



Contract # 234567

## STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:  
Department Name: Natural Resources Agency Code: 560 Division Name: Parks and Recreation, referred to as the State Entity, and the following Contractor:

Example Concessionaire

Name

1594 W. North Temple

Address

Salt Lake City

UT

84114

City

State

Zip

### LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor  
☐ Non-Profit Corporation  
☒ For-Profit Corporation  
☐ Partnership  
☐ Government Agency

Contact Person: Manager Phone # 801-888-8888 Email: concessions@email.com  
Vendor # VC99999 Commodity Code # 90101

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: Concession services to include motorized rentals at Utah State Parks.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX# 560 234000000021, FY21, Bid# AS22-199, or other method: N/A.
4. CONTRACT PERIOD: Effective Date: April 1, 2021 Termination Date: March 31, 2031 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$revenue for costs authorized by this contract. Prompt Payment Discount (if any): N/A. Additional information regarding costs: revenue on monthly gross receipts
6. ATTACHMENT A: State of Utah Standard Terms and Conditions for ☐ Goods or ☒ Services  
ATTACHMENT B: Concession Terms and Conditions  
ATTACHMENT C: Scope of Services  
ATTACHMENT D: Concession Fees  
**Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:  
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.  
b. Utah State Procurement Code, Procurement Rules, and Contractor's response to Bid #AS22-199 dated January 1, 2021.
8. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms. Further, that Contractor is registered with the Utah Department of Commerce and is in good standing.  
The parties sign and cause this contract to be executed. This contract is not fully executed until the State of Utah Approving Authorities have signed this contract.

### CONTRACTOR

### STATE

Contractor's signature

Date

Agency's signature

Date

Type or Print Name and Title

### STATE OF UTAH APPROVING AUTHORITIES

Director, Division of Purchasing

Date

Mike Long

801-707-3515

mikelong@utah.gov

Agency Contact Person

Telephone Number

Fax Number

Email

## ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
  - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
  - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
  - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the State Entity and Contractor sign.
  - d) **"Contractor"** means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
  - e) **"Custom Deliverable"** means the Work Product that Contractor is required to deliver to the State Entity under this Contract.
  - f) **"Services"** means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including Custom Deliverable, supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
  - g) **"Proposal"** means Contractor's response to the State Entity's Solicitation.
  - h) **"Solicitation"** means the documents used by the State Entity to obtain Contractor's Proposal.
  - i) **"State Entity"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
  - j) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - k) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
  - l) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State Entity. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State Entity intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, and State Entity staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
  1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
  3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.

7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the State Entity be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.
13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
  - a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.

- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

#### 17. **RESERVED.**

- 18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

- 19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

- 20. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

- 21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

- 22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

- 23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity, the State of Utah, and anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.

- 24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

- 25. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.

- 26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing

similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

27. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.
29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.
33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:
  1. Contractor has received payment for the Custom Deliverables,
  2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
  3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential

Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the State Entity.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the State Entity a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the State Entity's and the State of Utah's internal business operation under this Contract. The State Entity and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
38. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
39. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
40. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
45. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

(Revision Date: 15 April 2021)

## ATTACHMENT B – CONCESSION STANDARD TERMS AND CONDITIONS

1. **CONCESSION AUTHORITY:** This agreement is authorized under and subject to the Utah Division of Parks and Recreation (hereinafter the “DIVISION”), Utah Administrative Code R651-601 et. seq., including but not limited to the following, by reference:

R651-608-2 Any person, defined as “an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency”, or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

R651-601-12. “Commercial Activity” means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:

- (1) sales of goods or merchandise.
- (2) rentals of equipment.
- (3) collection of entrance or admission fees.
- (4) collection of storage or use fees.
- (5) sales of services.
- (6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. “Commercial gain” means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. “Concession Contract” means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

2. **CONCESSION GRANTED:** By granting this CONTRACT, hereinafter referred to alternately as “CONCESSION CONTRACT,” the DIVISION authorizes and allows the CONTRACTOR, hereinafter referred to alternately as the “CONCESSIONAIRE,” to develop and operate a recreational concession, hereinafter referred to as “CONCESSION.” The CONCESSIONAIRE accepts, for all purposes, the CONCESSION PREMISES in its present physical condition “as is,” upon execution of the present. The CONCESSIONAIRE, at its own expense and liability, shall make all improvements necessary to perform this contract. The CONCESSIONAIRE shall operate the CONCESSION so as not to interfere with public use of the State Park or facility.
3. **CONCESSION PROPERTY:** At its own expense, the CONCESSIONAIRE shall acquire all personal property the CONCESSIONAIRE needs to operate the concession and perform this contract. The CONCESSIONAIRE shall have rights of ownership and or possession of this property. The CONCESSIONAIRE shall be responsible for the maintenance and repairs of its own property and the repairs to any DIVISION property damaged as a result of the negligence of a CONCESSIONAIRE, employee, or customer. The CONCESSIONAIRE shall maintain all of its property in a first-class manner throughout the term of this agreement. The term “first-class” shall mean free from any defects, in a safe condition, clean or otherwise maintained to the satisfaction of the DIVISION.

