



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

March 18, 2020

ISSUED BY: Rebecca Lovin
Paralegal III
302-739-9206

SUBJECT: **AWARD NOTICE ADDENDUM #1 (effective 1/1/20)**
CONTRACT NO. NAT16005_NON-MOTORIZED WATER SPORTS
NON-MOTORIZED WATER SPORTS

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each Vendor's contract shall be valid for a three (3) year period from January 1, 2017 to December 31, 2019. Each contract may be renewed for one (1) four (4) year period and one (1) three (3) year period through negotiation between the Vendor and the Division of Parks and Recreation. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

This contract has been extended for one (1) four (4) year period through December 31, 2023. There is one (1) three (3) year period remaining.

The State reserves the right to extend this Contract on a month-to-month basis for a period of up to three (3) months after the term of the full Contract has been completed. In the event of an extended re-procurement effort and the Contract's available renewal options have been exhausted, Division of Parks and Recreation reserves the right to extend the Contract. If exercised, the extension shall be for a reasonable period of time as mutually agreed to by the Division and Vendor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new Contract.

2. VENDORS

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<p><u>Cape Henlopen</u> Verdant Adventures, LLC DBA Quest Kayak 514 E. Savannah Rd. Lewes, DE 19958 Phone: (302) 745-2925 Email: questkayak@gmail.com</p>
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3. PRICING

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<p><u>Cape Henlopen</u> Annual Contract Fee: \$7,000.00 and Percent of Gross Receipts: 6 %</p>

ADDITIONAL TERMS AND CONDITIONS

4. PAYMENT

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The annual Contract fee shall be due in two (2) installments on July 15 and September 15 during the term of this Contract. The Vendor agrees to pay the percentage of total gross receipts to the Division on or before December 31 of each year.

Any payments which become due from the Vendor to the Division and which are not paid on or before the due date shall be subject to an interest penalty of twelve (12) percent per annum until paid, computed from the due date. When a late payment is received, the Vendor shall be billed the amount of interest penalty as applicable. This provision is in no way a waiver of the Vendor's obligation to make payments when they are due.

5. AGENCY USE CONTRACT

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Pursuant to 29 Del. C. §6904(e) respectively, if no state Contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the

arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

6. STATEMENT OF NEEDS

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Vendor shall furnish all labor, personnel, equipment and supplies necessary to operate Non-Motorized Water Sport Services per the terms and conditions as described herein. The Division of Parks and Recreation is interested in procuring services with an emphasis on excellent customer service, operations/management knowledge and capabilities in providing quality Non-Motorized Water Sports services in accordance with the specifications listed herein.

7. PRODUCTS AND SERVICES

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Vendor may offer for rent or sale Non-Motorized Water Sports equipment which may include, but is not limited to, kayaks, stand-up paddle boards, paddle boats, canoes, sailboats, and any other environmentally sensitive non-motorized manually propelled watercraft. Vendor shall include, as part of their services, tours and instructional water sports programs, special activities and events and other group activities at the discretion of the Vendor and approved in writing by the Division, for which e-mail is an acceptable means for written request and approval of items to be offered for sale. Additional items may be offered for rent or sale, (e.g. sun visors, hats, water shoes / sandals, sun products, etc.), water, sodas, non-alcoholic beverages and packaged snacks, upon advanced written approval by the Division.

8. REQUIREMENTS

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A. Reporting:

The Vendor agrees to submit to: OBS_Parks@state.de.us, a mandatory usage report once a month, covering each day's operation under the Contract, **plus a tabulated annual gross receipts report and annual financial reports** for the period of operation on or before December 31 of each year. All annual gross receipt reports must be **"Reviewed"** by a certified public accountant prior to submission and proof of "Review" must be included in Vendor submission.

B. Utilities:

Utilities used in the operation area shall be solely at the Vendor's expense. The Vendor will be required to make independent arrangements with the local utility companies unless the location has sub metered functionality managed by the Park.

C. Taxes and Permits:

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Vendor at its own expense. Vendor shall obtain all necessary permits and licenses, including but not limited to, a Delaware Business License, Public Health License and other necessary permits at its own cost and expense as a result of operating the business conducted as part of the services.

D. Security:

Vendor shall be responsible for security of its equipment, software and any credit card services while contracting with the Division.

E. Inspection:

Vendor will allow free access to its designated operation space while on Park premises as needed to authorize representatives of the Division and other county, state or federal officials having jurisdiction for inspection purposes. The Vendor shall further agree that if notified in writing by the Division or its authorized representatives that any part of the contracted premises or the facilities thereof for which Vendor are responsible for services rendered are not in conformance with the Contract granted, then Vendor shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the Division and the Vendor.

