REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
LUMS PUBLIC OUTDOOR RECREATION
ISSUED BY DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
CONTRACT NUMBER NAT26003_LUMS RECREATION

Contents:

I. Overview

II. Scope of Services

III. Required Information

IV. Professional Services RFP Administrative Information

V. Contract Terms and Conditions

VI. RFP Miscellaneous Information

VII. Attachments

Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS

Appendix B - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

Appendix C - EQUESTRIAN AND ANNUAL REQUIREMENTS

Appendix D - SITE PHOTOS

Appendix E - DE STATE PARK PROGRAMMING

Appendix F – SPECIFICATIONS

Appendix G – TEMPLATE/SAMPLE AGREEMENT

I. Overview

The State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation (the "Division"), seeks professional services to operate Public Outdoor Recreation at the Lums Pond State Park property formerly known as "the Equestrian Center." This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	**Date: Tuesday, November 24, 2026**
Deadline for Questions	**Date: Tuesday, December 15, 2026**
Response to Questions Posted by:	**Date: Tuesday, January 5, 2027**
Deadline for Receipt of Proposals	**Date: Wednesday, January 27, 2027 at 1:00 PM (Local Time)**

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on **Attachment 3**).

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A mandatory pre-bid meeting has not been established for this Request for Proposal. Interested Vendors may request an on-site appointment for a site review. Instructions are included herein.

II. Scope of Services

The Department of Natural Resources and Environmental Control, Division of Parks and Recreation ("the Division") is seeking a qualified and competent Vendor to operate Public Outdoor Recreation at 1030 Howell School Rd, Bear, DE 19701 (the "Facility"), formerly known as "the Equestrian Center," to include outdoor recreational activities for youth and adults. The Division is seeking options for public outdoor recreational activities open to the local community, park visitors and campers. Additional information is provided in **Appendix B – Scope of Work and Technical Requirements**.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

   Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.

3. Complete all appropriate attachments and forms as identified within the RFP.

4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in this RFP.

5. Describe the techniques and business approaches used for providing Public Outdoor Recreation, including a work plan and timeline. Include a well-defined ACTION PLAN that will describe the Vendor's organization and method for providing services as specified herein. Include business plan, customer billing and payment processes/options, customer service, advertising and marketing plans, employee training procedures, and animal care plans (if applicable). Include industry analysis (detail the market in which you are competing, how large it is and what trends are affecting it) and customer analysis (what customers you are targeting).

6. Proposed capital investments and improvements offered by the Vendor. The Division is interested in viable capital investments and improvements at the Facility. The Vendor(s) shall include in their proposal any ideas or concepts for development, restoration, rehabilitation, preservation and reconstruction, including, but not limited to, capital investment, funding sources, timeline for delivery of project work, projected expenses and any other related items incidental to the Facility.

7. Proposed hours of operations, and any proposed phases for operations based on improvements to the Property.

8. Vendor Emergency Contact Data as required in this RFP.

9. Provide **one (1) copy of financial information for the past three (3) years** for your business to include but not limited to: **balance sheets and income statements**.

B. General Evaluation Requirements

1. **Demonstrated ability** - clearly demonstrate Vendor's ability to operate, maintain and operate public outdoor recreation; including their interaction with customers, response in emergencies, compliance with regulatory agencies, and day to day operation.

2. **Experience and Reputation**
   a. Provide the name of the employee who will be the administrative manager of the contract. Also list other jobs this individual has completed of this magnitude for other customers.

   b. Provide an organizational chart of the company and qualifications, certifications and job descriptions of staff and management staff.

   c. Explain your procedures for escalation of problems when they are reported.

   d. Explain your procedures for working/coordination with the Division to ensure compliance with all contractual and technical requirements, terms and State policies and procedures.

   e. Other criteria necessary for a quality cost-effective business (interface with public, financial accountability, reporting).

   f. At least three (3) business references that are similar scope and value.

3. **Capacity to meet requirements (size, financial condition, etc.)** - cover the details of the offer and how the proposal addresses and meets the requirements of the contract.

4. **Location (geographical)** - demonstrate they are staffed appropriately to provide a guaranteed response to any service call. Please provide a detailed description of your response capabilities to provide levels of service throughout the State by the time-of-day, and day-of-week and local areas covered in the response. Vendor must be on-site during operational hours.

