This section details the mandatory technical, functional, and experience requirements that must be demonstrated in the response to this RFQ in order to be passed on to Phase II of the Technical Response evaluation. A Respondent must duplicate and use RFQ Attachment A as a guide to organize responses for the Mandatory Requirements of the RFQ Response. The Respondent should reference the page location of the information within the response in the indicated column of the table. This section is included in the State's evaluation as to whether or not a Respondent meets mandatory qualifications (Phase I).
- 3.1.2. **General Qualifications & Experience:** This section is included in the State's evaluation of Phase II of the Technical Response Evaluation and details general information and qualifications that must be demonstrated in the Response to this RFQ. A Respondent must duplicate and use RFQ Attachment B as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location in the information within the response in the indicated column of the table.
- 3.1.3. **Technical Qualifications, Experience & Approach:** This section is also included in the State's evaluation of Phase II of the Technical Response Evaluation and details technical qualifications, experience, and approach items that must be demonstrated in the Response to this RFQ. A Respondent must duplicate and use RFQ Attachment C as a guide to organize responses for this portion of the RFQ response. The Respondent

should reference the page location in the information within the response in the indicated column of the table.

3.1.4. Cost Proposal:

- 3.1.4.1. The Cost Proposal must be completed as more specifically described in RFQ Attachment D, Cost Proposal & Evaluation Guide. Any response that does not follow the instructions included in RFQ Attachment D may be deemed nonresponsive.
- 3.1.4.2. A Respondent must only record the proposed cost exactly as required by the RFQ Attachment D, Cost Proposal & Evaluation Guide and must NOT record any other rates, amounts, or information.
- 3.1.4.3. The proposed cost shall incorporate ALL costs for services under the Contract for the total contract period.
- 3.1.4.4. A Respondent must sign and date the Cost Proposal.
- 3.1.4.5. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response.

3.2. **Response Delivery Location**

A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ § 2, Schedule of Events. All Responses must be delivered to:

Lindsay Oliveras, Sourcing Account Specialist  
Tennessee Department of General Services – Central Procurement Office  
312 Rosa L. Parks Ave., 3<sup>rd</sup> Floor  
Nashville, Tennessee 37243  
Phone 615-253-4762  
[Lindsay.Oliveras@tn.gov](mailto:Lindsay.Oliveras@tn.gov)

3.3. **Response Format**

- 3.3.1. A Respondent must ensure that the original response meets all form and content requirements detailed within this RFQ.
- 3.3.2. A Respondent must submit original response documents and copies as specified below.
  - 3.3.2.1. Technical Response  
One (1) original Technical Response paper document clearly labeled:

**“RFQ #32701-02523 TECHNICAL RESPONSE ORIGINAL – [RESPONDENT NAME]”**

and nine (9) copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

**“RFQ #32701-02523 TECHNICAL RESPONSE COPY – [RESPONDENT NAME]”**

The digital copies should not include copies of sealed customer references or cost information in the general and technical evaluation phase. However, any other discrepancy between the paper response document and digital copies may result in the State rejecting the response as nonresponsive.

3.3.2.2. **Cost Proposal:**

One (1) original Cost Proposal paper document clearly labeled in a sealed package separate from the Technical Response:

**“RFQ #32701-02523 COST PROPOSAL ORIGINAL – [RESPONDENT NAME]”**

and nine (9) copies of the Cost Proposal in digital format (as described below) properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

**“RFQ #32701-02523 COST PROPOSAL COPY – [RESPONDENT NAME]”**

The digital copies of the sections of the Cost Proposal requiring use of attached Excel templates (See Attachments I through T) must be submitted in “XLS” format.

The digital copies of the remaining sections of the Cost Proposal must be submitted in the form of one (1) digital document in “PDF” format.

In the event of a discrepancy between the original Cost Proposal document and the digital copies, the original, signed document will take precedence.

3.4. **Response Prohibitions:** A Response to this RFQ shall not:

- 3.4.1. Restrict the rights of the State or otherwise qualify the Response to this RFQ;
- 3.4.2. Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect;
- 3.4.3. Include more than one Response, per Respondent, to this RFQ;
- 3.4.4. Include any information concerning costs (in specific dollars or numbers) associated with the Technical Response;
- 3.4.5. Include the Respondent’s own contract terms and conditions, except as specifically noted in the Respondent’s redline revisions of the pro forma contract; or
- 3.4.6. Include the Respondent as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own Responses.

3.5. **Response Errors & Revisions**

A Respondent is responsible for any and all errors or omissions in its Response to this RFQ. A Respondent will not be allowed to alter or revise its Response after the Response Deadline time and dates as detailed in RFQ § 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

3.6. **Response Withdrawal**

A Respondent may withdraw a Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a Response, a Respondent may submit another Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any Response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

#### **4. GENERAL INFORMATION & REQUIREMENTS**

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##### **4.1. Communications**

- 4.1.1. Respondents shall reference RFQ #32701-02523 in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator:

Lindsay Oliveras, Sourcing Account Specialist  
Tennessee Department of General Services – Central Procurement Office  
312 Rosa L. Parks Ave., 3<sup>rd</sup> Floor  
Nashville, Tennessee 37243  
Phone 615-253-4762  
[Lindsay.Oliveras@tn.gov](mailto:Lindsay.Oliveras@tn.gov)

The State will provide all official replies to Questions and Comments related to this RFQ to the potential Respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ §1.3.).

- 4.1.2. Potential Respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participating in the RFQ process. Potential Respondents may contact the RFQ Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in RFQ § 2, Schedule of Events.
- 4.1.3. **Unauthorized contact about this RFQ with other employees or officials of the State of Tennessee may result in disqualification from contract award consideration.**
- 4.1.4. Notwithstanding the foregoing, potential Respondents may also contact the following as appropriate:
- 4.1.4.1. Staff of the Governor’s Office of Diversity Business Enterprise may be contacted for assistance with respect to available minority-owned, woman-owned, Tennessee service-disabled veteran-owned, and small business enterprises as well as general public information relating to this request; or
- 4.1.4.2. The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Helen Crowley  
Department of General Services  
Central Procurement Office  
3rd Floor, William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Ave.  
Nashville, Tennessee 37243  
[Helen.Crowley@TN.gov](mailto:Helen.Crowley@TN.gov)  
Telephone Number: (615) 741-3836

##### **4.2. Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this solicitation or in the employment practices of the Concessionaire on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Concessionaire pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### 4.3. **Conflict of Interest**

- 4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,
  - 4.3.1.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - 4.3.1.2. A contract with or a proposal from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
  - 4.3.1.3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 4.3.2. This RFQ is also subject to *Tennessee Code Annotated*, Section 12-4-101.

#### 4.4. **Respondent Required Review & Waiver of Objections**

- 4.4.1. Each potential Respondent must carefully review this RFQ, including but not limited to, attachments, the RFQ Attachment G, *pro forma* Contract, and any amendments for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "Questions and Comments").
- 4.4.2. Any potential Respondent having Questions and Comments concerning this RFQ must provide such in writing to the State no later than the written "Questions & Comments Deadline" detailed in RFQ § 2, Schedule of Events.
- 4.4.3. Protests based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the written "Questions & Comments Deadline."

#### 4.5. **Disclosure of Response Contents**

- 4.5.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Selection for award does not affect this right. By submitting a Response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection. Refer to RFQ § 2, Schedule of Events.
- 4.5.2. The RFQ Responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.
- 4.5.3. The State agrees to protect, to the fullest extent permitted by state law, the confidentiality of information expressly identified by the Respondent as confidential and proprietary, including information that would allow a person to obtain unauthorized access to

confidential information or to electronic information processing systems owned by or licensed to the State.

**4.6. Notice of Professional Licensure, Insurance, and Department of Revenue Registration Requirements**

- 4.6.1. All persons, agencies, firms or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as part of a Response to this RFQ, shall be properly licensed to render such opinions.
- 4.6.2. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.
- 4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must provide a valid, Certificate of Insurance indicating current insurance coverage meeting minimum requirements as may be specified by the RFQ.
- 4.6.4. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Respondent provides proof of such registration. The foregoing is a mandatory requirement of an award of a Contract pursuant to this solicitation.

**4.7. RFQ Amendments & Cancellation**

- 4.7.1. The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFQ § 1.3). A Response must respond, as required, to the final RFQ (including its attachments) as may be amended.
- 4.7.2. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

**4.8. State Right of Rejection**

- 4.8.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The State may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to seek clarifications or to waive, at its sole discretion, a Response's minor variances from full compliance with this RFQ. If the State waives variances in a Response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting Concessionaire to strict compliance with this RFQ.
- 4.8.3. The State will review the Response evaluation record and any other available information pertinent to whether or not each Respondent is Responsive and Responsible. If the evaluation team identifies any Respondent that appears not to meet the Responsive and Responsible thresholds such that the team would not recommend the respondent for potential Contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects

to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.)

#### 4.9. **Assignment & Subcontracting**

- 4.9.1. The Concessionaire may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.9.2. If a Respondent intends to use subcontractors, the response to this RFQ must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFQ Attachment B, Item B.11.).
- 4.9.3. Subcontractors identified within a Response to this RFQ will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.
- 4.9.4. The Concessionaire resulting from this RFQ may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.
- 4.9.5. Notwithstanding any State approval relating to subcontracts, the Concessionaire resulting from this RFQ will be the prime contractor and will be responsible for all work under the Contract.

#### 4.10. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFQ process.

### 5. **PROCUREMENT PROCESS& CONTRACT AWARD**

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- 5.1. The complete Concessionaire selection will be a two-part process: (1) Qualification of Technical Responses (includes Phase I and II evaluations as described below); and (2) Evaluation of Cost Proposals/Negotiations. Any Contract award is subject to successful Contract negotiation.
- 5.2. Qualification of Technical Responses: Technical Responses will be short-listed for further evaluation, analysis or negotiation if they are apparently Responsive, Responsible, and within the Competitive Range. A Technical Response will be deemed within the Competitive Range based on the following criteria:
  - Phase I: The State will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis. Respondents that pass will move forward with Phase II evaluation.
  - Phase II: Following the Phase I evaluation, the State will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by Evaluation Team members according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C).  
  
The Solicitation Coordinator will total the average score from the Evaluation Team for each Responsive and Responsible Respondent's Technical Response points

for RFQ Attachments B & C to determine which of the Respondents are considered Qualified and within the Competitive Range.

Competitive Range of Technical Responses: The Technical Response score must attain a combined score of 25 points. This minimum score threshold represents a score of 50%.

5.3. Cost Proposals: Only Qualified Respondents that are Responsive and Responsible and in the Competitive Range, will continue onto Cost Proposal evaluation. The State will open all Cost Proposals submitted by Qualified Respondents. The State will apply a standard equitable evaluation model that will result in a score awarded for the Cost Proposal as set forth in RFQ Attachment D, Cost Proposal & Evaluation Guide.

5.3.1. Oral Presentation. The State may invite Qualified Respondents to give Oral Presentations to the State. Evaluation of Cost Proposal Parts 1 and 2 for each Respondent may include information derived from the Oral Presentations. The Oral Presentation will not be scored separately. Each Qualified Respondent will be provided with the same topic outline prior to the Oral Presentation and written clarifications and questions specific to its respective Response. Any clarifications presented by a Respondent as part of the Oral Presentation, must also be submitted in writing to the Solicitation Coordinator within 3 business days of completing the Oral Presentation.

Oral Presentations will occur in Nashville, Tennessee at a location to be determined by the State. Oral Presentations will occur on the dates specified in RFQ § 2 – Schedule of Events, beginning at either 8:00 a.m. or 1:00 p.m. central time. The Solicitation Coordinator will randomly assign dates and times to Qualified Respondents. The Qualified Respondents will be notified by the Solicitation Coordinator of the date and time assigned to them.

The Oral Presentation shall not exceed four hours in length including time for questions. The presentation team for each Respondent must include at least one representative of the Respondent that would interact with TDEC in the event the Contract is awarded to that Respondent.

5.4. Clarifications and Negotiations: The State reserves the right to award a Contract on the basis of initial Responses received; therefore, each Response should contain the Respondent's best terms from a technical and cost standpoint. However, the State reserves the right to conduct clarifications or negotiations with Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in Response improvement.

5.4.1. Clarifications: The State may identify areas of a Response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification round(s). Each clarification sought by the State may be unique to an individual Respondent.

5.4.2. Negotiations: The State may elect to negotiate with Qualified Respondents, within the Competitive Range, by requesting revised Responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds.

5.4.2.1. Revenue and Cost Negotiations: All Qualified Respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market

considerations, benchmarks, budget availability, or other methods that do not reveal individual respondent pricing. During target price negotiations, respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices.

5.4.2.2. If the State determines costs and contract finalization discussions and negotiations are not productive, the State reserves the right to bypass the apparent best evaluated Respondent and enter into Contract negotiations with the next apparent best evaluated Respondent.

5.5. Evaluation Guide

The State will consider qualifications, experience, technical approach, and cost/revenue in the evaluation of Responses and award points in each of the categories detailed below. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	10 Points
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	40 Points
Cost Proposal –Financial Experience (refer to RFQ Attachment D – Part 1)	10 Points
Cost Proposal – Concession Portfolio Financials (refer to RFQ Attachment D – Part 2)	35 Points
Cost Proposal – Revenue Proposal (refer to RFQ Attachment D – Part 3)	5 Points

5.6 Contract Award

5.6.1. The Solicitation Coordinator will submit the Evaluation Team determinations and Response scores to the head of the contracting agency, or the agency head’s designee, for consideration along with any other relevant information that might be available and pertinent to Contract award.

5.6.2. The contracting agency head, or the agency head’s designee, will determine the apparent best-evaluated Response. (To effect a Contract award to a Respondent other than the one receiving the highest evaluation score, the head of the contracting agency must provide written justification and obtain written approval of the Chief Procurement Officer and the Comptroller of the Treasury.)

5.6.3. The State reserves the right to make an award without further discussion of any Response.

5.6.4. The State will issue an Evaluation Notice and make the RFQ files available for public inspection at the time and date specified in the RFQ §2, Schedule of Events.

**NOTICE:** The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Respondent identified as the apparent best-evaluated or any other Respondent.

- 5.6.5. The Respondent identified as offering the apparent best-evaluated Response must sign a Letter of Commitment and Contract drawn by the State pursuant to this RFQ. The Contract shall be substantially the same as the RFQ Attachment G, *pro forma* contract. The Respondent must sign said Letter of Commitment and Contract no later than the deadlines detailed in RFQ § 2, Schedule of Events. If the Respondent fails to provide either the signed Letter of Commitment and/or Contract by the specified deadlines, the State may determine the Respondent is non-responsive to this RFQ and reject the Response.
- 5.6.6. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall NOT materially affect the basis of Response evaluation or negatively impact the competitive nature of the RFQ and Concessionaire selection process.
- 5.6.7. If the State determines that a Response is nonresponsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining Responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated Response.
- 5.6.8. Any Contract awarded under this RFQ is subject to the appropriation and availability of State funds. Specifically, all funds contributed by the State for deferred maintenance or other real property improvements are subject to legislative budget approval and capital grant approval by the State Building Commission. The earliest possible date that financial contribution by the State will be finalized is July 2016.

**TECHNICAL RESPONSE & EVALUATION GUIDE**

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review all responses to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFQ requirements.