F. Accounting and Reports:

Vendor shall maintain proper and complete books and records of accounts of its operation under the Contract granted. Internal control procedures implemented by the Vendor shall be adequate to ensure that all revenue is accounted for and recorded. All receipts of any nature from the operation of this Contract provided by the Vendor shall be immediately and properly recorded. Vendor shall permit the Division or its authorized representatives to examine and audit financial records relative to this Contract at any reasonable time during normal business hours, after giving the Vendor two (2) weeks' notice of the date and time of such examination and audit. Vendor shall retain these financial records for a period of five (5) years beyond the termination of this Contract, unless earlier disposal is approved by the Division in writing.

G. Operating Schedule:

Vendor agrees to operate the Non-Motorized Water Sport Service in accordance with the following schedule. The hours of operation may be changed with prior approval by the Park Management. In addition, Vendor is required to promptly contact the Park Management prior to canceling service for the day and receive permission to cancel service. The Division may, in its sole discretion, close the operation services temporarily for repairs or special events as needed, or permanently with prior notice to the Vendor.

Hours of Operation	
April through May 15th; September 11th through October 14th	
Days	Hours of Operation
Monday	Open by phone or email reservation only*
Tuesday	Open by phone or email reservation only*
Wednesday	Open by phone or email reservation only*
Thursday	Open by phone or email reservation only*
Friday	Open by phone or email reservation only*
Saturday	8AM - 4PM
Sunday	8AM - 4PM
*Availability depends upon scheduled group tours, rentals, beach parties or instructional program.	
May 16th through September 10th	
Days	Hours of Operation (including holidays)
Monday	8AM - 4PM*
Tuesday	8AM - 4PM*
Wednesday	8AM - 4PM*
Thursday	8AM - 4PM*
Friday	8AM - 4PM*
Saturday	8AM - 4PM*
Sunday	8AM - 4PM*
*Hours of operation will extend from 4 PM to sunset June 17th – September 4th.	

The Division reserves the right to revoke the Contract of the Vendor if they do not adhere to the agreed-upon schedule of operations.

H. Trash Removal and Use of Recyclable Products:

Trash receptacles are available for Vendor's operation at each Park location and for the public's use. Vendor will be responsible for depositing the trash, as a result of its operations, in a designated Park-provided dumpster at the end of each day or as-needed to ensure that the area remains pristine and inviting to park patrons and customers.

I. Emergencies:

Vendor and the Division or their designated agent(s) shall be available by phone twenty-four (24) hours a day, seven (7) days a week for emergencies during the entire term of the Contract. Information on how to contact the Vendor or their designee is to be provided as part of Vendor's proposal.

J. Parking:

Parking spaces for the Vendor and their employees will be assigned by the Park Superintendent.

K. Franchise Limitations:

Vendor shall faithfully conform to all the provisions of this RFP and any contract signed between the State and Vendor, and for as long as any Non-Motorized Water Sport Services are provided as heretofore described at each of the Delaware State Parks. Awarded Vendor shall have exclusivity for commercial Non-Motorized Watersports at Cape Henlopen State Park with exception to Division programming and events and the general public's use. No outfitters or other commercial business shall operate in these areas other than the Vendor for normal daily operations without express permission by the Division. The Division reserves the right to operate Park Programming, to include non-motorized sports, tours and interpretation programs. In addition, the Division also reserves the right to schedule events that may include non-motorized sports. For all instances, the Vendor shall be notified by the Division of all activities. If the Division authorizes limited outfitter activity in any of the sites, the Awarded Vendor shall be notified prior to activity.

L. Marketing and Promotion Plans; Signs and Advertising:

Vendor is encouraged to work with the Division of Parks and Recreation on a marketing and promotion plan for each calendar year, beginning summer season, 2017. The agreed upon marketing plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with individual state parks or facilities. Copies of the publications promoting Non-Motorized Water Sport Services at Cape Henlopen State Park location shall be made available to the Park Management for distribution.

Vendor agrees not to use signs or any other means of soliciting business without the approval of the Division and agrees not to advertise any contract between the State and Vendor in any manner or form on or about premises contracted to it, or elsewhere, or in any newspaper or otherwise, without such prior approval. Any printed advertising shall include the correct name and location of the operation (e.g. XYZ Paddle Boards at Cape Henlopen State Park).