CONCESSIONAIRE shall identify all improvements owned or constructed by CONCESSIONAIRE within the CONCESSION PREMISES and CONCESSION SERVICE AREA. This list shall be provided to the Park Manager and reviewed at least every six months during concession conferences with the Park Manager.

4. **TAXES AND ASSESSMENTS:** The CONCESSIONAIRE shall pay all applicable taxes, fees or assessments levied against the CONCESSION PREMISES and property. The CONCESSIONAIRE shall pay all taxes on goods, merchandise, fixtures, appliances and equipment owned or used therein.
5. **EASEMENTS:** All real property rights are retained by the DIVISION. All rights herein of the CONCESSIONAIRE shall be subject to all easements or right-of-ways, water rights, or other real property interests that may exist within the State Park or within the CONCESSION PREMISES. The DIVISION may at any time create additional easements or rights-of-ways over, under, along, and across the CONCESSION PREMISES, and may do so without compensating the CONCESSIONAIRE. In exercising these rights, the DIVISION shall take reasonable steps to minimize any interference with operation of the concession.
6. **LIABILITY RELEASE:** If, in connection with the present contract or otherwise in connection with the CONCESSION PREMISES, the CONCESSIONAIRE rents, leases, or lets recreational equipment, including, but not limited to, watercraft, off highway vehicles, horses, etc., the CONCESSIONAIRE shall provide renter with a rental agreement, which renter shall agree to and sign. The rental agreement shall name the DIVISION as released of all liability renter incurs in connection with the use or operation of said equipment. Rental agreements utilized by the CONCESSIONAIRE shall receive prior written approval of the

DIVISION.

7. **PROPERTY DESTRUCTION:** If the CONCESSIONAIRE's property is damaged or destroyed, the CONCESSIONAIRE, at its own cost, shall restore or rebuild the premises as soon as possible and shall resume operation of the concession as soon as possible. The CONCESSIONAIRE shall report any damage or destruction in this connection to the DIVISION within ten (10) days with a written plan, including time schedule, for restoration and rebuilding. Any time lapse in CONCESSION services in this connection, greater than ninety (90) days, will require written permission from the DIVISION. The CONCESSIONAIRE's duty to restore and rebuild shall be excused only if the DIVISION specifically excuses it in writing, in which case the DIVISION may declare the contract terminated. Such termination shall not forgive or extinguish any other outstanding obligations or breaches.
8. **COMPLIANCE WITH RULES AND REGULATIONS:** The CONCESSIONAIRE shall abide by, and the concession shall be operated in, accordance with all Federal, State, and local laws, ordinances, and rules including but not limited to rules established by the Utah Parks Board (hereinafter the "BOARD").
9. **SAFETY:** It is the CONCESSIONAIRE'S responsibility to keep the concession area safe. The CONCESSIONAIRE shall immediately notify the DIVISION of any unsafe condition of the CONCESSION PREMISES, as well as any unsafe practices occurring thereon, and work with the DIVISION to correct that practice or condition. The CONCESSIONAIRE shall seek emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on or from the CONCESSION PREMISES and promptly report any such incident to the DIVISION. The CONCESSIONAIRE shall cooperate fully with the DIVISION and law enforcement officers in the investigation of any accidental injury or death occurring on or from the CONCESSION PREMISES, including a prompt report thereof to the DIVISION.
10. **SECURITY:** The CONCESSIONAIRE shall be responsible for all security and surveillance of CONCESSION PREMISES. The CONCESSIONAIRE may install at its own expense any legal device or equipment designed for the purpose of protecting the CONCESSION PREMISES from theft, burglary or vandalism provided that prior, written approval is obtained from the DIVISION. Any DIVISION provided security patrol shall be limited by and subject to the patrolling activities normally performed by the DIVISION. The CONCESSIONAIRE shall pay the DIVISION for its pro-rata share, based upon the number of monitored devices, of the costs of security and fire alarm off-site monitoring.
11. **INSPECTION OF PREMISES:** In its discretion the DIVISION may enter and inspect the CONCESSION PREMISES at any time, and the CONCESSIONAIRE shall cooperate in the inspection. The CONCESSIONAIRE's duties under this contract, including the duty to keep the CONCESSION PREMISES safe, shall not be lessened or affected if the DIVISION either inspects or does not inspect the premises at any time. The DIVISION assumes no responsibility or liability for inspecting or not inspecting the premises.
12. **DISPUTE RESOLUTION:** Dispute resolution, if any, shall be handled at the discretion of the DIVISION Director (hereinafter the "DIRECTOR"). The DIRECTOR will proceed according to the following.
  - a. Good Faith Negotiations:
    - (1) In the event of any dispute, claim, question, or disagreement (collectively, a "Dispute") arising from or relating to this CONCESSION or the DIVISION's and/or CONCESSIONAIRE's performance or alleged breach, then DIVISION and CONCESSIONAIRE shall use reasonable efforts to settle the Dispute within thirty (30) days of receipt of notice of such Dispute (a "Dispute Notice"). To this end, the parties shall consult and negotiate with each other in good faith and attempt to reach a just and equitable solution satisfactory to both parties. The Dispute Notice shall contain a brief description of the nature of the Dispute and shall be delivered within thirty (30) days after the party sending the Dispute Notice becomes aware of the facts giving rise to, and the existence of, a Dispute. Each party shall use commercially reasonable efforts to mitigate its damages upon becoming aware of a Dispute.
    - (2) Although the DIVISION and CONCESSIONAIRE intend to negotiate in good faith, they agree that no party can be held liable in damages or otherwise for an alleged breach of an obligation to negotiate in good faith. The parties further agree that neither the DIVISION nor CONCESSIONAIRE can be held liable for expenses incurred or opportunities foregone by the other in reliance on the party's agreement to negotiate in good faith.
  - b. Mediation:
    - (1) If the DIVISION and/or CONCESSIONAIRE are unable to resolve the dispute, claim, question, or disagreement through good faith negotiations within thirty (30) days then either party may submit the matter to mediation by providing the other party with notice of intent to mediate. The notice of intent to mediate must be delivered to the other party within ten (10) days of the completion of good faith negotiations.
    - (2) The mediation shall be conducted in accordance with Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (except for the rules requiring American Arbitration Association administration). The DIVISION and CONCESSIONAIRE shall bear equally the costs of the mediation. The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from American Arbitration Association, if they are unable to agree upon a mediator within three (3) business days of receipt of the notice of intent to mediate.