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		The Technical Response must not contain cost or pricing information of any type.	
		The Technical Response must not contain any restrictions of the rights of the State or other qualification of the Response.	
		A Respondent must not submit alternate Responses.	
		A Respondent must not submit multiple Responses in different forms (as a prime and a subcontractor).	
	<b>A.1.</b>	Provide the Statement of Certifications and Assurances (RFQ Attachment E) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting Contract. The document must be signed without exception or qualification.	
	<b>A.2.</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall perform work under the Contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	<b>A.3.</b>	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	<b>A.4.</b>	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
	A.5.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a positive credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	A. 6.	<p>Provide a valid, Certificate of Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>(a) Insurance Company</li> <li>(b) Respondent’s Name and Address as the Insured</li> <li>(c) Policy Number</li> <li>(d) The following minimum insurance coverage: <ul style="list-style-type: none"> <li>(i) Workers’ Compensation/ Employers’ Liability (including all states coverage) with a limit not less than the relevant statutory amount or One Million Dollars (\$1,000,000) per occurrence for employers’ liability;</li> <li>(ii) Comprehensive Commercial General Liability (including personal injury &amp; property damage, fire legal liability, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate;</li> <li>(iii) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than One Million Dollars (\$1,000,000) per occurrence;</li> <li>(iv) Errors and Omission Coverage with a limit of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate; and</li> <li>(v) A letter from the Respondent’s insurance provider stating that the Respondent is capable of obtaining an Umbrella form excess liability insurance in excess of the limits provided by the commercial general liability, comprehensive automobile liability, and employer’s liability insurance policies required above with limits of not less than one million dollars (\$1,000,000) per occurrence and five million dollars (\$5,000,000) aggregate OR a valid Certificate of Insurance verifying that Respondent already has said coverage in place.</li> </ul> </li> <li>(e) The following information applicable to each type of insurance coverage: <ul style="list-style-type: none"> <li>(i) Coverage Description,</li> <li>(ii) Exceptions and Exclusions,</li> </ul> </li> </ul>	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		(iii) Policy Effective Date, (iv) Policy Expiration Date, and (v) Limit(s) of Liability.  NOTES: These are minimum policy standards for the purposes of review of the Mandatory Requirements. Additional coverage types and limits are specified in the attached Pro Forma Contract.	
	A. 7.	Provide documentation disclosing the amount of cash flows from operating activities for the Respondent's most current operating period. Said documentation must indicate whether the cash flows are positive or negative, and, if the cash flows are negative for the most recent operating period, the documentation must include a detailed explanation of the factors contributing to the negative cash flows.  NOTICE: All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.	
	A. 8.	Provide the Respondent's most recent independent audited financial statements. Said independent audited financial statements <u>must</u> :  (1) reflect an audit period for a fiscal year ended within the last 36 months (2) be prepared with all monetary amounts detailed in United States currency; (3) be prepared under United States Generally Accepted Accounting Principles (US GAAP); (4) include: the auditor's opinion letter; financial statements; and the notes to the financial statements; and (5) be deemed, in the sole discretion of the State to reflect sufficient financial stability to undertake the subject agreement with the State.  <b>OR</b> , in lieu of the aforementioned independent audited financial statements, provide a financial institution's letter of commitment for a general Line of Credit in the amount of One Million Dollars (\$1,000,000), U.S. currency, available to the Respondent. Said letter <u>must</u> specify the Respondent's name, be signed and dated within the past three (3) months by an authorized agent of the financial institution, and indicate that the Line of Credit shall be available for at least 6 months.	

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		<p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ Reviewed or Compiled Financial Statements will not be deemed responsive to this requirement and will <u>not</u> be accepted.</li> <li>▪ All persons, agencies, firms, or other entities that provide opinions regarding the Respondent's financial status <u>must</u> be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders the opinions.</li> </ul>	
	<b>A. 9.</b>	Provide a statement that Respondent has read and understood the entire RFQ and all attachments, and any amendments, including but not limited to, the RFQ Attachment G - pro forma Contract, and the RFQ Attachment H - Business Opportunities document.	
	<b>A.10.</b>	<p>Utilizing the attached checklist, please mark all park locations that Respondent is including in its proposed Concession Portfolio.</p> <ul style="list-style-type: none"> <li>(i) It is mandatory that the proposed Concession Portfolio include a minimum of three park locations.</li> <li>(ii) It is mandatory that for each park location selected by Respondent, all hospitality operations located within the park that are within the scope of this RFQ must be included in the proposed Concession Portfolio.</li> </ul>	
<i>State Use – RFQ Coordinator Signature, Printed Name &amp; Date:</i>			

**Checklist for Mandatory Requirement A.10.**

Check Shaded Box for Each Park Location Included in the Response	Park Location and Hospitality Operations Within the Scope of this RFQ	Check Shaded Box for Each Park Location Included in the Response	Park Location and Hospitality Operations Within the Scope of this RFQ
	<b>Fall Creek Falls</b>		<b>Montgomery Bell</b>
	Inn (includes gift shop and conference center) Cabins Restaurant Golf		Inn (includes gift shop and conference center) Cabins Restaurant Golf
	<b>Paris Landing</b>		<b>Pickwick Landing</b>
	Inn (includes gift shop and conference center) Cabins Restaurant Golf Marina		Inn (includes gift shop and conference center) Cabins Restaurant Golf Marina
	<b>Henry Horton</b>		<b>Natchez Trace</b>
	Inn (includes gift shop and conference center) Cabins Restaurant Golf		Inn (includes gift shop and conference center) Cabins Restaurant
	<b>Cumberland Mountain</b>		<b>Harrison Bay</b>
	Restaurant (includes gift shop) Golf		Golf Marina
	<b>Warrior's Path</b>		<b>Tims Ford</b>
	Golf		Golf
	<b>David Crockett</b>		
	Restaurant		

**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Evaluation Team members will independently evaluate and assign one score for all responses to Section B—General Qualifications & Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	<b>B.2.</b>	Describe the Respondent's form of business ( <i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	<b>B.3.</b>	Detail the number of years the Respondent has been in business.
	<b>B.4.</b>	Briefly describe how long the Respondent has been performing the goods or services required by this RFQ.
	<b>B.5.</b>	Describe the Respondent's number of employees, client base, and location of offices.
	<b>B.6.</b>	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	<b>B.7.</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	<b>B.8.</b>	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	<b>B.9.</b>	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFQ or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFQ.  NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		licensure number for each person or entity that renders such opinions.
	<b>B.10.</b>	<p>Provide a statement of whether there is any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will impair the Respondent's performance in a contract pursuant to this RFQ.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>
	<b>B.11.</b>	<p>Given the diversity of the Asset Classes included in the Portfolio, TDEC anticipates that a Respondent may elect to engage subcontractors in order to address all Asset Classes.</p> <p>Provide a statement of whether the Respondent intends to use subcontractors to accomplish the work required by this RFQ, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the work each subcontractor will perform; <u>and</u></p> <p>(c) a statement signed by each subcontractor specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent's response to this RFQ.</p>
	<b>B.12.</b>	<p>Provide documentation of the Respondent's commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent's certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent's current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (<i>i.e.</i>, ethnicity, gender, Tennessee service-disabled); and</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information:</p> <p>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>ownership characteristics only and <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</p> <p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor's Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9265">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9265</a> for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent's total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	<b>B.13.</b>	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five-year period. If so, provide the following information for all current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact responsible for the contract at issue;</p> <p>(b) the name of the procuring State agency;</p> <p>(c) a brief description of the contract's specification for goods or scope of services;</p> <p>(d) the contract term; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points.</li> <li>▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts responsive to Section B.16 of this RFQ.</li> </ul>
	<b>B.14.</b>	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the services sought under this RFQ and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) current accounts or projects managed by the Respondent that includes at least one Asset Class that is similar to those contained in the Portfolio; <u>and</u></li> <li>▪ three (3) completed projects managed by the Respondent that includes at least one Asset Class that is similar to those contained in the Portfolio.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently managed account or project. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFQ Attachment F. References that are not completed as required may be deemed nonresponsive and may not be considered.</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page # (Respondent completes)</b>	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires, follow the process below:</p> <p>(a) Add the Respondent’s name to the standard reference questionnaire at Attachment F, and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and a new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p> <p>(ii) sign <u>and</u> date the completed reference questionnaire;</p> <p>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response).</p> <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p><b>NOTES:</b></p> <ul style="list-style-type: none"> <li>▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required.</li> <li>▪ The State will not review more than the number of required references indicated above.</li> <li>▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references.</li> <li>▪ The State is under <u>no</u> obligation to clarify any reference information.</li> </ul>
	<b>B.15.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>i. is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>ii. has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<ul style="list-style-type: none"> <li>iii. is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and</li> <li>iv. has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.</li> </ul>
	<b>B.16.</b>	<p>The State is amenable to making changes to RFQ Attachment G, <i>pro forma</i> contract, including the attached draft Operating and Maintenance Plan. The State will take all reasonable suggested alternative or supplemental contract language changes by Respondents under advisement during the evaluation and post award processes, subject to any mandates or restrictions imposed on the State by applicable state or federal law. The State, however, recommends that Respondents include with their response any alternative or supplemental suggested contract language that a Respondent would propose.</p> <p>Clearly indicate, by providing a “red-line” of RFQ Attachment G, <i>pro forma</i> contract, including the attached draft Operating and Maintenance Plan, all suggested alternative or supplemental contract language. Do <b>not</b> include any exceptions or changes that (1) contradict a Federal requirement or a Mandatory Requirement, or (2) push back any deadlines.</p> <p><i>Note: When preparing the redline draft of the pro forma Contract DO NOT include the specific proposed percentages and financial investment dollar amounts. The specific proposed percentages and financial investment dollar amounts will be included in the Cost Proposal.</i></p>
	<b>B.17.</b>	Has the Respondent ever defaulted from or been terminated from a management or concession contract? If answer is yes, provide details of the circumstances.
<b>SCORE (for all Section B— Qualifications &amp; Experience Items above):</b> (maximum possible score = 10)		
<i>State Use – Evaluator Identification:</i>		



**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

**0 = little value    1 = poor    2 = fair    3 = satisfactory    4 = good    5 = excellent**

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's raw, weighted score for purposes of calculating the section scores as indicated.

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
<b><u>Stewardship of Hospitality Portfolio Assets</u></b>					
<p><u>Objective:</u> TDEC has four distinct Asset Classes: (1) lodging, (2) food service, (3) marinas, and (4) golf. Each of these Asset Classes requires unique and specific types of maintenance. TDEC is keenly interested in the effective stewardship of these assets within their Portfolio. To achieve this objective it is critical that maintenance strategies are designed around current conditions, routine and preventative maintenance needs and that these activities are supported by systems and processes that can monitor and measure asset depreciation and condition over their lifetime. A response that addresses the unique issues associated with stewardship of all four Asset Classes is preferred.</p>					
	<b>C.1.</b>	<p><u>Routine &amp; Preventive Maintenance</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 20 pages</i></p> <p>Identify how the Respondent will use existing asset information (Condition Assessments), and its expertise, approaches, processes, methodologies and tools to address the following:</p> <p>(a) Development of an annual maintenance plan and budget by park location and Asset Class. Specifically, detail the processes the Respondent will use to create the annual maintenance plan for the Concession Portfolio and its profile of assets. Include its strategy to identify, prioritize, track, and perform routine and preventative maintenance on an annual and multi-year basis.</p> <p><b>NOTE: Do not include cost data in this section. Any information concerning costs (in specific dollars and numbers) must be presented in response to the Cost Proposal section of this RFQ.</b></p> <p>(b) Determination of staffing requirements for maintenance by park. Specifically provide an example of a proposed staffing plan for each park's</p>		3	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<p>maintenance function, to include traditional work hours as well as off-hour emergencies (response times and complaints). TDEC seeks efficient maintenance staffing plans for all assets within the Portfolio.</p> <p>(c) Specialized equipment (e.g. boilers and chillers in inns, fuel at marinas, golf course equipment) are located throughout the Portfolio. Explain how proposed staffing and/or contract labor will be used to ensure proper maintenance of the operations systems and equipment. Identify how the Respondent will ensure that the required skill level is available to maintain the operations.</p> <p>(d) Identify how the Respondent will complete maintenance work during the busy season with limited disruption to park operations and guests.</p>			
	C.2.	<p><u>Deferred Maintenance</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 15 pages</i></p> <p>TDEC desires that deferred maintenance identified be cured within a reasonable timeframe.</p> <p>Identify a priority plan for curing deferred maintenance throughout the Concession Portfolio by outlining details of what items will be addressed, and a rationale and timeframe for these re-capitalization efforts.</p>		2	
	C.3.	<p><u>Reporting &amp; Software</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 5 pages</i></p> <p>Identify what maintenance management system the Respondent plans on using and the plan for populating the system based upon information available at the start of the Contract. Provide examples of the reporting functions of the system that will be used for developing the maintenance plan and budget and establishing daily, weekly and monthly work orders.</p> <p><b>NOTE: Do not include cost data in this section. Any information concerning costs (in specific dollars and numbers) must be presented in response to the Cost Proposal section of this RFQ.</b></p>		1	
	C.4.	<p><u>Real Property Improvement Process</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 5pages</i></p> <p>Please provide an example of your firm's construction project management process for</p>		1	

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		completing real property renovations, improvements and/or modifications on government-owned or managed properties. Specifically identify the core phases in the process and how these will integrate with the requirements of the Contract. Specifically identify the key interaction phases with the state and desired approval response times.			
	C.5.	<p><u>Personal Property Management Process</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 20 pages</i></p> <p>Identify how the Respondent will use the personal property inventory provided by the State, and the Respondent's own expertise, approaches, processes, methodologies and tools to address the following:</p> <p>(a) Development of a personal property plan broken down by park location and Asset Class. The personal property plan should identify the Respondent's priority plan for replacing personal property throughout the Concession Portfolio by outlining details of what items will be addressed, and a rationale and timeframe for these replacement efforts.</p> <p>(b) Detail the processes the Respondent will use to create the personal property plan for the Concession Portfolio and its profile of assets. Include its strategy to identify, prioritize, replace, and track personal property on an annual and multi-year basis.</p> <p><b>NOTE: Do not include cost data in this section. Any information concerning costs (in specific dollars and numbers) must be presented in response to the Cost Proposal section of this RFQ.</b></p>		3	
	C.6.	<p><u>Personal Property Management Experience</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 6 pages</i></p> <p>TDEC recognizes that investments will be required to modernize and bring up to standard certain personal property elements of the Portfolio.</p> <p>Provide two specific examples of the Respondent's experience with a significant replacement/conversion of personal property at government-owned or managed properties. Specifically provide examples of how the Respondent managed each phase of the personal property life cycle, including acquisition, receipt/entry into inventory, accountability/tracking, utilization, and disposal.</p>		1	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
<b><u>Proposed Development Plan</u></b>					
<p><b>Objective:</b> TDEC desires a Concessionaire who will redevelop and manage its Portfolio to a high visitor service quality standard. It is interested in forming a relationship with a strategic operating and investment partner to favorably move the Portfolio into a more competitive environment. A response that provides for a Concession Portfolio that includes the largest number of total parks and all Assets Classes within those parks is preferred.</p>					
	C.7.	<p><u>Concession Portfolio Plan</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 35 pages</i></p> <p>(a) Identify in priority order what the composition of parks and Asset Classes that your firm will commit to managing and investing in as part of the Concession Portfolio.</p> <p>(b) Identify your plans for redevelopment for each park location and Asset Class (e.g. we plan to replace the personal property at “X” park and desire to change the food service concept from “X” to “X” at “X” park).</p> <p><b>NOTE: Do not include cost data in this section. A question dealing with development costs is located in the Cost Proposal section of this RFQ.</b></p> <p>(c) TDEC desires to complete the re-capitalization/development within the first three to five years of the contract term. Identify your proposed timeline for the proposed redevelopment in a format that identifies key milestones for development/re-development including planning, approval, construction and project opening for each project.</p>		3	
<b><u>Marketing and Promotion</u></b>					
<p><b>Objective:</b> TDEC believes that effective marketing of the Asset Classes included in the Portfolio will increase visitation and expand revenue generation at the parks. A response that demonstrates experience in marketing similar Asset Classes and proposes creative and diverse marketing platforms for the Concession Portfolio is preferred.</p>					
	C.8.	<p><u>Marketing Plan</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 20 pages</i></p> <p>(a) Provide an outline of a marketing plan that addresses both in-park and out-of-park promotions for each Asset Class identified in the Concession Portfolio with the goal of increasing visitation, utilization and revenues.</p> <p>(b) Describe the Respondent’s strategies for local, regional and national marketing of the Asset Classes included in the Concession Portfolio.</p> <p>(c) Provide information on the target market segments and specify the different media and organizations the Respondent will use to implement the strategy ensuring it is appropriate and consistent</p>		2	