The Division, through their authorized agents, reserves the right to prohibit the erection, display or use of signs which are not in keeping with the park area. Permission must be granted by the Division

or their authorized agents prior to the erection, display or use of signs. The Division also reserves the right to designate the type, size, wording, color and number of signs requested by the Vendor.

Any signs authorized by the Division for specific events shall become the property of the Division, if not removed by the Vendor after reasonable notice from and at the direction of the Division.

It is mutually agreed by vendor and the Division that no permanent or temporary advertising, signage, or trademark visibility for Vendor's Non-Motorized Water Sport program and any tour or instructional information, equipment rental or for sale products will be displayed or permitted anywhere in the designated Park without prior written approval from the Division, except that it is agreed that the Vendor shall be permitted to include its trademark and brand names on its equipment (e.g. kayaks, canoes, visors, clothing or other vendor-owned products, etc.).

Vendor may offer educational programs or activities without charge to state park visitors for promotional purposes, with the Division's prior approval, and the cost of these free services to park visitors shall be included in vendor's annual financial statement as non-revenue generating services.

M. Payment Credit Card Industry (PCI) Requirements:

The Vendor agrees that it is their responsibility to become PCI compliant and maintain compliance. For more information related to PCI Security Standards, the following link is provided: https://www.pcisecuritystandards.org/security_standards/index.php.

N. Quality and Pricing:

Vendor warrants that the Non-Motorized Water Sport services, including any instructional, certified or educational programs offered by it to the public, shall be of the highest quality and consistent with quality specifications as provided by the Vendor pursuant to this section.

Vendor shall have the right and privilege to charge prices and rates as are reasonable and fair. All price changes shall be subject to the prior written approval of the Division.

Vendor shall submit a price list to the Division each season, before the beginning of the operation, with a schedule of products and services to be offered and the prices to be charged for each product or service. Vendor agrees to offer only such products and services and any retail items for rent or sale at such prices as have been approved by the Division. In approving rates, primary consideration will be given to the prices charged for similar classes of products and services furnished outside the areas administered by the Division under similar conditions.

If, in the sole opinion of the Division, any products or services offered by the Vendor are inconsistent with the image or reputation of the Division or the State of Delaware, or are otherwise deemed unsuitable for sale on the contracted premises, the Division shall request the Vendor cease selling such products or services and the Vendor shall cease doing so immediately upon receipt of such written request from the Division.

O. Vendor Responsibilities:

Vendor will be granted the right to provide Non-Motorized Water Sport Services at Cape Henlopen State Park as specified herein. Vendor responsibilities shall include the following:

- a. Vendor Tour Guides and Instructors must be eighteen (18) years of age or older.

- b. Vendor Tour Guides and Instructors shall be ACA – American Canoe Association (or equivalent) certified during the term of the Contract.
- c. Vendor and its employees shall be certified in adult and child CPR as well as first aid.
- d. Vendor and its employees shall be knowledgeable in signaling devices, such as required by the Coast Guard including a whistle, flag, smoke, and/or day time flares.
- e. Vendor shall carry either a VHF marine radio or cell phone when providing the Non-Motorized Sport Services.
- f. Vendor shall carry a tow rope equipped with a quick release mechanism.
- g. Vendor will be required to furnish all necessary Non-Motorized Water Sports equipment.
- h. All of the Vendor-owned equipment shall be serviceable and in compliance with Federal, State, and Municipal Codes and Regulations.
- i. Vendor shall, at its own expense, provide its own tools, equipment, machinery, supplies, or any other materials required to manage and operate the Non-Motorized Water Sport Services.
- j. Vendor must furnish a cash register and/or Point of Sale System with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports.
- k. Vendor shall have all customers sign a safety and informational waiver noting the inherent risks of Non-Motorized Water Sports and safety precautions/procedures. The Division shall approve any waivers prior to use.
- l. Vendor agrees to abide by the Division of Delaware Parks and Recreation's vehicular rules and regulations, (as provided on the state's official website: www.destateparks.com/rules), including but not limited to the following:
 - I. Vehicles (including golf carts, mopeds, all-terrain vehicles, etc.):
 - i. All golf cart, mopeds, all-terrain vehicles must be DOT approved and must be approved by the Park Superintendent for use at the Park and designated concession site. The Division reserves the right to deny these types of Vehicles for any reason and at any time.
 - ii. Vehicles will only be permitted on approved roads within Cape Henlopen State Park or areas specifically designated by the Division for such purpose.
 - iii. Vehicles are not allowed on paved pedestrian trails/paths or paved walkways.
 - iv. Vehicles are not permitted to cut across lawns or gardens.
 - II. Parking:
 - i. Vendor, their employees, subcontractors and customers shall park their vehicles only in the designated parking lot or area.
 - ii. No parking is permitted under the trees, on the lawn or any landscaped area of the Park.
 - III. Park Entrance/Gates:

- i. Vendor, their employees, subcontractors and customers will only be permitted to access the Park through the main entrance/gate(s).
 - ii. Vendor will not pay the daily Park entrance fees for participation in the Non-Motorized Water Sport Services, however, **it is the expectation of the Division that all visitors to Delaware State Parks pay daily entrance fees or procure an annual park pass.**
- m. Vendor shall be responsible for providing the following services:
- I. Vendor, their employees and volunteers shall wear staff clothing that identifies them as the Non-Motorized Water Sport employee, guide or instructor.
 - II. Vendor shall repair and maintain all equipment and watercraft owned by Vendor. Equipment shall be clean, painted or polished, safe for use by Vendor customers and in maintained in proper serviceable condition at all times.
 - III. Vendor shall, on a daily and as-needed basis, collect and deposit litter, garbage and other refuse from the grounds assigned or used by Vendor into Division-owned dumpsters as part of the Non-Motorized Water Sport services and in the everyday course of business. The Park will provide a trash receptacle and it is the sole responsibility of the Vendor to ensure trash is removed daily and during any holiday pickup requirements. Failure to adhere to this responsibility will result in additional expense to Vendor, in the event the Division is contacted to provide these emergency services on behalf of Vendor.
 - IV. Vendor shall provide maintenance of the operation area, including removal of all debris to ensure accessible for handicap visitors, in compliance with Americans with Disabilities Act (ADA) laws and legislation.
 - V. Vendor and their employees shall at all times generate and maintain an inviting atmosphere for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this Contract.
 - VI. Vendor must publically display in a conspicuous place at the Park a neat and legible sign listing all Non-Motorized Water Sports hours of operation, rates, prices and charges for all products for rent or sale and tour, guide or instructional services.
 - VII. Vendor shall be responsible for providing quality water sports equipment, products, limited retail items and Non-Motorized Water Sport services at a reasonable price, in addition to providing excellent customer service to Park visitors.
 - VIII. Vendor shall be responsible in employing only competent, mature and orderly employees and ensure their employees shall keep themselves neat and clean and be courteous to all visitors and patrons of the Park. Further, Vendor and its employees will not use improper language, behave in a boisterous manner nor engage in any unlawful or unbecoming conduct during the course of their employment by the Vendor. Any significant visitor complaints may be considered performance deficiencies under this Contract.
 - IX. At the end of the contract term or at the request of the Division, Vendor shall ensure that all facilities and/or equipment provided by the Division are returned to the Division in good order, reasonable wear and tear expected. Failure to return such facilities to its natural state or return equipment to the Division at the end of the Contract term may result in the Division billing Vendor, as applicable.

- X. Upon expiration of the Contract period, Vendor shall remove all equipment and inventory furnished by Vendor, provided all fees have been paid. Any equipment, inventory and/or personal property left on the premises beyond sixty (60) days from the expiration of the Contract shall become the property of the Division.
- XI. Vendor shall not allow surfboards, kayaks, canoes or similar watercraft in designated guarded swimming areas unless approved by the Director or their designee.
- XII. If the Division does not provide storage for Vendor equipment, then Vendor shall be responsible for installing temporary storage at the beginning of the season. All temporary storage must be removed at the end of the season. All temporary and portable storage must be approved by the Division.
- XIII. The Vendor shall collaborate with the Division for guide services. The Division is interested in guiding Vendor tours for a fee for interpretive and learning based tours.
- XIV. The Vendor shall offer a promotional incentive program in partnership with the Division for events and activities with the goal of bringing patrons to Delaware State Parks.