- (3) The DIVISION and CONCESSIONAIRE agree to participate in good faith in the mediation and related negotiations for a period of thirty (30) days or such additional time as they may mutually agree.
- (4) Although the DIVISION and CONCESSIONAIRE intend to mediate in good faith, they agree that no party can be held liable in damages for an alleged breach of an obligation to mediate in good faith. The DIVISION and CONCESSIONAIRE further agree that no party can be held liable for expenses incurred or opportunities foregone by the other in reliance on the party's agreement to mediate in good faith.
- (5) The DIVISION and CONCESSIONAIRE may, but are not required to, retain the American Arbitration Association to administer the mediation proceedings.
- c. Completion of, or a good faith effort to complete good faith negotiations and mediation under the previous paragraphs is a condition precedent to DIVISION's and CONCESSIONAIRE's right to initiate court proceedings involving the CONCESSION, except for an action to enforce the obligation to negotiate or mediate.
13. **WAIVER:** Any waiver by the DIVISION of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained; nor shall failure on the part of the DIVISION to require exact, full and complete compliance with any of the covenants, conditions, or terms of agreement herein contained be construed as in any manner changing the terms of this agreement or stopping the DIVISION from enforcing its full provisions thereof.
- No delay, failure, or omission of the DIVISION to re-enter the CONCESSION PREMISES or to exercise any right, power, privilege or option arising from any default nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.
- No notice to the CONCESSIONAIRE shall be required to restore or revive "time of the essence" after the waiver by the DIVISION of any default.
- No option, right, power, remedy or privilege of the DIVISION shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given the DIVISION by this agreement shall be cumulative.
14. **CONTRACT ENFORCEMENT:** It is understood that the park shall be operated in accordance with the rules including but not limited to park manager authority, established by the BOARD. Said rules and regulations are designed for the protection of the visitors and facilities of the park, and to provide for emergency conditions that from time to time may require the park, including the CONCESSION area, to close temporarily (e.g., because of weather conditions, overcrowding or other conditions requiring immediate action on the part of the park manager).
15. **PARK MANAGER AUTHORITY:** The park manager over the CONCESSION PREMISES has authority to enforce this agreement on behalf of the DIVISION and may authorize other DIVISION employees to help administer this agreement. Regardless, the park manager's authority to administer the CONCESSION CONTRACT shall not extend to verbally altering or amending the provisions of the Contract.
16. **PARK USE FEES:** Notwithstanding any other provision contained herein, the DIVISION shall have the right to collect park use fees in the amount determined by the BOARD for public use of the facilities provided at CONCESSION area. In order to avoid having the public charged unreasonably high or unduly low amounts for recreation services provided by the CONCESSIONAIRE, the DIVISION and the CONCESSIONAIRE shall coordinate fees charged or not charged by the Park to CONCESSION customers. The park manager may reduce or waive fees for this purpose. If the park manager grants a reduction or waiver, it shall be invalid unless memorialized in writing and signed by both CONCESSIONAIRE and park manager.
17. **DATA SECURITY:** CONCESSIONAIRE shall be responsible for all its own information security according to all applicable federal and state privacy and data protection laws. This includes the protection and security of credit cardholder data that CONCESSIONAIRE possesses, including the functions relating to storing, processing, and transmitting of cardholder data, in compliance with Payment Card Industry Data Security Standards (PCI-DSS).
18. **REMITTANCE OF FEES AND RENTS (IF PAYING AN ANNUAL CONCESSION AREA RENTAL FEE):** The CONCESSIONAIRE shall provide to the DIVISION a verified annual gross receipts report, showing any amount due and payable to the DIVISION. Any payment due shall be included with said report. Remittance shall be made to the DIVISION on or before October 1 of each operational year. Late payments may be subject to an interest charge of 2% monthly on the balance due the DIVISION. Payment shall be made to the order of the State of Utah Division of Parks and Recreation and delivered to the park manager in charge of the CONCESSION SERVICE AREA.
- REMITTANCE OF FEES AND RENTS (IF PAYING A PERCENTAGE OF GROSS RECEIPTS):** The CONCESSIONAIRE shall provide to the DIVISION a verified monthly gross receipts report, showing any amount due and payable to the DIVISION. Any payment due shall be included with said report. The monthly reporting period shall be the calendar month. Remittance shall be made to the DIVISION on or before the fifteenth of each month following the reporting period. Late payments may be subject to an interest charge of 2% monthly on the balance due the DIVISION. Payment shall be made to the order of the

State of Utah Division of Parks and Recreation and delivered to the park manager in charge of the CONCESSION SERVICE AREA.