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		with the objective of conservation and protection of Tennessee State Parks.  (d) Include two example of the Respondent’s ideas and examples of the advertising campaign(s) for (i) parks with inns, and (ii) golf courses. TDEC desires that all marketing materials will conform to the Tennessee State Parks logo specifications included in the online information portal.			
	C.9.	<u>Marketing Experience</u> <i>Page Limit Maximum, including text, pictures, and graphs: 5 pages</i> Provide one specific example of a successful marketing campaign at a similar hospitality operation your company has successfully implemented.		1	
<b><u>Respondent Experience in Management of Hospitality Portfolio Assets</u></b>					
Objective: TDEC seeks to engage a Concessionaire with expertise in providing the same or similar hospitality services as the Asset Classes included in the Portfolio. A response that demonstrates a comprehensive approach to managing the Portfolio with experienced personnel as well as depth of experience in managing the four Asset Classes is preferred. A response that demonstrates meaningful changes and improvements in the operational performance of an asset is preferred.					
	C.10.	<u>Organizational and Management Structure</u> <i>Page Limit Maximum, including text, pictures, and graphs: 10 pages</i> TDEC seeks to understand how the Respondent will develop their management team to provide support to each park.  (a) Provide a narrative description of the proposed organizational structure and include an organizational chart identifying the management positions that will be responsible for managing the Concession Portfolio. The organizational chart should illustrate the lines of authority and designate the positions responsible for the management of each park location and Asset Class included in the Concession Portfolio.  (b) Provide detailed qualifications for each management position. Examples of management specialty areas are included below. The Respondent may decide to combine two or more of these positions into one employee’s position description or include others not specified. Responses should be specific on how each of the responsibilities will be allocated across the management staff.  <i>Note: Do not submit resumes of individuals who might fill these positions. Instead, provide a listing of qualifications the Respondent will require for successful candidates for each position.</i>		2	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		i. General Manager ii. Lodging Department Manager iii. Retail Department Manager iv. Food and Beverage Manager v. Facilities/Asset Maintenance Manager vi. Environmental Program Manager vii. Occupational Health and Safety Manager viii. Employee Training and Education Manager ix. Golf Professional/Superintendent x. Marina Manager xi. Other			
	C.11.	<u>Management and Operational Experience</u> <i>Page Limit Maximum, including text, pictures, and graphs: 5 pages</i> Describe the Respondent's experience in managing comparable hospitality portfolios and operations across a large geographic area. For context, please describe the span of the geographic distribution of the operations (i.e. statewide, multi-state, several operations within a single large park, etc.).		2	
<b><u>Hospitality Portfolio Staffing</u></b>					
<p><b>Objective:</b> TDEC is interested in continuing its role of providing for economic stability within the communities surrounding its parks. Providing employment opportunities at competitive rates/terms is important to TDEC. Additionally, TDEC seeks to ensure that staff receives training to ensure high quality visitor services. A response that indicates current labor retention, market based wages, competitive benefit package, and a greater quantity and diverse types of staff training is preferred.</p>					
	C.12.	<u>Staff Recruitment</u> <i>Page Limit Maximum, including text, pictures, and graphs: 5 pages</i> Describe your firms plan for staff hiring and recruiting of existing hospitality staff, noting the requirement in the contract that all existing staff shall be considered in the hiring process.		3	
	C.13.	<u>Staff Training and Development</u> <i>Page Limit Maximum, including text, pictures, and graphs: 5 pages</i> Describe the minimum commitment that will be made to staff training and development. Specifically, describe what type of training will be offered, frequency of training, and staff categories receiving training.		2	
<b><u>Sustainable Practices</u></b>					
<p><b>Objective:</b> TDEC is committed to the sustainable preservation of our Tennessee State Parks and improving the environment and habitat for our citizens and visitors to enjoy and share with future generations. As part of this</p>					

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
<p>commitment, TDEC developed a set of “TDEC State Park Sustainability Goals” to insure our parks will be enjoyed today, tomorrow, and beyond, including:</p> <ul style="list-style-type: none"> <li>• Energy Efficiency and Conservation</li> <li>• Water use reduction</li> <li>• Waste stream management and diversion</li> <li>• Environmental Purchasing</li> </ul> <p>Respondent commitments to sustainable practices are preferred. A response that indicates an understanding of policies, procedures and tools to develop, manage and track sustainability progress is preferred.</p>					
	C.14.	<p><u>Sustainable Practices Implementation</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 15 pages</i></p> <p>(a) Demonstrate the Respondent’s experience in implementing conservation measures to reduce energy, water, and other natural resource usage by providing two examples of the Respondent’s past performance in project initiatives at comparable assets in the Portfolio.</p> <p>(b) Identify what system for utility billing management and tracking the Respondent uses and the plans for populating the system based upon information available at the start of the Contract. Specifically, provide examples of the reporting functions of the system that can be used to monitor utility usage on different measurement periods (weekly, monthly and annually).</p> <p>(c) Identify if the Respondent has a Green Purchasing Policy. If so, briefly describe the goals, objectives and successful outcomes of the policy. If not, state as such, and identify how the Respondent would develop said policy.</p> <p>(d) Identify if the Respondent has a Corporate Sustainability Plan. If so, briefly describe the goals, objectives and successful outcomes of the plan. If not, state as such, and identify how the Respondent would develop said plan.</p> <p>(e) Identify how the Respondent will establish the targets for sustainability practices and describe the method the Respondent will use to monitor, measure, and report progress on sustainability practices.</p>		2	
<b><u>Transition of Operations</u></b>					
<p><u>Objective:</u> TDEC is committed to achieving an orderly transition of operations in order to avoid disruption of services to visitors and minimize transition expenses. TDEC has identified minimum requirements in the pro forma Contract. TDEC expects Respondents to identify additional issues relative to their respective start-up operations. A preferred response details the rights and responsibilities of TDEC and the Respondent.</p>					
	C.15.	<u>Transition Plan</u>		2	

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
		<p><i>Page Limit Maximum, including text, pictures, and graphs: 10 pages</i></p> <p>Describe how the Respondent will collaborate with TDEC to achieve an orderly transition of operations. In particular, address the Transition Period requirements listed in Section A.17 of the pro forma Contract. The response should also include a transition period timeline that includes the minimum TDEC requirements and any additional steps or requirements determined by the Respondent.</p>			
<p><i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p>					<p><b>Total Raw Weighted Score:</b> <i>(sum of Raw Weighted Scores above)</i></p>
<p><b>Total Raw Weighted Score</b></p> <hr/> <p><b>Maximum Possible Raw Weighted Score</b> <i>(i.e., 5 x the sum of item weights above)</i></p>			<p><b>X40 Points</b> <i>(maximum possible score)</i></p>	<p><b>= SCORE:</b></p>	
<p><i>State Use – Evaluator Identification:</i></p>					
<p><i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i></p>					

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## Cost Proposal & Evaluation Guide

*NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED*

**Objective:** The State needs to quantify the value of the financial commitment that is being made by the Respondent. Additionally, it needs to understand the reasonableness of the proposed assumptions for the financial commitment. Finally, the State desires to ensure that the Respondent has the financial capability to fulfill the requirements of the proposed development and management plan for the Concession Portfolio.

The Cost Proposal shall be submitted by the Respondent simultaneously with the Technical Response by the Response Deadline specified in RFQ § 2 – Schedule of Events. The Cost Proposal must be in a sealed package separate from the Technical Response. The Cost Proposal shall be submitted in the format described in RFQ § 3.3.2.2 - Cost Proposal. This includes one original paper document and nine digital copies.

The Cost Proposal shall indicate the proposed cost to the State and the financial commitment of the Respondent for the delivery of specified services for the entire scope of services, including all services defined in the Scope of Services of the RFQ Attachment G, pro forma Contract and for the entire Contract period. The Cost Proposal shall remain valid for at least 365 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with the Contract resulting from this RFQ. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

### **Cost Proposal (Part 1) – Financial Experience**

The Respondent must address all items detailed in Section D (Part 1) and provide, in sequence, the information and documentation as required. Evaluation Team members will independently evaluate and assign one score for all responses to Section D (Part 1) — Financial Experience.

### **Cost Proposal (Part 2) – Concession Portfolio Financials**

The Respondent must address all items detailed in Section D (Part 2) and provide, in sequence, the information and documentation as required. The response to Item D.3 must be completed using the Excel templates identified as Attachments I through T. The response to Item D.7 must be completed using the attached Investment Proposal Worksheet. Evaluation Team members will independently evaluate and assign one score for all responses to Section D (Part 2) — Concession Portfolio Financials.

### **Cost Proposal (Part 3) – Revenue Proposal**

The Respondent must address all items detailed in Section D (Part 3) on the attached Revenue Proposal Worksheet. The revenue proposal will be evaluated by the Solicitation Coordinator according to the scoring formula described on the attached worksheet

**COST PROPOSAL & EVALUATION GUIDE**

**SECTION D (Part 1): FINANCIAL EXPERIENCE.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Evaluation Team members will independently evaluate and assign one score for all responses to Section D (Part 1) — Financial Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 1) — Financial Experience Items</b>
	<b>D.1.</b>	<p><u>Portfolio Development Experience</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 24 pages</i>                      TDEC recognizes that investments will be required to modernize and bring up to standard certain elements of the Portfolio.                      TDEC desires to understand the process that will be used to undertake the recapitalization/redevelopment plan as well as to identify how the Respondent has successfully undertaken similar efforts at other park locations.                      Provide the following for four projects which have involved an upgrade/redevelopment completed by the Respondent. TDEC would prefer to see a project for each of the Asset Classes contained within the Concession Portfolio. If there are not four different Asset Class examples available, you may provide multiple examples for similar relevant Assets Classes.                      If a subcontractor will be engaged to operate certain Asset Classes within the Concession Portfolio, please provide a response detailing the requested information for their respective Asset Classes.</p> <ol style="list-style-type: none"> <li>i. Name of Location</li> <li>ii. Size of location (# of rooms or seats)</li> <li>iii. Date of the project redevelopment</li> <li>iv. Point of Contact at Location (name, phone and email)</li> <li>v. Identify the issue that the proposed project was seeking to address</li> <li>vi. Identify the details of what the project included (# of rooms, # golf holes, size of facility, nature of renovations or improvements, etc.)</li> <li>vii. Timeline for renovations or improvements</li> <li>viii. Provide details of the process that was used to plan for the project, seek approval for the project, develop the budget for the project, manage the construction of the project, and close out the project</li> <li>ix. Identify key lessons learned from the project</li> <li>x. Identify the project budget including hard vs. soft costs and real and personal property cost breakdowns</li> <li>xi. Identify operating performance prior to and after the redevelopment. Specifically identify operating metrics relative to the asset class before and after the improvements took place for comparative purposes (i.e. hotel occupancy/ADR, food and beverage covers/average checks, etc.)</li> </ol>
	<b>D.2.</b>	<p><u>Management and Operational Experience</u>  <i>Page Limit Maximum, including text, pictures, and graphs: 20 pages</i>                      Demonstrate the Respondent's experience for each of the Asset Classes contained</p>

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<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 1) — Financial Experience Items</b>
		<p>within the Concession Portfolio by providing at least one example for each Asset Class that includes the items listed below. For each item, provide metrics of past performance and examples of successful results in increasing revenue and visitation.</p> <ul style="list-style-type: none"> <li>i. General Information <ul style="list-style-type: none"> <li>a. Name and location of operation(s)</li> <li>b. Timeframe of involvement, with dates</li> </ul> </li> <li>ii. Financial aspects of services offered <ul style="list-style-type: none"> <li>a. Gross revenues for the most recent three years of operation in which the Respondent was involved with the business</li> <li>b. Gross revenues for the two years of operation immediately prior to the Respondent being involved in the business</li> <li>c. Service volume for the most recent three years of operation in which the Respondent was involved with the business (e.g. annual room nights, number of guests, cover counts, etc.)</li> <li>d. Service volume for the two years of operations immediately prior to Respondent being involved in the business</li> </ul> </li> <li>iii. Types of facilities (e.g. number of structures, number of lodging rooms, restaurant seats, golf holes, marina slips, sales floor square footages), nature of the Respondent’s involvement (contract, management agreement, lease, etc.)</li> <li>iv. Current status of business (e.g., owned and operated by Respondent, sold, open but no longer operated by Respondent, closed, etc.)</li> <li>v. Operating season and hours</li> <li>vi. Number of year-round employees</li> <li>vii. Number of seasonal employees</li> <li>viii. Operational performance results for the Asset Class identified. Specifically, identify what metrics were when the Respondent took over the contract and what the metrics are as of the closing of the most recent year of operation <ul style="list-style-type: none"> <li>a. Lodging <ul style="list-style-type: none"> <li>1. Type of lodging accommodation and number of rooms</li> <li>2. Average daily rate</li> <li>3. Annual occupancy during most recent completed year/season</li> </ul> </li> <li>b. Cabins <ul style="list-style-type: none"> <li>1. Type of cabins (1, 2, 3-bedrooms, etc.)</li> <li>2. Number of cabins</li> <li>3. Average daily rate</li> <li>4. Annual occupancy during most recent completed year/season</li> </ul> </li> <li>c. Golf <ul style="list-style-type: none"> <li>1. Annual number of rounds</li> <li>2. Average green fee per round</li> <li>3. Breakdown of types of rounds (regular daily fee, senior daily fee, tournaments, etc.)</li> </ul> </li> <li>d. Food and Beverage <ul style="list-style-type: none"> <li>1. Dayparts served (breakfast, lunch, dinner)</li> </ul> </li> </ul> </li> </ul>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 1) — Financial Experience Items</b>
		<ul style="list-style-type: none"> <li>2. Type of food service (i.e., convenience, limited service, full service)</li> <li>3. Number of seats</li> <li>4. Average check</li> <li>5. Annual number of covers by meal period during most recent completed year/season</li> <li>6. Average turns/meal period</li> <li>e. Retail Sales <ul style="list-style-type: none"> <li>1. Average annual number of transactions during most recent completed year/season</li> <li>2. Square feet of retail space</li> <li>3. Average sales per square foot</li> <li>4. Average check/transaction</li> </ul> </li> <li>f. Marina <ul style="list-style-type: none"> <li>1. Number of slips</li> <li>2. Types of slips (covered, open, dry storage, etc.)</li> <li>3. Average revenue per foot per slip</li> <li>4. Average yearly fuel, concession, food &amp; beverage sales</li> </ul> </li> </ul>
<b>SCORE (for all Section D (Part 1) – Financial Experience Items above):</b> (maximum possible score = 10)		
<i>State Use – Evaluator Identification:</i>		