P. Modifications to Park Facilities:

Vendor may make alterations, modifications, additions or improvements to the contracted premises and facilities with prior Division approval of the design, development, timeline and approved plans. **No work shall commence until Vendor receives the Division's approval and consent in writing. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor, unless the Division consents to share a portion of said costs or provide necessary materials and/or labor.** Vendor shall submit a proposed layout of the operation and a description of any alterations or modifications which are contemplated to set up the operation. Vendor is responsible for obtaining any work permits, adhering to state and local ordinances, code and regulations at Vendor's expense. Additional requirements based on state and local ordinances, code and regulations may be required and shall be the responsibility of the Vendor. Vendor shall coordinate any subcontractor access to the Park with the Park Management. **Any award associated with capital investment/improvements shall result in the Division's ownership of all capital improvements executed during the life of the contract at the point of expiration and/or termination.**

Q. Damage to Park Facilities:

In the event State property or facilities are damaged in any way whatsoever by reason of any act or omission of Vendor or its employees, Vendor shall repair at its own cost and expense the facility or property so damaged. Upon the failure of Vendor to make such repairs within five (5) working days or a reasonable time period agreed upon by the Division and Vendor, the Division will repair such damage at the cost and expense of Vendor and deliver a detailed invoice to Vendor which will be due and payable within thirty (30) days of the date of the invoice.

R. Waiver of Damages:

Vendor waives any and all claims for compensation of any loss or damage sustained by the Vendor resulting from fire, water, natural disaster (e.g. hurricane, tornado, etc.) civil commotion or riots.

S. Division Responsibilities:

- a. The Division reserves the right to enlarge, close and/or reduce the size of any designated Park location(s) for the purposes of improvement, repair, construction or any other legitimate purpose. It is understood that any of the above actions shall not entitle Vendor to any reduction or suspension of the Contract or fees unless otherwise approved by the Division.
- b. The Division shall be responsible for the major utility and structural repairs and exterior Maintenance of the Park facilities. In the event of an immediate repair need or request from the Vendor, the Division shall be the sole determining authority of prioritizing, scheduling and repair. Division shall bill Vendor for the monthly electrical and water use charges (if services are available) used in the performance of the operation services.
- c. The Division may perform maintenance tasks which are the responsibility of the Vendor for which the Division shall charge the Vendor a fee based upon actual costs for labor and materials. Requests for said maintenance tasks shall be submitted in writing by the Vendor and approved by the Division prior to commencement of work.
- d. The Division shall provide the following services:
 - I. Weed control, trimming of bushes and leaf removal around all buildings.
 - II. The Division shall be responsible for maintenance of the parking lot(s).
 - III. The Division shall be responsible for security and patrolling of the Park area during normal Park hours.
 - IV. The Division shall be responsible for grass mowing and maintain landscape of the Park area.
 - V. The Division shall be responsible for major utility and structural repairs and exterior maintenance to division-owned buildings and facilities, including capital improvements, extensive renovations and exterior painting.

9. HOLD HARMLESS

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The Vendor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the Vendor, its employees, and invitees on or about the premises and which arise out of the Vendor's performance, or failure to perform as specified in the Agreement.

10. NON-PERFORMANCE

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In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the Vendor. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

11. FORCE MAJEURE

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Neither the Vendor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

12. SPECIFIC REQUIREMENTS OF CAPE HENLOPEN STATE PARK

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A. Specific services required:

- a. Rental of non-motorized water sport equipment and safety gear for enjoyment of the general public.
- b. Individual or group lessons will be conducted by ACA (or industry equivalent) certified instructors and offered to the public for all watercraft included in the Vendor's operation.
- c. Individual or group tours will be conducted by ACA (or industry equivalent) certified operators and offered to the public for all watercraft included in the Vendor's operation.
 - l. Tours may include sunset and sunrise tours with written approval from the Division.
- d. Vendor will advertise and promote guided tours and lessons to the public as well as providing public tours and lessons in cooperation with the Division's environmental and interpretive programs.
- e. Used kayaks, canoes, paddleboards, sailboats and water craft from the Vendor's operation may be sold to the public. Additionally, Vendor shall allow potential buyers to test equipment, if requested, prior to purchase.
- f. Prepackaged snack foods, candies, and canned sodas and other prepackaged, non-alcoholic beverages approved by the Division may be offered for sale to the public. Pricing must be reasonable.
- g. Limited retail items, such as water shoes, t-shirts, hats, sailing accessories, sunscreen, and other products approved by the Division may also be offered for sale.
- h. The Division reserves the right to disapprove items for any reason, at any time if it is deemed in the best interest of the Division.
- i. Vendor agrees to withdraw from sale or rent any items disapproved by the Division (such as STATE OF DELAWARE Department of Natural Resources and Environmental Control Division of Parks and Recreation State Park souvenirs).

B. The Division shall provide the following equipment for the Vendor's use:

- a. Boat Rental Building and Office is included with this site.
- b. Utilities (Electric and Water) shall be included with these sites and Vendor will be metered and billed monthly by the Division for use.
- c. Park dumpster for daily refuse disposal.
- d. 24 hour restroom in the park.