The term "gross receipts" shall mean all monies, property or any other things of value received by the CONCESSIONAIRE through the operation of said CONCESSION or through compensation for branded merchandise, endorsements, or partnerships in this connection. The CONCESSIONAIRE may deduct certain types of gross receipts in calculating "adjusted gross receipts" upon which percentage fees shall be calculated and paid. Included in these deductible receipts shall be the following: sales, transient room, resort, excise, and fuel taxes, and the like, collected on behalf of and paid directly to taxing entities; refunds of expenditures, tax payments, or deposits; cash given to customers in debit and credit card transactions; proceeds of the sale of CONCESSIONAIRE's used and retired capital equipment; payments received for off-site repairs; and loans to the concessionaire. Any deduction/adjustment of this nature must be properly documented in the receipts of the CONCESSIONAIRE and on revenue reports to the Park.

19. **ACCOUNTING RECORDS:** The CONCESSIONAIRE shall maintain a method of accounting in accordance with generally accepted accounting principles and procedures, which, to the satisfaction of the DIVISION, shall correctly and accurately reflect the gross receipts and disbursements of the CONCESSIONAIRE. The method of accounting, including bank accounts established for the CONCESSION, shall be separate from the accounting system used for any other business operated by the CONCESSIONAIRE or for recording the CONCESSIONAIRE's personal financial affairs. Such method shall include the following documents:
  - a. Regular books of accounting such as general ledgers or computer accounting programs.
  - b. Journals, including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
  - c. State and Federal income tax returns and sales tax returns.
  - d. Cash register tapes (daily tapes may be separated but shall be retained so that from day to day the sales can be identified).
  - e. Any other reporting records that the DIVISION deems necessary for proper reporting of receipts.
  - f. All sales shall be recorded by means of written receipts or cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.
  - g. All documents, books and accounting records shall be open for inspection as outlined in Attachment A so that the accuracy of the above records can be confirmed. If the report of gross sales made by the CONCESSIONAIRE should be found to be less than the amount of gross sales disclosed by such audit, the CONCESSIONAIRE shall pay the delinquent amount within thirty (30) days notice of deficiency. Interest at the rate of 2% monthly may be added.
  - h. The CONCESSIONAIRE shall provide the DIVISION access to sworn or verified income and expense statements, balance sheets, or any other concession financial records as requested.
20. **CONSTRUCTION:** If any construction is to be completed, all improvements shall be in accordance with plans and specifications, which shall have been prepared by the CONCESSIONAIRE, and final plans approved by the DIRECTOR and in accordance with all applicable Federal, State, and local regulations. Such agencies shall include property stakeholders, and Federal, State, and local regulatory and service authorities, such as the county fire marshal. All construction shall be properly bonded and insured. No modification of said final plans and specifications or of said improvements, including landscaping, shall be made by the CONCESSIONAIRE without prior written approval of the DIRECTOR. In the event the development requires the construction to be completed in phases, the nature of the development and the time interval between phases shall be subject to approval by the DIRECTOR.
  - a. The CONCESSIONAIRE agrees that the STATE may have on the site at any time during the development period an inspector who shall have the right of access to the CONCESSION PREMISES and any construction work.
  - b. Permits and inspection. For projects costing less than one hundred thousand dollars (\$100,000.00), construction proposals, plans, and specifications shall be approved by the Division Construction Manager. This may require construction permits from the local city/county building authority and inspection services as required by local codes. For projects costing one hundred thousand dollars (\$100,000.00) or more, the project shall be managed by the Utah State Division of Facilities Construction and Management (DFCM), and all DFCM criteria and codes shall be followed before and during construction.
  - c. The CONCESSIONAIRE shall complete and maintain all construction and installations covered by this agreement in a good and workmanlike manner with high quality materials and shall furnish all tools, equipment, labor and materials necessary to perform and complete the same. The CONCESSIONAIRE expressly warrants that all materials and workmanship will be free from defects.
21. **REMOVAL OR SALE OF CONCESSION BUILDINGS AND STRUCTURES:** The parties agree that, at the end of the contract period, the CONCESSIONAIRE shall remove all CONCESSIONAIRE-owned buildings and structures from the

CONCESSION PREMISES, or sell any or all of the buildings or structures to the DIVISION or to the succeeding concessionaire. CONCESSIONAIRE shall have sixty (60) days after the contract termination date to remove or sell the CONCESSIONAIRE-owned buildings and structures.