**COST PROPOSAL & EVALUATION GUIDE**

**SECTION D (Part 2): CONCESSION PORTFOLIO FINANCIALS.** The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Evaluation Team members will independently evaluate and assign one score for all responses to Section D (Part 2) — Concession Portfolio Financial Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 2) — Concession Portfolio Financial Items</b>
	<b>D.3.</b>	<p><u>Cost Proposal Financial Data</u></p> <p>TDEC desires to understand the Respondent’s financial commitment and supporting assumptions for the commitment. Using the materials and directions provided, complete the attached Excel workbooks (Attachments I through T), as applicable, as directed below for the proposed Concession Portfolio. The financial data must coincide with the Respondent’s answers in response to Attachment C, including but not limited to the maintenance plan (described in Item C.1), personal property plan (described in Item C.5), and Concession Portfolio development plan (described in Item C.7).</p> <p>A complete response shall include:</p> <p>1) Attachment I - Consolidated Concession Portfolio Workbook The Respondent shall provide the consolidation of all financial information for all park locations and Asset Classes included in the Concession Portfolio.</p> <p>2) Attachments J through T – Park Specific Workbooks The Respondent shall provide a park specific workbook for each park and Asset Class included in the Concession Portfolio.</p> <p>3) Provide a clear and concise narrative explanation of the method(s) used to prepare the estimates and the assumptions on which your projections are based. Information must be sufficiently detailed to provide a full understanding of how the estimates were determined.</p> <p><i>Note the following regarding the workbooks:</i> <i>The workbooks are provided in the format that the State desires. Do not add or eliminate rows on the Excel spreadsheets provided. Columns should not be deleted and formulas must not be changed; however, columns may be added to reflect the number of years in the Contract term, if necessary. For the purpose of the pro forma financial statements utilize the calendar year as the fiscal year.</i></p>
	<b>D.4.</b>	<p><u>Verification of Financial Capability to Fulfill Cost Proposal</u></p> <p>The State needs to understand the ability of the Respondent to obtain the required funds for start-up costs, investments, and continued operations under this RFQ by providing credible, compelling documentation, particularly evidence from independent sources, such as bank statements, audited or reviewed financial statements, and signed loan commitments letters. Fully explain the financial arrangements you propose, including identifying the relationship between the available fund sources and the commitment amount that has been identified. Use the following guidance in</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 2) — Concession Portfolio Financial Items</b>
		<p>providing fund source information.</p> <ul style="list-style-type: none"> <li>i. If funds are to be obtained from operating cash flows or cash on hand, document each source and the availability of these funds by referring to your previous and current audited financial statements.</li> <li>ii. If funds are to be obtained from lending institutions (banks, savings and loans, etc.), provide financing agreements, letters of commitment or similar supporting documents. The support documents must, at a minimum, include the amount of the loan, the interest rate, the term of the loan and any encumbrances on the loan.</li> <li>iii. If funds are to be obtained from an individual, or a business entity whose primary fund source is an individual, provide the following as appropriate with respect to such individual: <ul style="list-style-type: none"> <li>a. Signed funding commitment from the individual.</li> <li>b. Current personal financial statement certified as to accuracy and completeness by the individual submitting it.</li> <li>c. Current bank/financial institution documents that verify the account and account balance for the primary fund source.</li> <li>d. Documentation of any assets to be sold.</li> <li>e. Any other assurances or documents that demonstrate that the funds are available.</li> </ul> </li> <li>iv. If funds are to be obtained from working capital liabilities (such as advance deposits), provide estimates and a rationale for each estimate. The information provided should be of sufficient detail to allow a reviewer to fully understand how the estimates were determined.</li> <li>v. If funds are to be obtained from another source (e.g., a business entity whose primary fund source is not an individual), provide the following as appropriate: <ul style="list-style-type: none"> <li>a. Signed funding commitment from the fund source stating the approximate amount of the loan, the term, and any proposed encumbrances which may be necessary.</li> <li>b. Current audited financial statements for the most recent year. <ul style="list-style-type: none"> <li>•If audited financial statements are not available, explain in detail why they are not available and submit reviewed financial statements.</li> <li>•If reviewed financial statements are not available, explain in detail why they are not available and submit business financial statements that are certified as to accuracy and completeness by an authorized officer of the entity.</li> </ul> </li> </ul> </li> </ul>
	<b>D.5.</b>	<p><u>Compensation and Benefits</u></p> <ul style="list-style-type: none"> <li>(i) Provide proposed hourly compensation ranges by departmental positions <ul style="list-style-type: none"> <li>a. Housekeepers</li> <li>b. Housekeeping Supervisors</li> <li>c. Cooks</li> <li>d. Supervisory Cooks</li> <li>e. Maintenance Staff</li> <li>f. Servers</li> <li>g. Front Desk Staff</li> <li>h. Retail Staff</li> <li>i. Golf Course Grounds-keeping Staff</li> <li>j. Marina staff</li> <li>k. Other departmental positions based on Respondent's proposed organizational structure</li> </ul> </li> <li>(ii) Outline what benefits will accrue to hourly staff and at what hourly threshold benefits will be offered.</li> </ul>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section D (Part 2) — Concession Portfolio Financial Items</b>
		(iii) Identify the elements of the various benefit packages.
	<b>D.6.</b>	Provide an estimated annual marketing budget broken down between labor and other expenses. The estimated annual marketing budget must coincide with the marketing plan described by Respondent in response to Item C.8.
	<b>D.7.</b>	<p>Investment Proposal</p> <p>TDEC desires to understand the proposed investment offered by the Respondent and required from the State and the intended timing of the proposed investments.</p> <p>(a) An investment proposal shall be completed utilizing the attached Investment Proposal worksheet.</p> <p>(b) Provide a timeline for the proposed Respondent and State investments, including general description of intended use of the funds for each timeline milestone. This response should take into account the transition plan (described in Item C.15) and Concession Portfolio development plan (described in Item C.7).</p>
<b>SCORE (for all Section D (Part 2) – Concession Portfolio Financial Items above):</b> (maximum possible score = 35)		
<i>State Use – Evaluator Identification:</i>		

**COST PROPOSAL & EVALUATION GUIDE**

**Section D (Part 2) Continued**

**Response to Question D.7. - Investment Proposal Worksheet**

The shaded green cells denote a requirement of the Respondent to respond and fill in the cells accordingly. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

<b>Real Property Investment (\$) State Responsibility</b>	
<b>Real Property Investment (\$) Concessionaire Responsibility</b>	
<b>Personal Property Investment (\$) Concessionaire Responsibility</b>	

This Investment Proposal must be signed, in the space below, by an individual empowered to bind the entity responding to the provisions of this RFQ and any contract awarded pursuant thereto. If said individual is not responding in an individual capacity or is the *President or Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the entity responding to this RFQ.

<b>RESPONDENT SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	
<b>RESPONDENT LEGAL ENTITY NAME:</b>	

## **COST PROPOSAL & EVALUATION GUIDE**

### **Section D (Part 3) - Revenue Proposal Worksheet**

The shaded green cells denote a requirement of the Respondent to respond and fill in the cells accordingly. All other cells will be completed by the State for scoring purposes.  
All percentage amounts shall be limited to two (2) places to the right of the decimal point.

	<b>Proposed Percentage</b>	<b>Evaluation Factor</b>	<b>Evaluation Cost (Percentage x Factor)</b>
<b>Maintenance Reserve (%)</b>		2	
<b>Personal Property Reserve (%)</b>		2	
<b>Concession Fee (%)</b>		1	

**Evaluation Cost Amount** (sum of evaluation costs above):

The RFQ Coordinator will use this sum and the formula below to calculate the score for this part of the Cost Proposal.

$\frac{\text{Evaluation cost amount being evaluated}}{\text{Highest evaluation cost amount from all Responses}}$	<b>x 5 Points</b> (maximum possible score)	<b>= SCORE:</b>	
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State Use – RFQ Coordinator Signature, Printed Name & Date:

This Revenue Proposal must be signed, in the space below, by an individual empowered to bind the entity responding to the provisions of this RFQ and any contract awarded pursuant thereto. If said individual is not responding in an individual capacity or is the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the entity responding to this RFQ.

<b>RESPONDENT SIGNATURE:</b>	
<b>PRINTED NAME &amp; TITLE:</b>	
<b>DATE:</b>	
<b>RESPONDENT LEGAL ENTITY NAME:</b>	

---

**STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

---

**The Respondent does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Respondent will comply with all of the provisions and requirements of the RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions, except changes as set forth in the response (refer to RFQ Attachment B, Item B#16), set out in the RFQ Attachment G, *pro forma* Contract.
4. The Respondent awarded the Contract resulting from this RFQ shall accept the State Purchasing Card ("P-Card") as a form of payment at no cost to the State.
5. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
6. The Respondent will comply, as applicable, with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
7. To the best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
8. The Response submitted to the RFQ was independently prepared, without collusion, and under penalty of perjury.
9. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Respondent in connection with the request or any potential resulting contract.
10. The Response submitted in response to the RFQ shall remain valid for at least 365 days subsequent to the date of the Response opening and thereafter in accordance with any contract pursuant to the RFQ.

**By signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.**

**SIGNATURE & DATE:**

---

**PRINTED NAME & TITLE:**

---

**LEGAL ENTITY NAME:**

---

**FEIN or SSN:**

---

**REFERENCE QUESTIONNAIRE**

**The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.**

The Respondent will be responsible for obtaining completed reference questionnaires as required (refer to RFQ Attachment B, General Qualifications & Experience Items, Item B.14.), and for enclosing the sealed reference envelopes within the Respondent's Technical Proposal.

**RFQ # 32701-02523 REFERENCE QUESTIONNAIRE**

**RESPONDENT NAME:** **RESPONDENT NAME** (completed by respondent before reference is requested)

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The "respondent name" specified above, intends to submit a response to the State of Tennessee in response to the Request for Qualifications (RFQ) indicated. As a part of such response, the respondent must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
  - sign and date the completed questionnaire;
  - seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
  - sign in ink across the sealed portion of the envelope; and
  - return the sealed envelope containing the completed questionnaire directly to the respondent.
- 

**(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire?**

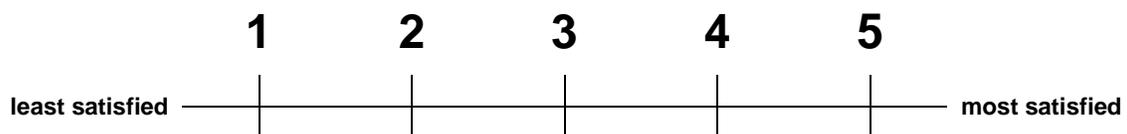
**(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

**(3) What services do/did the vendor provide to your company or organization?**

**(4) What is the level of your overall satisfaction with the vendor of the services described above?**

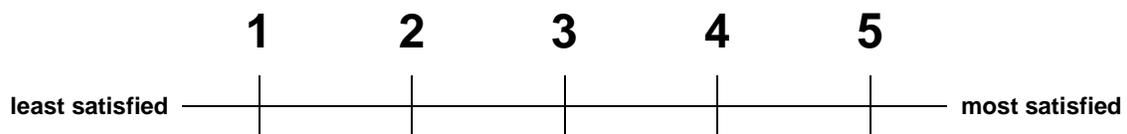
*Please respond by circling the appropriate number on the scale below.*



If you circled 3 or less above, what could the vendor have done to improve that rating?

- (5) If the services that the vendor provided to your company or organization are completed, were the services completed in compliance with the terms of the contract, on time, and within budget? If not, please explain.
  
- (6) If the vendor is still providing services to your company or organization, are these services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.
  
- (7) How satisfied are you with the vendor's ability to perform based on your expectations and according to the contractual arrangements?
  
- (8) In what areas of service delivery do/did the vendor excel?
  
- (9) In what areas of service delivery do/did the vendor fall short?
  
- (10) What is the level of your satisfaction with the vendor's project management structures, processes, and personnel?

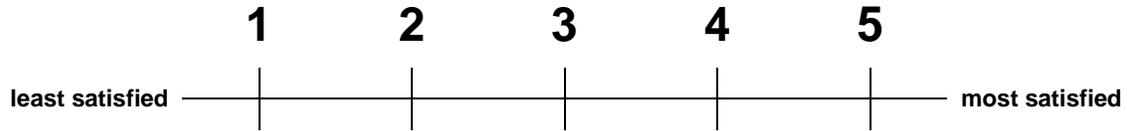
*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

- (11) Considering the staff assigned by the vendor to deliver the services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

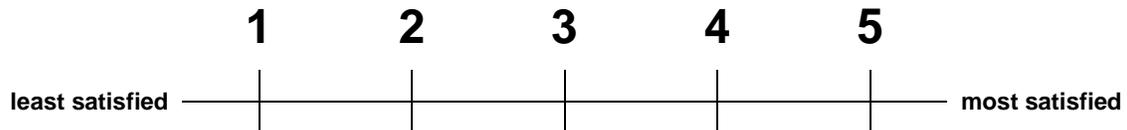
*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

- (12) Would you contract again with the vendor for the same or similar services?

*Please respond by circling the appropriate number on the scale below.*



What, if any, comments do you have regarding the score selected above?

**REFERENCE SIGNATURE:**

(by the individual completing this request for reference information)

\_\_\_\_\_  
(must be the same as the signature across the envelope seal)

**DATE:**

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE**  
**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION**  
**AND**  
**CONCESSIONAIRE NAME**

This Contract, by and between the State of Tennessee, Tennessee Department Environment and Conservation, hereinafter referred to as the "State" and *Concessionaire Legal Entity Name*, hereinafter referred to as the "Concessionaire," is for the provision of a concession agreement for the operation of certain hospitality services at Tennessee State Parks, as further defined in the "SCOPE OF SERVICES."

The Concessionaire is *a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company*.

Concessionaire Place of Incorporation or Organization: *Location*

**A. SCOPE OF SERVICES:**

A.1. Definitions. The following terms used in this Contract have the meanings provided below:

- a. "Alliance Director" means the Concessionaire's representative that functions as the primary point of contact in connection with matters relating to this Contract.
- b. "Annual Construction Plan" means the annual plan developed by the Concessionaire detailing the implementation of the proposed real property improvements identified in the Portfolio Development Plan and the Maintenance Reserve Plan for the upcoming Contract Year.
- c. "Annual Marketing Plan" means the annual plan developed by the Concessionaire detailing the proposed advertising, marketing, and promotions for the upcoming Contract Year.
- d. "Component Renewal/Replacement" means the planned replacement of a component at the end of its useful life for components that have a life cycle of greater than seven years. This expense shall be eligible for use of the Maintenance Reserve.
- e. "Concession Fee" means the percentage of Gross Receipts paid to the State by the Concessionaire.
- f. "Concession Inspection Report" means the report generated by the State following inspection of the Facilities.
- g. "Concessionaire" means the individual or entity identified in the Preamble as a party to this Contract. *(May also be referred to as the Procuring Party in the Contract cover page.)*
- h. "Concessionaire Employees" means all employees employed by the Concessionaire.
- i. "Concessionaire Financial Statement" means a report that includes a consolidated balance sheet, income statement and cash flow statement as well as park specific income statements for the previous calendar year. This financial statement shall be audited by Certified Public Accountant licensed in the State of Tennessee.
- j. "Concessionaire Investment" means the funds contributed by the Concessionaire to be invested in personal property purchases and/or real property improvements.
- k. "Contract" means this written agreement between the Concessionaire and the State and amendments thereto, including any additional documents incorporated by reference as specified in Section E.6.

- l. "Contract Director" means the State's representative that functions as the primary point of contact in connection with matters relating to this Contract.
- m. "Contract Management Team" means the State's representatives responsible for oversight and guidance to the Concessionaire for the Services required under this Contract. This team will be led by the Contract Director.
- n. "Contract Year" means each one-year period of time that commences on July 1, extending twelve (12) months therefrom, and continuing from each anniversary throughout the Term of the Contract. The Contract Year shall coincide with the State's fiscal year. The initial Contract Year will be a partial year that commences on the Effective Date and extends until the year-end on June 30.
- o. "Cyclic Maintenance" means planned work that reoccurs on a periodic cycle of greater than one year to sustain the useful life of an asset. This Maintenance Expense shall be eligible for use of the Maintenance Reserve.
- p. "Deferred Maintenance" means postponed maintenance items identified by the State during the Startup Transition Period.
- q. "Effective Date" means the date this Contract commences as specified in Section B.1.
- r. "Excluded Facilities" means any operations and/or facilities located outside of the Land Area Assignment that are excluded from the Scope of Services of this Contract.
- s. "Facilities" means those certain Tennessee State Parks hospitality facilities located at the Park locations, and as described in more detail in Schedule A.
- t. "Gross Receipts" means any and all revenue generated on or within the scope of this Contract. It shall be further defined to include the total amount of sales minus sales tax received pursuant to the rights granted in this Contract including the gross revenue of any sub-contractors.
- u. "Impacted Employees" means any current, qualified employees of State who submit an employment application to the Concessionaire and have been providing services to State similar to the Services required of Concessionaire under this Contract.
- v. "Land Area Assignment" means the land area in which the Concessionaire operates and maintains the Facilities and Services under this Contract.
- w. "Maintenance Expense" means Operational and Preventative Maintenance activities that maintain and extend the manufacturers' useful life of an item. These are expensed on the income statement on an annual basis. These expenses do not qualify for use of the Maintenance Reserve.
- x. "Maintenance Reserve" means the reserve fund established to be used for maintenance of the Facilities.
- y. "Maintenance Reserve Plan" means the multiyear plan developed by the Concessionaire outlining proposed Maintenance Reserve expenditures.
- z. "Mark" means any Tennessee State Parks trademarks or logos used by the Concessionaire.

- aa. "Operating and Maintenance Plan" means the document that outlines the specific requirements for the Services provided by the Concessionaire at the Facilities, as may be amended from time to time.
- bb. "Operational Maintenance" means maintenance that occurs on a daily and routine basis including, but not limited to, janitorial and custodial services, operations of utilities and grounds keeping. Activities related to Operational Maintenance do not qualify for the Maintenance Reserve.
- cc. "Park" means refers to those Tennessee State Parks, both individually and collectively, containing hospitality operations managed by the Concessionaire pursuant to this Contract.
- dd. "Personal Property Inventory" means the inventory of all personal property owned by the State and utilized by the Concessionaire for operation of the Facilities pursuant to this Contract.
- ee. "Personal Property Officer" means the person at each Park location designated by the Concessionaire to be responsible for maintaining accurate inventory records, complying with State personal property management policies, and coordinating with the State for disposal of surplus State-owned personal property.
- ff. "Personal Property Plan" means the multiyear plan developed by the Concessionaire outlining proposed Personal Property Reserve expenditures.
- gg. "Personal Property Reserve" means the reserve fund established to be used for the purchase or repair of personal property pursuant to this Contract.
- hh. "Preventative Maintenance" means planned, scheduled, periodic maintenance that is performed weekly, monthly, semi-annually or annually on assets, typically including but not limited to, inspection, lubrication and adjustments. These expenses do not qualify for the Maintenance Reserve.
- ii. "Portfolio Development Plan" means the overall plan prepared by the Concessionaire outlining the redevelopment plans for each Park, including all proposed construction projects, curing of Deferred Maintenance, and an overview of the replacement of personal property proposed for the Term of the Contract.
- jj. "Services" means the services performed by the Concessionaire pursuant to this Contract.
- kk. "Startup Transition Period" means the period during which time the Concessionaire will use commercially reasonable efforts to implement its startup operations and the transition of Services from the State to the Concessionaire.
- ll. "State" means the State of Tennessee, Tennessee Department of Environment and Conservation.
- mm. "Term" means the period time in which this Contract is effective, beginning on the Effective Date through the termination, as specified in Sections B.1.
- nn. "Transition Date" means the date on which the Concessionaire assumes full operational duties for the Facilities.
- oo. "Transition Management Team" means the Concessionaire's representatives responsible for implementation of the Concessionaire's start-up operations and transition of Services to the Concessionaire. This team will be led by the Alliance Director.

- pp. "Transitioned Employees" means Impacted Employees accepting employment with Concessionaire and successfully completing Concessionaire's pre-hire screening process.
- qq. "Windup Transition Period" means the period during which time the Concessionaire will use commercially reasonable efforts to implement its windup operations and the transition of Services from the Concessionaire to the State, a successor concessionaire, or other entity designated by the State.

A.2. Description of Facilities. The State, for and in consideration of the agreements hereinafter stated, grants to Concessionaire, for the purposes stated herein, the right, privilege, and duty to develop, equip, operate, and maintain those certain Tennessee State Parks hospitality Facilities located within the Land Area Assignment at the Park locations as specified in **Exhibit A**.

- a. New Facilities. Concessionaire may propose the development of new facilities in addition to those Facilities specified in **Exhibit A**. All proposed new facilities must be included in the Portfolio Development Plan and shall be subject to the same terms and conditions that apply to existing Facilities.
- b. Excluded Facilities. Park locations may have additional operations and/or facilities located outside of the Land Area Assignment that are excluded from the Scope of Services of this Contract. Excluded Facilities may be managed by the State or a third party operator authorized by the State, as determined by the sole discretion of the State. In the event the State elects to enter into or renew an agreement with a third party operator for the Excluded Facilities, the State shall inform the Concessionaire of the opportunity to submit an offer as part of the procurement process. Any agreement for operation of the Excluded Facilities will be a separate contract subject to its own terms and conditions.

A.3. Use of Facilities and Services Provided. The Facilities shall be used by the Concessionaire for the provision of continued operation, maintenance, and access for the use and enjoyment of the general public to the satisfaction of the State based on the guidance provided in the Operating and Maintenance Plan. Development and operation of the Facilities shall be conducted in accordance with all applicable federal, state, and local government statutes, laws, and regulations.

Concessionaire shall staff, operate, manage, and provide all goods, services, and Facilities offered in a manner comparable to other high quality concessions providing similar facilities and services. State reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety and/or to ensure that the public receives, in the State's view, fair pricing, proper service, and appropriate quality.

A.4. Operating and Maintenance Plan. The specific requirements for the Services provided by the Concessionaire at the Facilities are detailed in a draft Operating and Maintenance Plan attached to this Contract as **Exhibit B**.

The Operating and Maintenance Plan shall be finalized during the Startup Transition Period and approved in writing by both parties. The Operating and Maintenance Plan may be modified from time to time, as mutually agreed upon by the parties in writing. At a minimum, the Concessionaire and State shall review the Operating and Maintenance Plan on an annual basis, modify as needed, and reaffirm their approval in writing.

A.5. Contract Management Team. The State shall designate a Contract Director to be the primary point of contact and oversight for the Concessionaire for all requirements under Contract. The Contract Director will lead a Contract Management Team staffed by the State to provide on-going oversight and guidance to the Concessionaire for the Services required under this Contract.

- a. Meetings. At the State's request, upon a reasonable notice, and not more frequently than once each month, the Concessionaire agrees to meet with the State and/or its representative for the purposes of reviewing operational and financial performance, Facilities operation, maintenance and development as well as other operational issues that may be of relevance to both parties. To the greatest degree possible, the Concessionaire will have in attendance, the entirety of the Concessionaire's executive team and all local department managers to better facilitate a productive meeting. Meetings shall take place at one of the Concessionaire's Park locations.
- b. Inspections. Monthly, the Contract Management Team, or its designee, may perform an inspection of all aspects of the Facilities, wherein the inspection team will generate a Concession Inspection Report. The Concessionaire must correct any deficiencies noted within thirty (30) calendar days of the Concession Inspection Report date. If the deficiency is not correctable within this period of time, a plan of action for correcting the deficiency must be submitted to the Contract Management Team within ten (10) calendar days of the report date. If the deficiency poses a health or safety hazard, a shorter correction period may be imposed. If the deficiency poses a severe threat to the public, closure of the entire Facility may result.

On a semi-annual basis, the Contract Management Team, or its designee, and the Concessionaire shall perform an inspection of all aspects of the Concessionaire's operation. This will include a review of Facilities, operations and contract compliance.

State further reserves the right of ingress and egress without notice to inspect the Facilities for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Facilities; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the Park. State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State's entry in the Facilities as provided herein, except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

- A.6. Facilities Maintenance. The Concessionaire shall maintain the Facilities (interior and exterior areas, as applicable) in a clean, sanitary and safe manner and in good order and repair to the satisfaction of the State based upon guidance provided in the Operating and Maintenance Plan.
  - a. Maintenance Reserve. A percentage of the Gross Receipts shall be allocated to be used as a Maintenance Reserve, as more specifically described in Section C.2. On an annual basis, the Concessionaire shall provide to the State a multiyear Maintenance Reserve Plan that covers all Facilities for a period of three (3) years. This plan will outline the proposed activities planned for Cyclic Maintenance and Component Renewal/Replacement along with the estimated budgeted expenditures. Prior to the start of each Contract Year, Concessionaire shall meet with the Contract Management Team to review the Maintenance Reserve Plan and obtain State written approval for the plan.
  - b. Deferred Maintenance. A report of real property needs identified as "deferred maintenance" shall be generated by the State and approved by both parties in writing during the Startup Transition Period. The report will include estimated expenditures required to cure the deferred maintenance. The proposed timeline for curing the deferred maintenance shall be incorporated into the Portfolio Development Plan.
- A.7. Personal Property. The State shall authorize the Concessionaire to utilize personal property owned by the State and located at the Facilities, including without limitation removable equipment, fixtures, furniture and goods, necessary for operation of the Facilities pursuant to this Contract. The Concessionaire shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Concessionaire's use under this Contract.

- a. Personal Property Officer. Concessionaire shall designate a Personal Property Officer at each Park location. The Personal Property Officer will be assigned the responsibility of maintaining accurate inventory records, complying with State personal property management policies, and coordinating with the State for disposal of surplus State-owned personal property.
- b. Personal Property Inventory. An inventory of all personal property initially furnished by State shall be generated by the State and approved by both parties in writing during the Startup Transition Period. As items are withdrawn or additional items added, the Personal Property Inventory shall be updated by the Concessionaire and approved by the State in writing. As items are added, the Personal Property Inventory shall include acquisition date, estimated useful life, and item cost.

Upon termination of this Contract, all property listed in the Personal Property Inventory shall be returned to the State in a well maintained condition, subject to reasonable wear and tear. Should the personal property be destroyed, lost, or stolen, the Concessionaire shall be responsible to the State for the fair market value of the property at the time of loss.

- c. Personal Property Reserve. A percentage of the Gross Receipts shall be allocated to be used as a Personal Property Reserve, as more specifically described in Section C.3. The Concessionaire shall prepare a multiyear Personal Property Plan per Park for the purchase of furniture, fixtures, and equipment for a period of three (3) years. This plan shall include the remaining life expectancy of items currently in inventory, specific timeline for purchases in the upcoming Contract Year, and a budget detailing purchase costs. Prior to the start of each Contract Year, Concessionaire shall meet with the Contract Management Team to review the Personal Property Plan and obtain State written approval for the plan. Funding for the Personal Property Plan shall include the Personal Property Reserve and the Concessionaire Investment, as more specifically described in Section C.7.
- d. Title to Personal Property. Title to all personal property purchased with Personal Property Reserve funds and Concessionaire Investment funds shall vest in the State and shall be listed on the Personal Property Inventory. Concessionaire shall not attach any personal property to any real property or structure without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property or structure will be considered a real property improvement and shall become property of State at the time this Contract is terminated.
- e. Surplus of State-Owned Personal Property. Personal property that is no longer required by the Concessionaire for operation of the Facilities shall be returned to the State for disposition. At least 120 days prior to the desired disposition date, Concessionaire must provide the State with a list of items to be removed from the Facilities. The State will utilize its best efforts to remove the surplus personal property from the Facilities in a timely manner with minimum disruption of business operations.

- A.8. Facility Improvements. Upon written permission by State, Concessionaire may improve the Facilities by expansion, remodeling or rehabilitation of the present facilities or demolition and rebuilding of facilities in compliance with the Portfolio Development Plan prepared by the Concessionaire and accepted by the State. The Portfolio Development Plan shall outline the redevelopment plans for each Park proposed for the Term of the Contract including all construction projects, curing of Deferred Maintenance, and an overview of the replacement of personal property. The Portfolio Development Plan shall include a timeline for completion of each project, and a budget including proposed expenditures and source of funding for each project.

The Portfolio Development Plan shall be initially provided in writing during the Startup Transition Period and may be modified from time to time, as mutually agreed upon by the parties in writing.

At a minimum, the Concessionaire and State shall review the Portfolio Development Plan on an annual basis, modify as needed, and reaffirm their approval in writing.

- a. Required Approvals. Any improvements of real property or demolition of any building or structure on real property shall require approval of the plans for such work by the State Building Commission as required by T.C.A. § 4-15-101, *et seq.*, in addition to all requirements required in this Contract.
- b. Annual Construction Plan. Concessionaire shall be responsible for developing an Annual Construction Plan detailing the implementation of the proposed facility improvements identified in the Portfolio Development Plan for the upcoming Contract Year. Prior to the start of each Contract Year, Concessionaire shall meet with the Contract Management Team to review the Annual Construction Plan and obtain State written approval for the plan. The Annual Construction Plan shall also be submitted to the State Building Commission for approval, including any required supporting documentation related to the proposed facility improvements.
- c. Use of Consultants: Concessionaire shall employ licensed contractor(s) in the completion of all required construction work. Additionally, Concessionaire shall utilize professional contractors and consultants, including architects(s) and engineer(s), acting in accordance with the latest American Institute of Architects' standards of practice to develop comprehensive construction plans, including schematic design plans, design development plans, and working drawings, and to conduct independent inspections and monitoring of all construction. Concessionaire agrees to select contractors and consultants who are licensed to practice in the State of Tennessee and are acceptable to the State. However, in no event shall State be deemed to have control of or be responsible for Concessionaire's final hiring decisions, the day-to-day management of the project, or administration of contracts with contractors or consultants. State must be provided a copy of all contracts between Concessionaire and any contractor or consultant within ten (10) days of execution by Concessionaire.
- d. Performance Bond. For each construction project with a budget in excess of one hundred thousand dollars (\$100,000.00), Concessionaire shall provide to the State a performance bond guaranteeing full and faithful performance of all construction project undertakings and obligations, specifically faithful performance of the work in accordance with the plans, specifications, and any associated documents. The performance shall be in an amount equal to one hundred percent (100%) of the maximum liability budgeted for the specific construction project. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. Concessionaire shall submit the bond to the State prior to the commencement of any construction project. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The performance bond required under this Contract shall not be released or reduced without the State's prior written approval.
- e. Payment Bond. For each construction project with a budget in excess of one hundred thousand dollars (\$100,000.00), Concessionaire shall provide to the State a payment bond guaranteeing that the Concessionaire's subcontractors, laborers, and material suppliers will be paid for performance associated with the specific construction project and that Concessionaire shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond shall be in an amount equal to one hundred percent (100%) of the maximum liability budgeted for the specific construction project. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. Concessionaire shall submit the bond to the State prior to the commencement of any construction project. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The

payment bond required under this Contract shall not be released or reduced without the State's prior written approval.