CONCESSIONAIRE shall pay for all costs and expenses related to the removal of the buildings and structures, and hold the DIVISION harmless from any and all liability, including expenses for attorney's fees, which may arise from such removal. Promptly following removal of the designated buildings and structures, the CONCESSIONAIRE, at its expense, shall:

- a. Restore the affected property to a condition fully equal to that existing before the building or structure was in place, subject to the following specifications:
  - (1) CONCESSIONAIRE shall repair excavated areas to match the existing grade and materials;
  - (2) CONCESSIONAIRE shall bring in additional materials and promptly restore smooth surface contours matching the existing grade of any portion of the property that may have settled due to trenching or other construction or removal activities caused by CONCESSIONAIRE;
  - (3) CONCESSIONAIRE shall saw cut the asphalt of the property that CONCESSIONAIRE causes to be excavated if the excavated area was paved; and
  - (4) CONCESSIONAIRE shall, if backfilling, use select fill and cap it with road base to a minimum of 8-inches compacted to 96% below asphalt, with asphalt depth to be existing asphalt plus 1-inch compacted to 96%.
- b. Repair or replace any damaged signs and return them to their original location. If any fencing is removed or damaged by CONCESSIONAIRE, the CONCESSIONAIRE shall repair and replace the fence to its original location. CONCESSIONAIRE shall be responsible for all material costs and labor costs associated with repairing any damage to the property caused by CONCESSIONAIRE.

22. **LEASEHOLD SURRENDER INTEREST:** A CONCESSIONAIRE may acquire leasehold surrender interest (hereinafter "LSI") through constructing or providing capital improvements for the purpose of providing certain visitor services in connection with a qualified concession contract, on the property to which the CONCESSIONAIRE has a concession contract or leasehold interest. A capital improvement is a structure, fixture, or non-removable equipment provided by a concessionaire pursuant to the terms of a qualified concession contract and located on lands of or held by the STATE within a park area. In this connection, a capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind unless an item of personal property becomes a fixture as defined in this part.

- a. Before beginning to purchase or construct any capital improvement, the concessionaire must obtain written approval from the DIRECTOR in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the DIRECTOR may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the DIRECTOR to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)
- b. Upon substantial completion of the construction of a capital improvement in which the CONCESSIONAIRE is to obtain a leasehold surrender interest, the CONCESSIONAIRE must provide the DIRECTOR a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the DIRECTOR, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the CONCESSIONAIRE in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the DIRECTOR for inclusion in the project's construction cost.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

- c. After receiving the detailed construction report (and certification, if requested), from the CONCESSIONAIRE, the DIRECTOR will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the DIRECTOR in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the DIRECTOR will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the CONCESSIONAIRE requests arbitration of the construction cost. The DIRECTOR may at any time review a construction cost determination if the DIRECTOR has reason to believe that it was based on false, misleading or incomplete information.
- d. Leasehold surrender interest value means the amount of compensation a concessionaire is entitled to be paid for a leasehold

surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract, leasehold surrender interest value in existing capital improvements is an amount equal to:

- (1) The initial construction cost of the related capital improvement, or purchase cost if an existing structure, or Initial LSI Value;
- (2) Adjusted (increased or decreased) by the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index (hereinafter the "CPI") from the date the DIRECTOR approves the substantial completion of the construction, or purchase closing date if an existing structure, of the related capital improvement up to the date of payment of the leasehold surrender interest value, such value being the CPI-Adjusted Value; and
- (3) Said CPI-Adjusted Value is multiplied by the Remaining-Life Factor, which is the ratio between current remaining asset life and the asset life remaining at the time of Initial LSI Value, dividing the former by the latter. After the end of the asset's life, a structure, as defined herein, shall have an LSI value of zero dollars and zero cents.

e. The CONCESSIONAIRE:

- (1) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;
- (2) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and
- (3) May relinquish or waive a leasehold surrender interest.

f. A new leasehold surrender interest concession contract awarded to a new concessionaire will require the new concessionaire to pay the prior concessionaire its leasehold surrender interest value in existing capital improvements as determined by the DIRECTOR. The new concessionaire upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract for the remaining life of the asset. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessionaire was required to pay the prior concessionaire.

g. A concessionaire will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

23. **CONCESSIONAIRE STAFF:** CONCESSIONAIRE shall maintain an adequate and proper staff and shall not engage in, or permit employees to engage in, any behavior that the DIVISION deems to be detrimental to the public patronizing the Park or to any DIVISION employee. The CONCESSIONAIRE shall designate one member of the staff as the CONCESSION manager with whom the park manager may deal on a daily basis. Often the public fails to differentiate whether staff members are employees of the DIVISION or of the CONCESSIONAIRE; therefore, the CONCESSIONAIRE shall assure that the department of their staff reflects positively on park management and the mission of the DIVISION. In this connection, the employees of the CONCESSIONAIRE may attend the annual seasonal orientation meeting, notice of which shall be given by the park manager at least two weeks in advance.

24. **SIGNS:** All signs that the CONCESSIONAIRE wishes to place within the CONCESSION SERVICE AREA must be approved in advance and in writing by the DIVISION. The DIVISION may place its own signs within the CONCESSION SERVICE AREA, provided that said signs do not interfere with the reasonable business activities of the CONCESSIONAIRE.