- f. Permits. Unless mutually agreed upon otherwise, at its sole cost and expense, including mitigation costs, Concessionaire shall obtain all permits, licenses, and other approvals necessary for the construction and completion of approved facility maintenance or improvement projects. The State shall cooperate with Concessionaire with respect to securing said permits including the execution of documents required by a governmental authority to be initiated by State. Concessionaire shall reimburse State for all costs incurred by State on behalf of Concessionaire in association with acquisition of said permits. State will produce records of such costs for review by Concessionaire on a monthly basis.
- g. State Approval/Acceptance of Plans and Work. Concessionaire shall allocate a minimum of thirty (30) days in construction schedules for each required review by State. Concessionaire shall reimburse State for all third party professional services, including but not limited to architectural, engineering, construction monitoring, inspection, plan review and approval. State will produce records of such costs for review by Concessionaire on a monthly basis. The State's approval of the work and plans shall be for the purpose of determining that such work conforms to the scope and budget previously approved by the State Building Commission, the scope and quality of the State's policies and standards, and in no way shall relieve Concessionaire or its contractors or subcontractors of the responsibility to perform and complete the work (1) in accordance with generally accepted industry standards, (2) faithfully adhering to the approved plans, specifications, and drawings, and (3) in accordance with all applicable codes, laws, regulations, or other requirements, including but not limited to, the standards contained in this Contract. Permission to start construction will not be granted until all required permits and approvals have been secured in writing. Prior to the commencement of construction, Concessionaire shall provide to State for its approval a timeline listing target milestones for the facility improvement project.
- h. Completion of Improvements. Upon State approval in writing of working drawings and receipt of all required permits, licenses, and other approvals, Concessionaire shall commence construction, and prosecute the same to completion with all due diligence and within the timeline accepted by the State, unless otherwise agreed to in writing. Such time shall be extended as reasonably necessary in the event of delays caused by fire, earthquakes, wars, strikes, adverse weather, or other calamity beyond Concessionaire's control. Concessionaire shall hold monthly or more frequent status meetings throughout the period of construction, which shall include representatives of the general contractor, appropriate subcontractors, a representative of Concessionaire, and a representative of the State, as determined by the Contract Management Team.

Upon completion of construction, Concessionaire shall (1) file a Notice of Completion of Construction in the county within which work was executed, and identify State as recipient of recorded document; (2) secure Certificate of Occupancy if required by State Fire Marshal; (3) provide State with a complete set of "as-built" plans and updated specifications for all improvements in a format acceptable to State; (4) submit evidence that all improvements are clear of any mechanic's liens; (5) have work certified by a licensed architect or engineer to be in compliance with working drawings as approved by State and all applicable building or other laws, codes, or regulations; and (6) submit an account of the cost for all facility improvements.

When Concessionaire has obtained lien releases, filed the Notice of Completion, received Certificate of Occupancy as required, and received written acceptance from the State, subject to all other provisions of this Contract, Concessionaire shall have the right to commence business operations within the improved facility.



- A.13. Merchandise. The State shall review the nature, type and quality of merchandise to be sold or provided by the Concessionaire within the Facilities on an annual basis, at a minimum. The State reserves the right, at any time, to prohibit or modify the sale or rental of any item for public safety and/or to ensure that the public receives, in the State's view, fair pricing and appropriate quality, and/or to ensure compliance with Tennessee State Park branding and logo standards.
- A.14. Rates. The Concessionaire's product and service pricing shall be based on the premise that the public will be charged no more for merchandise and services at the Facilities than for the same or similar merchandise and services at other recreational facilities in the area. Details on requirements for rates review and management shall be outlined in the Operating and Maintenance Plan.
- A.15. Concessionaire Employees.
- a. Generally. Contractor shall perform the Services through able, qualified and trained subcontractors, vendors, and Concessionaire Employees including, without limitation, supervisory and support personnel, in sufficient number to properly render the Services in the manner required by this Contract. Except as provided in Section A.15.b, Concessionaire shall have the exclusive right to hire, direct, discipline, compensate and terminate Concessionaire Employees, and shall exercise complete and exclusive control over the conduct of Concessionaire Employees. Concessionaire shall fully comply with all applicable laws relating to workers compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer-employee matters with respect to Concessionaire Employees.
  - b. Transition of Employees to Concessionaire. During the Startup Transition Period and from time to time during the Term, Concessionaire shall interview and consider for employment any current, qualified employees of State who submit an employment application and have been providing services to State similar to the Services required of Concessionaire under this Contract (each, an "Impacted Employee"). Concessionaire shall extend an offer to those Impacted Employees determined by Concessionaire to be qualified, suitable and required for Concessionaire's performance of the Services based upon the Scope of Services, Concessionaire's labor requirements, and conditioned upon successful completion of Concessionaire's pre-hire screening process, all as determined by Concessionaire in its sole and absolute discretion. Concessionaire shall have no obligation to hire any Impacted Employee.
    - (1) In the event that Concessionaire shall elect to extend an offer of employment to an Impacted Employee, such offer shall be made in writing. The Impacted Employees accepting employment with Concessionaire and successfully completing Concessionaire's pre-hire screening process are referred to herein collectively as the "Transitioned Employees."
    - (2) State shall furnish, and shall cause its employees and agents to furnish, at its own expense, all information and cooperation including, without limitation, the cooperation of State's legal, operations, maintenance, construction, accounting, tax, benefits, environmental, finance and insurance departments reasonably required by Concessionaire with respect to its hiring of the Transitioned Employees. State shall allow Concessionaire reasonable access to the Transitioned Employees in order to allow for an orderly transition of their employment to Concessionaire.
  - c. Concessionaire Employee Matters. Concessionaire shall pay all salaries, wage, payroll and other taxes, fees, workers compensation insurance and other charges or insurance levied or required by any federal, state, or local law, statute, regulation or ordinance relating to the employment of Concessionaire Employees. State shall not

be deemed a party to any agreement which is now or hereafter may be in effect with respect to Concessionaire Employees or participate in the making of any decisions as to compensation, hours or other working conditions of Concessionaire Employees. If requested by State, Concessionaire shall replace any Concessionaire Employee who State reasonably believes may be engaged in improper conduct, is in the reasonable opinion of State unqualified to perform assigned duties, or has violated any material, established, generally applicable procedure regarding State security or confidentiality, provided that Concessionaire shall not be required to take any action that violates legal requirements. State may, in its sole discretion, deny entry and access to the Facilities to any Concessionaire Employee, subcontractor, or vendor.

- d. Alliance Director; Transition Management Team. Concessionaire shall employ a manager of the Services (the "Alliance Director") who shall function as Concessionaire's primary representative in connection with matters relating to this Contract. During the Startup Transition Period, Concessionaire will staff an alliance transition management team (the "Transition Management Team"), which will be led by the Alliance Director, to supervise such transition and provide oversight on all aspects of the relationship. The Transition Management Team is intended to provide for a seamless transfer of management responsibilities to the dedicated Concessionaire Employees who will provide the on-going Services under this Contract.

- A.16. Alcohol Sales. The sale of alcoholic beverages may be permitted at the food and beverages operations included in the Facilities. The sale of alcoholic beverages shall be done in a compliance with all applicable federal, state, and local laws.
- A.17. Startup Transition Period. The State and the Concessionaire in good faith will fully cooperate with one another to achieve an orderly transition of operations from the State to the Concessionaire in order to avoid disruption of services to visitors and minimize transition expenses. The Startup Transition Period shall commence on the Effective Date and extend for a period of four (4) months until the Transition Date of December 1, 2016. During the Startup Transition Period, the State shall continue to assume full operational duties associated with the Facilities while the parties complete the transition tasks listed below. On the Transition Date the Concessionaire shall assume full operational duties of the Facilities.

During the Startup Transition Period the parties agree to complete the following:

- a. Within fifteen (15) days following the Effective Date, the State shall designate a Contract Director and Contract Management Team.
- b. Within fifteen (15) days following the Effective Date, the State shall designate an Alliance Director and Transition Management Team.
- c. Within fifteen (15) days following the Effective Date, the State shall provide a list of deferred maintenance items to be cured by the Concessionaire, which shall be reviewed and approved in writing by mutual consent of the parties prior to the Transition Date.
- d. Within fifteen (15) days following the Effective Date, the State shall provide the Personal Property Inventory, which shall be reviewed and approved in writing by mutual consent of the parties prior to the Transition Date.
- e. Within fifteen (15) days following the Effective Date, the State shall provide the Concessionaire with a current staffing pattern report to determine potentially Impacted Employees. At least sixty (60) days prior to the Transition Date, the State and the Concessionaire shall mutually approve in writing a plan to address the transition of employees, which may be subject to the approval of the Tennessee Department of Human Resources.

- f. Within thirty (30) days following the Effective Date, the State and Concessionaire shall finalize and approve in writing the Operating and Maintenance Plan.
  - g. Within thirty (30) days following the Effective Date, the State and Concessionaire shall finalize and approve in writing the Portfolio Development Plan.
  - h. Within sixty (60) days following the Effective Date, the Concessionaire shall submit to the State the Annual Construction Plan, Maintenance Reserve Plan, Personal Property Plan, and Annual Marketing Plan for the first Contract Year, which shall be reviewed and approved in writing by the State prior to the Transition Date.
  - i. Prior to the Transition Date, the Concessionaire shall designate a Personal Property Officer at each Park location.
  - j. Prior to the Transition Date, the State may grant the Concessionaire, or its designees, access to the Facilities for the purpose of completing the transition tasks listed above or for other reasonable actions necessary for the orderly transition of operations from the State to the Concessionaire.
  - k. The deadlines specified for completion of the transition tasks listed above may be revised by mutual written agreement of the parties.
- A.18. Windup Transition Period. The State and the Concessionaire in good faith will fully cooperate with one another to achieve an orderly transition of operations from the Concessionaire to the State, or its designee, in order to avoid disruption of services to visitors and minimize transition expenses. The Windup Transition Period shall commence at such time as the State may notify the Concessionaire that it will not continue its operations upon the termination or expiration of this Contract. During the Windup Transition Period, the Concessionaire shall undertake the following tasks:
- a. The Concessionaire shall continue to provide visitor services and otherwise comply with the terms of the Contract in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously with a view to maintaining customer satisfaction.
  - b. The Concessionaire shall continue to accept all future bookings for any required or authorized services that involve advance reservations. The Concessionaire shall not divert any bookings to other facilities managed or owned by the Concessionaire or any affiliate of the Concessionaire.
  - c. Within ten (10) days of commencement of the Windup Transition Period, the Concessionaire shall provide the State, or its designee, a copy of the booking/reservation logs as of the date of notification. The Concessionaire shall thereafter update such log every thirty (30) days until the termination of the Contract. The log shall include at a minimum, name of visitor, address, contact information, dates of usage, rates quoted, amount of advanced deposit and confirmation number.
  - d. In the event the State designates a successor concessionaire, the Concessionaire shall designate one of the Concessionaire's key personnel as the point of contact (POC) for communications between the Concessionaire and the successor concessionaire. This POC shall timely respond to State and successor concessionaire meeting and information requests. The POC shall agree to meet monthly to discuss transition issues for up to six months prior to contract termination, or shall agree to another schedule deemed to be reasonable based upon an accelerated termination period. In the final

month of the contract, the POC shall agree to meet weekly. Meetings can be conducted via conference call or other practical means

- e. The Concessionaire shall agree to review a transition plan developed by the State. Following a review by the Concessionaire, both State and Concessionaire shall agree to work to follow the transition plan as closely as reasonably possible.
  - f. The Concessionaire shall provide the State or any successor concessionaire with access to all Facilities, including "back-of-house areas". The Concessionaire shall also provide the State or any successor concessionaire copies of the keys to all Facilities.
  - g. The Concessionaire shall provide the State and any successor concessionaire full access to all relevant information and materials pertaining to the operation of the Facilities. This information shall include but not be limited to complete information on the following: utilities, including gas and electric; fuel systems and fuel storage tanks; telephone service; water service; security systems, and life safety. The Concessionaire shall provide all such information within thirty (30) days after receipt of notification of the commencement of the Windup Transition Period and update the information periodically (but not less frequently than thirty (30) days) until termination of the Contract.
- A.19. Marketing. Concessionaire shall be responsible for developing an Annual Marketing Plan detailing the proposed advertising, marketing, and promotions for the upcoming Contract Year, subject to State approval. Prior to the start of each Contract Year, Concessionaire shall meet with the Contract Management Team to review the marketing plan and obtain State written approval for the plan. The Annual Marketing Plan may be modified from time to time, as mutually agreed upon by the parties in writing.

**B. TERM OF CONTRACT:**

- B.1. Contract Term. This Contract shall be effective on August 1, 2016 ("Effective Date"), and extend through November 30, 2036 ("Term"). The State shall have no obligation for goods or services provided by the Concessionaire prior to the Effective Date.
- B.2. Term Extension. The State may extend the Term an additional period of time, not to exceed three hundred sixty-five (365) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of twenty-one (21) years and four (4) months.
- B.3. Contract Year. For accounting and management purposes, the term "Contract Year" shall coincide with the State's fiscal year, which runs from July 1 to June 30. The initial Contract Year will be a partial year that commences on the Effective Date and extends until the year-end on June 30.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Concession Fee. Concessionaire shall pay, without offset, deduction, prior notice, or demand, as a "Concession Fee" \_\_\_\_\_ percent (\_\_\_\_\_% ) of Gross Receipts to the State beginning on the fifteenth (15th) day of the month following the Transition Date, and on or before the fifteenth (15th) day of each month thereafter. The Concession Fee shall be based upon the prior month's adjusted Gross Receipts.

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific proposed percentage for the Concession Fee. The specific proposed percentage will be included in the Cost Proposal.***

Concurrent with each monthly payment, Concessionaire shall furnish to the State a verified statement of the Facilities' Gross Receipts for the preceding month. Such statement shall specify the current period and cumulative total of Gross Receipts for the Facilities through the end of the preceding month for the then current Contract Year. The State shall have the right to review and confirm that the adjusted Gross Receipts calculation is accurate.

- C.2. Maintenance Reserve. Concessionaire shall pay, without offset, deduction, prior notice, or demand, as a "Maintenance Reserve" \_\_\_\_\_ percent (\_\_\_\_\_% ) of Gross Receipts to the State, beginning on the fifteenth (15th) day of the month following the Transition Date, and on or before the fifteenth (15th) day of each month thereafter.

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific proposed percentage for the Maintenance Reserve. The specific proposed percentage will be included in the Cost Proposal.***

The State shall deposit the Maintenance Reserve funds in the State Park Fund account, as established by T.C.A. §11-3-302. Interest accruing on Maintenance Reserve funds shall be added to the balance of the Maintenance Reserve. The State shall maintain a separate account ledger tracking all debits, credit, and interest accrued for funds allocated to the Maintenance Reserve. A copy of said ledger, cumulative through the end of the preceding month, shall be delivered to the Concessionaire beginning on the tenth (10<sup>th</sup>) day of the second month following the Transition Date, and on the tenth (10<sup>th</sup>) day of each month thereafter. Upon termination of this Contract, if all Maintenance Reserve funds are not expended, any unused portion shall remain the property of the State.

- a. Allowable Costs. Maintenance Reserve funds shall be used for maintenance projects identified in the Maintenance Reserve Plan and approved in writing by the State, or for emergencies as approved by the State. The Maintenance Reserve Plan shall outline the estimated budget expenditures required for Cyclic Maintenance and Component Renewal/Replacements for a period of three (3) years. In the event the Maintenance Reserve balance is not sufficient to finance needed repairs, the State shall inform Concessionaire which projects will be deferred. The Maintenance Reserve shall not be used to fund Preventative and Operational Maintenance expenses.

In the event of an emergency, the Concessionaire shall make immediate necessary repairs to avoid potential harm to human health or significant damage to the Facilities. As soon as reasonably possible, the Concessionaire shall contact the Contract Director, or designated emergency point of contact, to obtain verbal authorization for the required repairs and estimated expenses. Within seventy-two (72) hours of initiating the emergency repair, the Concessionaire shall submit a written request for approval to the Contract Director. The Contract Director will be responsible for obtaining all state approvals, including the approval of the State Building Commission, if necessary.

- b. Payment of Maintenance Reserve Funds. Concessionaire shall be reimbursed for actual, reasonable, and necessary costs for projects completed as part of the Maintenance Reserve Plan. In no event shall the maximum liability of the State exceed the approved budget in the Maintenance Reserve Plan. The Concessionaire shall submit invoices prior to any reimbursement of allowable costs.

The Concessionaire shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Jeni Lind Brinkman, TDEC Grants and Contracts Administration  
Tennessee Department of Environment and Conservation  
312 Rosa L. Parks Ave., Tennessee Tower – 10<sup>th</sup> Floor  
Nashville, Tennessee 37243  
[JeniLind.Brinkman@tn.gov](mailto:JeniLind.Brinkman@tn.gov)  
Telephone # 615-741-9031  
FAX # 615-259-4862

Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by Concessionaire).
- (2) Invoice Date.
- (3) Contract Number (assigned by the State).
- (4) State Agency: Tennessee Department of Environment and Conservation, State Park Fund – Concession Maintenance Reserve
- (5) Concessionaire Name.
- (6) Concessionaire Tennessee Edison Registration ID Number (Referenced on the Cover Page of this Contract).
- (7) Concessionaire Remittance Address.
- (8) Concessionaire Contact for Invoice Questions (name, phone, or fax).
- (9) Itemization of Reimbursements Requested, Including Actual Cost Per Item and Reference to Maintenance Reserve Plan Budget Line-Item.
- (10) Total Amount Due for the Invoice.

The State shall remit payment to Concessionaire within forty-five (45) days of receipt of Invoice by the State. If State determines funds have been expended by Concessionaire for purposes other than those approved in writing by State, Concessionaire shall reimburse the State, including any accrued interest, within thirty (30) days written notification by State.

- C.3. Personal Property Reserve. Concessionaire shall pay, without offset, deduction, prior notice, or demand, as a “Personal Property Reserve” \_\_\_\_\_ percent (\_\_\_\_\_% ) of Gross Receipts to the State, beginning on the fifteenth (15th) day of the month following the Transition Date, and on or before the fifteenth (15th) day of each month thereafter.

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific proposed percentage for the Personal Property Reserve. The specific proposed percentage will be included in the Cost Proposal.***

The State shall deposit the Personal Property Reserve funds in the State Park Fund account, as established by T.C.A. § 11-3-302. Interest accruing on Personal Property Reserve funds shall be added to the balance of the Personal Property Reserve. The State shall maintain a separate account ledger tracking all debits, credit, and interest accrued for funds allocated to the Personal Property Reserve. A copy of said ledger, cumulative through the end of the preceding month, shall be delivered to the Concessionaire beginning on the tenth (10th) day of the second month following the Transition Date, and on the tenth (10th) day of each month thereafter. Upon termination of this Contract, if all Personal Property Reserve funds are not expended, any unused portion shall remain the property of the State.

- a. Allowable Costs. Personal Property Reserve funds shall be used for the purchase of furniture, fixtures, and equipment identified in the Personal Property Plan and approved in writing by the State. The Personal Property Plan shall outline the estimated budget expenditures required for purchase of furniture, fixtures, and equipment for a period of three (3) years. In the event the Personal Property Reserve balance is not sufficient to finance needed purchases, the State shall inform Concessionaire which purchases will be deferred.

- b. Payment of Personal Property Reserve Funds. Concessionaire shall be reimbursed for actual, reasonable, and necessary costs based upon the Personal Property Plan. In no event shall the maximum liability of the State exceed the approved budget in the Personal Property Plan. Upon completion of the approved purchases, the Concessionaire shall submit invoices prior to any reimbursement of allowable costs.

The Concessionaire shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

Jeni Lind Brinkman, TDEC Grants and Contracts Administration  
Tennessee Department of Environment and Conservation  
312 Rosa L. Parks Ave., Tennessee Tower – 10<sup>th</sup> Floor  
Nashville, Tennessee 37243  
[JeniLind.Brinkman@tn.gov](mailto:JeniLind.Brinkman@tn.gov)  
Telephone # 615-741-9031  
FAX # 615-259-4862

Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice/Reference Number (assigned by Concessionaire).
- (2) Invoice Date.
- (3) Contract Number (assigned by the State).
- (4) State Agency: Tennessee Department of Environment and Conservation, State Park Fund – Concession Personal Property Reserve
- (5) Concessionaire Name.
- (6) Concessionaire Tennessee Edison Registration ID Number (Referenced on the Cover Page of this Contract).
- (7) Concessionaire Remittance Address.
- (8) Concessionaire Contact for Invoice Questions (name, phone, or fax).
- (9) Itemization of Reimbursements Requested, Including Actual Cost Per Item and Reference to Personal Property Plan Budget Line-Item.
- (10) Total Amount Due for the Invoice.

The State shall remit payment to Concessionaire within forty-five (45) days of receipt of Invoice by the State. If State determines funds have been expended by Concessionaire for purposes other than those approved in writing by State, Concessionaire shall reimburse the State, including any accrued interest, within thirty (30) days written notification by State.

- C.4. Annual Concessionaire Financial Statement. Concessionaire shall submit to State, no later than September 30<sup>th</sup> of each year during the term of this Contract, the Concessionaire Financial Statement for the previous Contract Year audited by Certified Public Accountant licensed in the State of Tennessee. Such statement shall contain an appropriate certification that all Gross Receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to the State. Within forty-five (45) days of the expiration or termination of this Contract, Concessionaire shall submit to the State a balance sheet and income statement for the period of operation not previously reported prepared in the manner stated above. If any additional payment is due to the State pursuant to Sections C1, C2, or C3 of this Contract, said payment shall be submitted with the financial report.
- C.5. Overdue or Insufficient Payments. An interest charge of ten percent (10%) of the amount owed to the State will be assessed on any overdue amounts not received within ten (10) consecutive days after such sums are due. Acceptance of any late charge shall not constitute a waiver of the Concessionaire's default with respect to the overdue amount, or prevent the State from exercising any other rights available to the State.

If Concessionaire makes any payments to the State with a check, draft, or money order and these payments are returned due to insufficient funds, the State shall have the right, upon written notice, to require that all subsequent payments to the State be in cash or by cashier's check, certified check, or wire transfer.

- C.6. State Capital Grant. The State shall provide up to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in the form of a State Capital Grant to be used solely for the implementation of the real property projects identified in the Portfolio Development Plan, as may be amended. The Concessionaire shall assist the State with completing all necessary applications and reviews required for issuance of the State Capital Grant. The State Capital Grant will have terms and conditions set by the State Building Commission, which may include terms and conditions above and beyond those contained in this Contract.

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific financial investment required from the State. The specific proposed dollar amount will be included in the Cost Proposal.***

- C.7. Concessionaire Personal Property Investment. The Concessionaire shall provide \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to be used for solely for the implementation of the personal property projects identified in the Portfolio Development Plan.

*Insert additional information on the contribution and usage of these funds as part of RFQ process.*

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific financial investment offered by the Concessionaire. The specific proposed dollar amount will be included in the Cost Proposal.***

- C.8. Concessionaire Real Property Investment. The Concessionaire shall provide \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to be used for solely for the implementation of the real property projects identified in the Portfolio Development Plan.

*Insert additional information on the contribution and usage of these funds as part of RFQ process.*

***Note to RFQ Respondents: When preparing the redline draft of the pro forma Contract as required by Technical Requirement Item B.16, DO NOT include the specific financial investment offered by the Concessionaire. The specific proposed dollar amount will be included in the Cost Proposal.***

## **D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.3. Termination for Convenience. The State may terminate this Contract for convenience in whole or in part without cause and for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Concessionaire at least one hundred twenty (120) days written notice before the effective termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Concessionaire for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Concessionaire. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Concessionaire of any liability to the State for any damages or claims arising under this Contract.
- D.4. Termination for Cause. If the Concessionaire fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Concessionaire materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Concessionaire shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.5. Assignment and Subcontracting. The Concessionaire shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Concessionaire shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Concessionaire's obligations under this Contract.

If such subcontracts are approved, they shall be consistent with the terms of this Contract and shall contain, at a minimum, the sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings); shall be assignable to the State at the State's option; and shall waive any claims the subcontractor may make against the State associated with the subcontractors performance under the subcontract. Notwithstanding the subcontracting of any portion of this Contract, the Concessionaire shall remain the State's primary point of contact with respect to all Services.

- D.6. Conflicts of Interest. The Concessionaire warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Concessionaire in connection with any work contemplated or performed relative to this Contract other than as required by Section A of this Contract.
- D.7. Nondiscrimination. The State and the Concessionaire hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the State or the Concessionaire on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
- D.8. Records. The Concessionaire shall maintain documentation for its transactions with the State under this Contract. The books, records, and documents of the Concessionaire, insofar as they relate to work performed or money paid under this Contract, shall be maintained for a period of five (5) full years from the final date of this Contract and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the

Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.9. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.10. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- Claims against the State of Tennessee, or its employees, or injury damages expenses or attorney's fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law (*Tennessee Code Annotated*, Sections 9-8-101 *et seq.*, 9-8-301 *et seq.*, and 9-8-401 *et seq.*). Damages recoverable against the State of Tennessee shall be expressly limited to claims paid by the Board of Claims or the Claims Commission pursuant to *Tennessee Code Annotated*, Section 9-8-301 *et seq.*
- D.11. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.12. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.13. State and Federal Compliance. The Concessionaire and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.14. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Concessionaire agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Concessionaire acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.17. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

- D. 18. HIPAA Compliance. The State and Concessionaire shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules").
- a. Concessionaire warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Concessionaire warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Concessionaire will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Concessionaire in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
  - d. The Concessionaire will indemnify the State and hold it harmless for any violation by the Concessionaire or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or email address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Jeni Lind Brinkman, TDEC Grants and Contracts Administration  
Tennessee Department of Environment and Conservation  
312 Rosa L. Parks Ave., Tennessee Tower – 10<sup>th</sup> Floor  
Nashville, Tennessee 37243  
[JeniLind.Brinkman@tn.gov](mailto:JeniLind.Brinkman@tn.gov)  
Telephone # 615-741-9031  
FAX # 615-259-4862

The Concessionaire:

*Concessionaire Contact Name & Title*

*Concessionaire Name*  
*Address*  
*Email Address*  
Telephone # *Number*  
FAX # *Number*

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3 Tennessee Department of Revenue Registration. The Concessionaire shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.4. Debarment and Suspension. The Concessionaire certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Concessionaire shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.5. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

E.6. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through g., below);
- c. any State Capital Grant(s) contract(s), including but not limited to any amendments, attachments, and exhibits thereto;
- d. any clarifications of or addenda to the Concessionaire's proposal seeking this Contract;

- e. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- f. any technical specifications provided to proposers during the procurement process to award this Contract; and,
- g. the Concessionaire's response seeking this Contract.

E.7 Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

E.8. Hold Harmless. The Concessionaire agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Concessionaire, its employees, or any person acting for or on its or their behalf relating to this Contract. The Concessionaire further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Concessionaire of its obligations under this Section to the extent that the Concessionaire can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Concessionaire, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

E.9. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at **Attachment 1**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

E.10. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.11. Concessionaire Commitment to Diversity. The Concessionaire shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Concessionaire's Response to Solicitation Number 32701-02523(**Attachment 2**) and resulting in this Contract.

The Concessionaire shall assist the State in monitoring the Concessionaire's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the required form and substance.

E.12. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Concessionaire by the State or acquired by the Concessionaire on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Concessionaire to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Concessionaire's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Concessionaire of this Contract; previously possessed by the Concessionaire without written obligations to the State to protect it; acquired by the Concessionaire without written restrictions against disclosure from a third party which, to the Concessionaire's knowledge, is free to disclose the information; independently developed by the Concessionaire without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Concessionaire to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Concessionaire due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.13. Disclosure of Personal Identity Information. The Concessionaire shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Concessionaire. Any such report shall be made by the Concessionaire within twenty-four (24) hours after the instance has come to the attention of the Concessionaire. The Concessionaire, at

the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Concessionaire shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.

- E.14. Right of Entry. The State has the right at any time to enter upon or into the Facilities for any purpose they may deem necessary for the administration of the Park.
- E.15. Condition of Facilities. The taking of possession of the Facilities and any State-owning personal property by the Concessionaire, in itself, shall constitute acknowledgment that the Facilities are in good and sufficient condition for the purposes for which Concessionaire is entering into this Contract. Concessionaire agrees to accept the Facilities and any State-owning personal property in their presently existing condition, "AS IS", and that the State shall not be obligated to make any alterations, additions, or betterments to the Facilities and any State-owning personal property except as otherwise provided for in this Contract. Concessionaire is expected to maintain Facilities and any State-owning personal property in as good a condition or better as received during the Term of this agreement.
- E.16. Taxes. Concessionaire agrees to pay all lawful taxes, assessments, or charges that at any time may be levied by the state, county, city, or any tax or assessment levying body upon any interest in or created by this Contract, or any possessory right that Concessionaire may have in or to the Facilities covered hereby, or the improvements thereon by reason of Concessionaire's use thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Concessionaire in or about the Facilities.
- E.17. Insurance. The Concessionaire shall carry adequate liability and other appropriate forms of insurance.
- a. The Concessionaire shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, fire legal liability, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
  - (4) Errors and Omission Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
  - (5) Products Liability Coverage for food service operations with a limit of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate.
  - (6) Liquor Liability Coverage with a limit of not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate if the Concessionaire will be operating Facilities that serve alcohol.

- (7) Pollution Coverage with a limit of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) aggregate if the Concessionaire will be operating Facilities that include petroleum storage tanks or storage of hazardous chemicals.
  - (8) Cyber liability Coverage with a limit of not less than \$1,000,000 per system, \$5,000,000 aggregate including private breach response and network asset protection with a limit not less than 5. The State is to be notified immediately if 25% of the required aggregate limit is encumbered and the Contractor shall be required to purchase additional coverage to meet the aggregate limit.
  - (9) Umbrella form excess liability insurance in excess of the limits provided by the commercial general liability, comprehensive automobile liability, and employer's liability insurance policies required above with limits of not less than one million dollars (\$1,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.
  - (10) The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Additional required coverage shall include, but is not limited to, Builder's Risk Coverage if the Concessionaire will be constructing or renovating real property improvements.
- b. The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and errors and omissions coverage (professional liability) insurance. All policies shall contain an endorsement for a waiver of subrogation in favor of the State.
  - c. The Concessionaire shall provide a valid Certificate of Insurance ("COI") naming the State as an additional insured and detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Concessionaire shall obtain from Concessionaire's insurance carrier(s) and will deliver to the State waivers of the subrogation rights under the respective policies. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Concessionaire loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Concessionaire shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Concessionaire to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best.

- e. The Concessionaire's policies shall stipulate that the insurance afforded the Concessionaire shall be primary and that any insurance carried by the State, its agents, officials, employees shall be excess and not contributory insurance. Insurance provided by the Concessionaire shall not limit the Concessionaire's liability assumed under any indemnification or hold harmless provisions of this Contract.
- f. Concessionaire's insurance certificate(s) shall include all subcontractors, as insureds under its policies or Concessionaire shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum insurance requirements identified above. The State reserves the right to require, at any time throughout the Term of this Contract, proof from the Concessionaire that its subcontractors have the required coverage.
- g. The deductible and any premiums are the Concessionaire's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Concessionaire agrees that the insurance requirements specified in this Section do not reduce any liability the Concessionaire has assumed under this Contract including any indemnification or hold harmless requirements.
- h. The State agrees that it shall give written notice to the Concessionaire as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Concessionaire of its obligations under this Section to the extent that the Concessionaire can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Concessionaire or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.
- i. State shall carry, at its own expense, all-risk property insurance covering the full replacement cost of the Facilities.