25. **PRE- AND POST-SEASON CONFERENCES:** The CONCESSIONAIRE and DIVISION shall meet in conference prior to the beginning of each service year and at the end of each service year with the purpose of optimizing the efforts of the CONCESSIONAIRE and their staff in providing certain services to park visitors and supporting the mission of the park and the DIVISION. For the pre-season conference, the CONCESSIONAIRE shall prepare a complete list of prices to be charged by the CONCESSION for review and ultimate approval by the DIVISION before implementation.

26. **MARKETING AND MEDIA:** DIVISION and CONCESSIONAIRE will partner together regarding media coordination and the issuance of publications. Such coordination shall address but shall not be limited to the following: trade names, logos or marks, materials, websites, press releases, press outings and press conferences, logoed apparel and merchandise, and events. The DIVISION shall retain the right to reject any material inappropriate to the mission of the DIVISION.

The CONCESSIONAIRE shall have the right to use the park name and to reference materials published by the DIVISION in carrying out its marketing and media activities.

The CONCESSIONAIRE shall have the right to purchase and/or develop web domain names, names, and logos or marks in the commercial development of the CONCESSION. The CONCESSIONAIRE and the DIVISION shall work diligently to protect the said names and marks in all their forms. The CONCESSIONAIRE is authorized to make exclusive use of these names and marks for commercial purposes, i.e., logoed merchandise, 'official energy bar of...' type partnerships, etc., in conjunction with ongoing operation of approved activities as contained in the CONCESSION contract, and with written approval by the DIVISION, for development of products. Nothing in this section precludes the State of Utah from the use of the names and logos for non-commercial purposes or for the production of pins or other memorabilia for State of Utah activities.

Upon termination of the CONCESSION, domain names developed in this connection shall be available on the basis of first right of refusal for purchase by the DIVISION from the CONCESSIONAIRE for the total amount of \$1 each. Names and logos shall be available on the basis of first right of refusal for purchase by the DIVISION for their cost of development, but not more than \$1,000 each.

27. **CONCESSION PRICES:** Before charging customers for any good or service, the CONCESSIONAIRE shall obtain written approval from the Park Manager of any and all price(s) to be charged. CONCESSIONAIRE shall display all pricing prominently in the view of customers.
28. **Any conflict between Attachment B and Attachment C, hereof, shall be resolved in favor of Attachment B.**

EXAMPLE  
ONLY

# ATTACHMENT C: SCOPE OF SERVICES

## STATE PARK MOTORIZED RENTALS CONCESSION

Concessionaire shall provide concession services according to the following specifications.

### A. GENERAL

1. **CONCESSION SERVICE AREA.** The designated Concession Service Area includes the water areas and grounds of State Park and the Concession Premises as identified in Figure 1 below. Such use shall not be exclusive and shall be alongside and compatible with use by the public and Park employees.
2. **CONCESSION PREMISES.** The Concession Premises is the physical location where the Concessionaire will base its operations and includes any concession buildings and, if desired, a fuel delivery system and docks. The Concessionaire shall use any concession buildings, fuel delivery system, and docks solely to provide products and services as described herein.

Concessionaire shall identify all improvements owned or constructed by Concessionaire within the Concession Premises and Concession Service Area. This list shall be provided to the Park Manager and reviewed at least every six months during concession conferences with the Park Manager.

FIGURE 1. STATE PARK CONCESSION SERVICE AREA AND CONCESSION PREMISES

3. **LAND AND WATER CONSERVATION FUND ENCUMBERED LAND.** The Offeror must acknowledge that portions of the Concession Service Area are encumbered by restrictions set forth by the Land and Water Conservation Fund Act ("LWCFA") of 1965, as amended, P.L. 88-578; 78 Stat. 897; 36 CFR Part 59. Therefore, pursuant to federal and state regulations, concession activities and services performed under this contract shall not prevent or burden public outdoor recreation and leisure uses at those encumbered portions of State Park.
4. **PROVISIONS FOR MAINTENANCE, UTILITIES, AND SANITATION.** Concessionaire shall pay for all maintenance costs and utility costs (gas/propane, electricity, water, etc.) for concession facilities and operations.
  - a. Maintenance
    - i. Concessionaire shall maintain the assigned Concession Premises in "first-class" condition. "First-class" shall mean free from any defects, in a safe condition, clean or otherwise maintained to the satisfaction of the Division. This shall include grounds and improvements, whether provided by the Concessionaire, its contractors, agents, or assigns or

provided by the Division, and whether considered real or personal property.

b. Utilities

- i. Concessionaire waives all claims against the Division for compensation for loss or damage caused by a defect, deficiency, or impairment of any utility system on the Concession Premises. Where practical, the utilities shall be assessed by separate meters maintained by the Concessionaire. Where use of separate meters is impractical, electrical, natural gas, propane, and other energy sources, as well as sewer used by the Concessionaire shall be charged to the Concessionaire at a rate equal to that amount paid by the Division for similar utilities and apportioned based upon times of occupancy, square footage of comparable spaces, and other operational factors, at the judgment of the Division.
- ii. Any additional non-existing utility connection shall be pre-approved in writing by the Park Manager. Concessionaire must provide a utility connection proposal that includes plans and specifications "wet stamped" by a qualified licensed engineer and include a cost estimate.
- iii. Concessionaire must provide its own telephone service either by cell phone or by running a phone line to the Concession Premises, which will be separate from the Park's telephone systems. Concessionaire will provide its own data service if desired.