E.18. Casualty.

- a. In the event any portion of the Facilities are damaged by fire or other casualty, earthquake or flood or by any other cause of any kind or nature, and the damage can, in the opinion of the State Architect, be repaired within ninety (90) calendar days from the date of the casualty, then State shall repair the damage. In the event the damage cannot, in the opinion of the State Architect, be repaired within ninety (90) days from the date of the casualty, but can be repaired within one hundred eighty (180) days from the date of the casualty, the State, in its sole discretion, may elect either to terminate this Contract, as it relates to the damaged Facilities, or to repair the damage. If in the opinion of the State Architect, the damage cannot be repaired within one hundred eighty (180) days from the date of the casualty, then both the State and Concessionaire shall have the right to terminate this Contract as it relates to the damaged Facilities.
- b. Notwithstanding any language herein to the contrary, State, in its sole discretion, shall have the right to terminate this Contract if at the time of any such damage, (i) less than two (2) years remain in the Term; (ii) the cost of repairing and restoring the damage exceeds twenty-five percent (25%) of the replacement cost of the damaged Facility; or (iii) the insurance proceeds available to State to restore the damaged Facilities are not sufficient to repair and restore the damage.
- c. In the event this Contract is not terminated as provided hereunder; (i) State shall be obligated to repair the damage only to the extent of the net insurance proceeds are

available to the State for the purpose of rebuilding and restoration; and (ii) if the Facilities, or any portion thereof, shall be damaged through the negligence or willful misconduct of Concessionaire and the cost of repairing the same is not covered by State's insurance, such damage shall be repaired by State at the sole expense of Concessionaire.

- d. In the event of any termination of this Contract under this Section, this Contract shall cease and terminate as if the date of such damage were the expiration date of the term of this Contract as it relates to the damaged Facilities.

E.19. Hazardous Substances.

- a. Use of Premises. At the Facilities, Concessionaire, unless otherwise approved in writing by State, shall not:
- i. Keep, store, or sell any goods, merchandise, or materials that are in any way explosive, hazardous, or in violation of any applicable law;
  - ii. Carry-on any offensive or dangerous trade, business, or occupation;
  - iii. Use or operate any machinery or apparatus that shall injure the premises or adjacent buildings in any way; or
  - iv. Do anything other than is provided for in this Contract.
- b. Nothing in this Section shall preclude Concessionaire from bringing, keeping, or using on or about said Facilities such chemicals, materials, supplies, and equipment as is appropriate or customary in carrying-on Concessionaire's business. Concessionaire shall be liable for all damages caused by improper use of any chemicals, materials, supplies, equipment, and machinery that are considered appropriate or customary in carrying-on Concessionaire's business.
- c. Hazardous Materials. Gasoline, oil, and other materials considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.
- d. Storage of Hazardous Materials. Concessionaire shall comply with all applicable laws and best practices pertaining to the use, storage, transportation, and disposal of hazardous substances. Concessionaire shall protect, indemnify, defend, and hold harmless the State or any of its affiliates, successors, principals, employees, or agents against any liability, cost, or expense, including attorney's fees and court costs, arising from illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, by Concessionaire. Where Concessionaire is found to be in breach of this provision due to the issuance of a government order directing Concessionaire to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by Concessionaire or any person acting under Concessionaire's direct control or authority, Concessionaire shall be responsible for all cost and expense of complying with such order, including any and all expenses imposed on or incurred by the State in connection with or in response to such government order. Notwithstanding the foregoing, in the event a government order is issued naming Concessionaire, or Concessionaire incurs any liability during or after the Term of the Contract in connection with contamination that preexisted the Concessionaire's obligations and occupancy under this Contract or prior contracts, or that were not directly caused by Concessionaire, the State shall be solely responsible as between Concessionaire and the State for all expenses and efforts in connection therewith, and State shall reimburse Concessionaire for all reasonable expenses actually incurred by Concessionaire therewith.

- e. Certification. Upon termination of this Contract, when requested by State, Concessionaire shall provide certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Facilities.

E.20. Intellectual Property Rights.

- a. Indemnification and Hold Harmless. The Concessionaire agrees to indemnify and hold harmless the State of Tennessee, as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Concessionaire shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Concessionaire shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Concessionaire notice of any such claim or suit and full right and opportunity to conduct the Concessionaire's own defense thereof, however, the failure of the State to give such notice shall only relieve Concessionaire of its obligations under this Section to the extent Concessionaire can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Concessionaire, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- b. Property of the State. Any names, logos, trademarks, and/or promotional materials, including but not limited to websites, commercials, electronic or print media, developed during and/or pursuant to this Contract that will in any way associate with, identify, or implicate an affiliation with Tennessee State Parks and/or the State shall be approved by State, but, whether or not so approved, shall be deemed to have been developed pursuant to this Contract and licensed hereunder to Concessionaire for the term of this Contract only; shall belong to State upon creation; and shall continue in State's exclusive ownership upon termination of this Contract, and all goodwill and other rights in said marks shall inure to the benefit of the State as the mark owner. Further, any original works of authorship in which copyright resides, and any other proprietary rights, including without limitation trade secrets and know-how, which are developed during and/or pursuant to this Contract, shall be deemed to be assigned by Concessionaire to the State, and shall be owned by the State; shall belong to State upon creation; and shall continue in State's exclusive ownership upon termination of this Contract. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, and other work developed in the performance of this Contract. Further, Concessionaire shall deliver to the State upon request the electronic media that contain the design or other such files containing such information. Concessionaire shall provide the State with a non-exclusive license for any preexisting Trademarks owned by the Concessionaire that will be utilized for promotional materials developed pursuant to this Contract.
- c. No Encumbrances. Concessionaire warrants that it has the full right, power, and authority over and is the sole exclusive owner of all tangible and intangible property deliverable to State in connection with this Contract and that title to such materials conveyed to State shall be delivered free and clear of all claims, liens, charges, judgments, settlement, encumbrances, or security interests. Concessionaire further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret, or any other intellectual property rights of any person, entity, or organization.
- d. Written Permission to State. Concessionaire agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or intellectual property rights of third parties without first (i) obtaining State's prior written permission, and (ii) granting to or obtaining for State a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license to use, reproduce, sell, modify, publicly and privately

perform, publicly and privately display and distribute any such prior works for any purpose whatsoever.

Concessionaire agrees to execute any documents reasonably requested by State in connection with securing State's registration of patent and/or copyrights, or any other statutory protection in such work product, including an assignment of copyright, in all deliverables. Concessionaire further agrees to incorporate these provisions into all of its contracts with architects, engineers, and other consultants or contractors.

- e. Permission to Use State Trademarks. The State hereby grants Concessionaire, and Concessionaire hereby accepts non-exclusive, non-assignable permission to use certain trademarks hereinafter referred to "Mark" created and owned by the State, in accordance with the following terms and conditions:
  - i. Any use of the Mark is subject to advance review and approval by the Contract Management Team.
  - ii. One copy of any published work or product using the Mark must be provided to State.
  - iii. Concessionaire shall not modify or alter the Mark in any way without prior written approval from State.
  - iv. A record of each authorized Concessionaire-use of the Mark shall be maintained by the Contract Management Team.
  - v. State reserves right to terminate Concessionaire's permission to use the Mark due to unauthorized use of the Mark, whereupon all rights granted herein shall revert immediately to State.

E.21. Default by Concessionaire.

- a. Defaults. The occurrence of any one of the following shall constitute a default and breach of this Contract by the Concessionaire:
  - i. Failure to Make Required Payments: Any failure of Concessionaire to make timely payments of any other monetary sums required to be paid hereunder where such failure continues for a period of ten (10) consecutive days after such sums are due.
  - ii. Absence from Facilities: Any absence by Concessionaire or its agents and employees from the Facilities located within a given Park for five (5) consecutive days or longer, that has not been approved by the State in writing. Absence from the Facilities located within a single Park as described herein may be treated as an event of default for all Facilities and Park locations.
  - iii. Nuisance: Should Concessionaire create or allow to be created a nuisance on the Facilities, State may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Facilities without notice to Concessionaire. Concessionaire shall immediately vacate the Facilities and remove all personal property within thirty (30) days after State's declaration of default.
  - iv. Failure to Observe Other Provisions. Any failure by Concessionaire to observe or perform another provision of this Contract where such failure continues for twenty (20) consecutive days after written notice thereof by State to Concessionaire. However, if the nature of Concessionaire's default is such that it cannot reasonably

be cured within the twenty (20) day period, Concessionaire shall not be deemed to be in default if it is determined at the sole discretion of State that Concessionaire has commenced such cure within the twenty (20) day period and thereafter continues to diligently prosecute such cure to completion to the satisfaction of State.

- v. Involuntary Assignments, Bankruptcy. State and Concessionaire agree that neither this Contract nor any interest of Concessionaire hereunder in the Facilities shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Contract; (d) the appointment of a receiver with the authority to take possession of the Facilities in any proceeding or action in which Concessionaire is a party; or (e) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a default by Concessionaire and State shall have the right to elect to take immediate possession of the Facilities, to terminate this Contract and/or invoke other appropriate remedies as set forth below, in which case this Contract shall not be treated as an asset of Concessionaire.
- b. Notices of Default. Notices of default shall specify in writing the alleged default, the applicable contract provision, and shall provide the Concessionaire the opportunity to cure the default within ten (10) days of the date of the notice of default. State may, in its sole discretion, elect to provide Concessionaire additional time to cure any default. No such notice shall be deemed a forfeiture or a termination of this Contract unless State specifically so states in the notice.
- c. State's Remedies. In the event Concessionaire fails to cure the default within the required time frame, State shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of the State at law or in equity.
  - i. Right to Cure Concessionaire's Default. At any time after the Concessionaire commits a default, State can cure the default at Concessionaire's cost. If State, if at any time by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the State shall be due from Concessionaire within five (5) days of written notice by the State. An interest charge of ten percent (10%) of the amount owed to the State will be assessed on any overdue amounts received after the five (5) day period. Acceptance of any late charge shall not constitute a waiver of the Concessionaire's default with respect to the overdue amount, or prevent the State from exercising any other rights available to the State.
  - ii. Continued Performance. At State's option, Concessionaire shall continue with its responsibilities under this Contract despite any dispute.
  - iii. Termination. The State may terminate this Contract in whole or in part or may terminate any part of the Services or Facilities covered under this Contract.
  - iv. Receiver. State shall have the right to have a receiver appointed to conduct Concessionaire's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by State to terminate this Contract.

E.22. Early Termination – Compensable Interest. It is in the intention of the Parties that no compensable interest shall be due to the Concessionaire from the State or a successor-

concessionaire at the expiration of the Term for any real or personal property acquired or improved in accordance with this Contract.

- a. Cause of Termination. Notwithstanding the foregoing, in the event of early termination of this Contract due to (i) default by the State, or (ii) termination for convenience by the State, the Concessionaire may have a compensable interest in either real or personal property acquired or improved in accordance with this Contract.

In the event of termination due to default by the Concessionaire, all claims or rights to any compensable interest in either real or personal property shall be deemed waived by the Concessionaire.

- b. Calculation of Compensable Interest. Within thirty (30) days of notice of termination of this Contract, the Concessionaire and the State shall enter into negotiations as to the value of any compensable interest due to the Concessionaire from the State or a successor-concessionaire. In the event the negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the State, the compensable interest shall be based on the market value as established by an appraisal, less the return on investment already recouped by the Concessionaire during the Term.

The appraisal process and definition of market value shall be governed by the Uniform Standards of Professional Appraisal Practice published by the Appraisal Institute for the most recent year.

The appraiser selected for the appraisal shall be approved by the State and the Concessionaire. Instructions to the appraiser for compensation valuation shall be established by the State and shared with the Concessionaire prior to engaging the appraiser. Upon receipt of the draft appraisal, the Concessionaire and the State shall have fourteen (14) days to submit their comments on the appraisal findings to the appraiser. The appraiser shall have thirty (30) days to review the draft appraisal in consideration of the comments and issue a final appraisal for the market value. The cost of the appraisal shall be split equally between the State and the Concessionaire.

If either party objects to the market value determined in the first appraisal, the objecting party may, at its own expense, obtain a second appraisal from a second appraiser approved by both the State and Concessionaire. Upon receipt of the second draft appraisal, the Concessionaire and the State shall have fourteen (14) days to submit their comments on the second appraisal findings to the appraiser. The appraiser shall have thirty (30) days to review the draft appraisal in consideration of the comments and issue a final appraisal for the market value. Market value will be the average of the both appraisals.

If the Concessionaire has a compensable interest, the Concessionaire shall convey the interest to a successor-concessionaire or other entity as designated by the State (including the State if appropriate), subject to mutually acceptable payment terms.

If the Concessionaire has no remaining compensable interest, the property shall remain the property of the State and the Concessionaire shall waive any further claims it may have related to the property.

- E.23. Printing Authorization. Concessionaire agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, et. seq., shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

IN WITNESS WHEREOF,

**CONCESSIONAIRE LEGAL ENTITY NAME:**

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**CONCESSIONAIRE SIGNATURE**

**DATE**

---

PRINTED NAME AND TITLE OF **CONCESSIONAIRE** SIGNATORY (above)

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION:

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**ROBERT J. MARTINEAU, JR., COMMISSIONER**

**DATE**

**Exhibit A**  
**Description of Facilities**

*Attachment will include information specific to the Concession Portfolio  
proposed by the Concessionaire in its Response to the RFQ.*

- List of specific facilities located at each Park
- Description/map of the Land Area Assignment for each Park location
- List of utilities – are they metered separately or will they be billed proportionally by the State

**Exhibit B**  
**DRAFT Operating and Maintenance Plan**

*See the attached document titled "Contract Exhibit B. Operating and Maintenance Plan"*

**(Fill out only by selected Contractor)**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER</b> (or Social Security number)	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind Contractor.

---

**PRINTED NAME AND TITLE OF SIGNATORY**

---

**DATE OF ATTESTATION**

**(Fill out only by selected Contractor)**

SAMPLE LETTER OF DIVERSITY COMMITMENT

**(Company Letterhead/Logo)**

**(Address)**

**(Date)**

**(Salutation),**

**(Company Name)** is committed to achieving or surpassing a goal of **(numeral)** percent spend with certified diversity business enterprise firms on State of Tennessee contract # **(Edison document #)**. Diversity businesses are defined as those that are owned by minority, women, small business and Tennessee service-disabled veterans which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of **(percentage)** participation on the **(Contract)** by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veteran) of anticipated diversity subcontractors and suppliers:  
\_\_\_\_\_
- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):  
\_\_\_\_\_ %.
- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:  
\_\_\_\_\_  
\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, Tennessee service-disabled veterans and small business.
2. Reporting quarterly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, Tennessee service-disabled veterans and small business accomplished under contract # **(Edison number)**.

**(Company Name)** is committed to working with the Go-DBE office to accomplish this goal.

Regards,

**(Company authority – signature and title)**

## Attachments H-T

*Please see attachments H-T labeled respectively:*

- H. Business Opportunity**
- I. Financial Workbook-Consolidated Concession Workbook**
- J. Financial Workbook-Cumberland Mountain**
- K. Financial Workbook-David Crockett**
- L. Financial Workbook-Fall Creek Falls**
- M. Financial Workbook-Harrison Bay**
- N. Financial Workbook-Henry Horton**
- O. Financial Workbook-Montgomery Bell**
- P. Financial Workbook-Natchez Trace**
- Q. Financial Workbook-Paris Landing**
- R. Financial Workbook-Pickwick Landing**
- S. Financial Workbook-Tims Ford**
- T. Financial Workbook-Warriors Path**