c. Sanitation

- i. Concessionaire shall provide all equipment and materials necessary to maintain the Concession Premises in a sanitary condition, to include trash receptacles and dumpsters. No substance constituting a fire hazard or a detriment to public health shall be permitted.
- ii. If the Concession Premises include restrooms intended for use by Park visitors, Concessionaire shall ensure adequate amounts of toilet paper, hand soap, sanitary napkins, and any other needed supplies.

5. **MINIMUM OPERATING SCHEDULE.** Concessionaire shall maintain minimum concession operation days and hours for required concession services as identified here:

Friday of Memorial Day weekend through Labor Day:

Friday through Sunday and Holidays from 9:00 a.m. to 7:00 p.m.

Monday through Thursday from 10:00 a.m. to 6:00 p.m.

Exceptions from the agreed upon days and times must be pre-approved by the

Park Manager in writing. Operating days and hours must be clearly identified and posted to the public at the Concession Premises and online. Concessionaire is welcome to be open above and beyond these hours but must be open for business the agreed upon hours at a minimum. If the Concession Service Area is closed or unavailable to the public for any reason, then Concessionaire is not required to be open and operating during the same period of time. Holidays are considered Memorial Day, Independence Day, Pioneer Day, and Labor Day.

**6. CONCESSION BUILDINGS, STRUCTURES, AND IMPROVEMENTS.**

- a. Any Concessionaire-owned buildings and structures must be constructed and maintained in a manner consistent with other park facilities, i.e. theme, coloring, etc.
- b. All required concession buildings and facilities shall be in place and operational by **May 15, 2021**.
- c. Any new construction for buildings, structures, improvements, or infrastructure such as water, electricity, or sewer, must have architectural and engineering plans “wet stamped” and approved by the Division before beginning any construction project. The Division will determine if the building needs to follow local building codes or follow Division of Facilities and Construction Management building codes. The Division will also determine if bonds are necessary for the project. Concessionaire is responsible for any costs associated with construction plans, specifications, and any fees required by the Division. Any construction project must be performed by a competent, licensed contractor.

- 7. FUEL DISPENSING SERVICES.** If desired, Concessionaire may provide fuel dispensing equipment and manage, operate, repair, and maintain a fuel dispensing system. The fuel dispensing system must meet the requirements contained herein as well as any further requirements set forth by cities, counties, and the State of Utah, and in accordance with the International Fire Code (2012) section 2310. All fuel systems shall be approved by the Division, by the State of Utah Division of Fleet Operations, and the State Fire Marshal upon initial installation. Fuel systems may be subject to annual inspections.

The Concessionaire shall:

- a. Train employees about what to do in case of fuel spills to include containing and absorbing spilled fuel on land and water. Training shall also include proper disposal of materials used to absorb fuel. Train employees on ABC fire extinguisher use and fighting a class B fire.
- b. Provide a copy of the training plan to park management prior to beginning operations each operational year.



- c. Provide either BC or ABC fire extinguishers in the size and amount needed to control a class B fire in the size and dimension of a normal boat for a boat fire or a spill equivalent to the average area of the fueling station.
  - d. Turn off and lock the fuel pumps and secure them from vandalism when unattended and at the end of each day's operation.
  - e. Visually check above ground lines, equipment, safety features, and safety equipment before each day's operation, and verify with a signed inspection report or pre-shift card.
  - f. Pump nozzles will be manually held and operated by Concessionaire staff while fueling boats.
  - g. Immediately report fuel spills greater than one gallon to the Park Manager. The Division has a responsibility to ensure all fuel spills are cleaned in accordance with NEPA and Reclamation requirements. Concessionaire is responsible for cleanup costs and associated costs for any fuel spill caused by Concessionaire staff.
  - h. Install a boat fueling procedures sign at the pump stations. This sign must be approved by the Park Manager and the State of Utah Division of Risk Management before posting.
  - i. At Concessionaire's own expense, have on site all materials and equipment sufficient to contain a fuel spill in the area of operation by surrounding the largest boat at the reservoir and the fuel dock area. Such materials and equipment must meet State fire and environmental quality standards and codes.
8. **AQUATIC INVASIVE SPECIES.** In 2008, the State of Utah Legislature made it illegal to possess or transport invasive mussels or other aquatic invasive species (AIS). Concessionaire shall ensure its watercraft meet all decontamination requirements within UCA Title 23, Chapter 27, Aquatic Invasive Species Interdiction Act. Concessionaire must support the State in its efforts to combat aquatic invasive species. Concessionaire shall designate at least one owner/operator to complete the annual online Mussel Aware Boater Program each year to ensure the Concessionaire is knowledgeable and compliant with current AIS rules. Upon completion of the online course, Concessionaire shall submit a copy of the completed course certification to the Division. Any new vessels added to Concessionaire's inventory must be inspected and certified by park staff before use to determine they are mussel free and compliant with AIS rules.

## **B. REQUIRED CONCESSION SERVICES**

The Concessionaire shall provide, operate, and maintain the required concession services as well as any related support facilities and services in accordance with this

contract to such an extent and in a manner considered satisfactory by the Division. Except for any such items that may be provided to the Concessionaire by the Division, the Concessionaire shall provide the personnel, equipment, goods, and commodities necessary for providing, operating, and maintaining the required concession services in accordance with this contract.

The Division will not contract with any other vendor to provide the listed concession services within the designated Concession Service Area throughout the term of this contract. Any services Concessionaire or the Division wish to include in the contract beyond those identified here as required concession services must be added to the contract by amendment.

**1. BOATING AND WATERSPORTS EQUIPMENT RENTALS.** All equipment and accessories rented to customers other than those listed below are subject to prior written approval by the Division.

- a. Motorboats – for a variety of watersports: Concessionaire shall provide a minimum of two (2) wake boats and two (2) pontoon boats available on site for rentals.
- a. Personal watercraft (e.g., Sea Doo, Jet Ski, Wave Runner): Concessionaire shall provide a minimum of six (6) personal watercraft available on site for rentals. All renters must view or receive a training video and/or rules brochure. The training video, rules brochures, and other rental materials must be made available in English and Spanish.
- b. Non-motorized vessels (e.g., stand up paddleboards, kayaks, canoes): Concessionaire shall provide a minimum of twenty (20) total pieces of non-motorized equipment in any combination of stand up paddleboards, kayaks, canoes, etc. available on site for rentals.
- c. Life jackets: Concessionaire shall provide enough life jackets per rented vessel to meet the maximum persons carrying capacity of each respective vessel. Each life jacket must be U.S. Coast Guard approved and available in a variety of sizes and ratings to cover varied passenger sizes and uses.
- d. Tow-behind water toys and accessories: Concessionaire shall provide tow-behind water toys and similar accessories. Supply must be ample enough to meet average demand.

If Concessionaire desires to provide docks to perform its services, Concessionaire must provide and maintain its own docks. Location and design of any docks requires written approval from the Division.

Concession staff must have a valid driver license and follow all applicable U.S. Department of Labor rules while operating any vehicles.

Concession staff shall be trained in all aspects needed to provide clear and understandable instructions to business patrons and park visitors to include general boating safety, minor maintenance, and equipment fueling.

Concessionaire shall ensure all renters view or receive a training video and/or rules brochure. Concessionaire shall provide the training video, rules brochures, and other rental materials in English and Spanish.

Concessionaire shall meet all requirements to operate a boat livery and provide proof of boat livery registration prior to the first day of business operation each year. Each concession vessel must clearly display the Concessionaire name.

Concessionaire shall retrieve its own vessels. Concessionaire shall contact law enforcement immediately upon recognizing an emergency situation and report all accidents and incidents to law enforcement staff.

Each Concessionaire vessel shall be properly and currently registered, numbered, and insured according to State laws and rules whenever placed on the waters of the State.

Concessionaire shall ensure that each vessel is in good working order and has on board all boating safety equipment required by State laws and rules each time the vessel is operated on the waters of the State. All vessels will be inspected on an annual basis by park rangers for required safety equipment before being available for rental.

Concessionaire may perform preventive maintenance of its own vessels on site. Preventive maintenance includes changing oil, changing spark plugs, applying grease, or other routine maintenance as approved by the Park Manager. Concessionaire shall not store hazardous materials within the Concession Service Area and shall follow all required standards to properly dispose of hazardous materials.

Concessionaire shall perform major maintenance and repairs at an offsite location outside of park boundaries. The Park Manager has the authority to determine whether a repair is a preventive maintenance repair or a major repair.

2. **CONCESSION STORE.** Conduct all commercial activities necessary to operate a convenience store and pro shop that includes the sale of camping supplies, fishing supplies, miscellaneous boating supplies (e.g., life jackets, ski flags, fire extinguishers, etc.), prepackaged food, and watersports-related clothing and equipment in accordance with all federal, state, and local laws and requirements. Park staff will continue to sell ice, firewood, and dry storage rentals.

## **ATTACHMENT D: CONCESSION FEES**

Concessionaire shall ensure concession fees are remitted in accordance with provisions in Attachment B: Concession Standard Terms and Conditions. Concessionaire shall submit a monthly gross receipts report and pay a Percentage of Gross Receipts Fee.

Concessionaire's concession fee is guaranteed for at least the first year of the contract. After the guarantee period, the fee may be adjusted upon mutual agreement of the parties. Any request for fee adjustments must be made at least sixty (60) days prior to the effective date. A request for fee adjustments must include sufficient documentation supporting the request. Any fee adjustment will not be effective unless identified in an amendment to this contract.

### **PERCENTAGE OF GROSS RECEIPTS**

**This percentage of gross receipts fee shall be paid for the services and functions listed in Attachment C: Scope of Services and identified as Required Concession Services. Concessionaire shall pay this fee monthly for any month when Concessionaire receives gross receipts from offering these services:**

**10% Concession Fee**