5. **Familiarity with public works and requirements** – if including viable capital improvements, include past projects of similar scope and value as applicable.

6. **Pricing/Pricing Structure** – fees paid to the Division by Vendor will be included in the overall evaluation scoring. The Division may include higher point values for proposals that include viable capital improvements and/or include high level maintenance of the Facility.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice
Public notice has been provided in accordance with 29 *Del. C*. § 6981.

2. Obtaining Copies of the RFP
This RFP is available in electronic form through the State of Delaware Procurement website at https://bids.delaware.gov/. Paper copies of this RFP will not be available.

3. Assistance to Vendors with a Disability
Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contacts
All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contacts.

ATTN: Rebecca Lovin
DNREC/Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

Rebecca.lovin@delaware.gov

or

ATTN: Kristie Wyatt
DNREC/Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

Kristie.wyatt@delaware.gov

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable and preferred, but other forms of delivery, such as postal and courier services can also be used.

5. Consultants and Legal Counsel
The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract:

b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor:

c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes:

d. Has violated contract provisions such as:

   1) Known failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

   2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;

e. Has violated ethical standards set out in law or regulation; and

f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each

proposal must be submitted with **2** paper copies and **2** electronic copies on separate USB memory drives.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00 PM (Local Time) on Wednesday, January 27, 2027**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

ATTN: Office of Business Services
DNREC/Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

Vendors are directed to clearly print "BID ENCLOSED" and "CONTRACT NO. NAT26003_LUMS RECREATION" on the outside of the bid submission package.

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery and any costs for returned proposals. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

3. **Proposal Modifications**
Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment, or modification to a previously submitted proposal. Changes, amendments, or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. **Proposal Costs and Expenses**
The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. **Proposal Expiration Date**
Prices quoted in the proposal shall remain fixed and binding on the bidder at least through March 31, 2027. The State of Delaware reserves the right to ask for an extension of time if needed.

6. **Late Proposals**
Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals, but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with 29 Del. C. § 10001, et seq. ("FOIA").

8. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive, or a mere formality shall reside solely within the State of Delaware.

9. Concise Proposals

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. All proposals are subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure, or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "**Confidential Business Information**" and include the specific RFP number. The envelope must contain a letter from the vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, vendor(s) assume the risk that confidential business information included in a proposal may enter the public domain.

12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. **Primary Vendor**

The State of Delaware expects to negotiate and contract with only one "prime vendor". The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.18 regarding multiple source contracting.

b. **Sub-contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

c. **Multiple Proposals**
A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

13. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

14. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

a. **RFP Question and Answer Process**
The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **Tuesday, December 15, 2026**. All questions will be consolidated into a single set of responses and posted on the State's website at bids.delaware.gov by the date of **Tuesday, January 5, 2027**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

- Section number
- Paragraph number
- Page number
- Text of passage being questioned

Questions not submitted electronically shall be accompanied by a USB memory drive and questions shall be formatted in Microsoft Word.

b. **SITE VISITS**

Site visits are available by scheduled appointment only and must be completed no later than the RFP Question due date of **Tuesday, December 15, 2026.** Contact the **RFP Designated Contacts** for scheduling. Reminder that the site visit is not a question and answer opportunity and on-site staff will not be able to provide information or answer any questions to ensure a fair bid process. Any questions must be submitted as noted in section (a) above.

15. State's Right to Reject Proposals

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

16. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

17. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C*. § 6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

18. Potential Contract Overlap

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

19. Supplemental Solicitation

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

20. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

21. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at bids.delaware.gov. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

22. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on **Attachment 3**. Acceptance of exceptions is within the sole discretion of the evaluation committee.

23. Business References

Provide at least **three (3)** business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. **Personal references cannot be considered**.

24. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the highest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. **RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the highest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

25. Cooperatives

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. **State of Delaware terms will take precedence.**

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the highest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. Professional services for this solicitation are considered under 29 *Del. C.* § 6982(b). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Agency head or designee, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982(b), to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with best costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* § 6986. Such selection will be based on the following criteria:
    - If multiple vendors submit complementary proposals (not Joint Ventures) that the Division determines may be advantageous to the State.

Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criteria	Points
Background and experience (e.g., past performance on similar ventures) company history, qualifications and experience of the employees and the organization in managing and operating a Public Outdoor Recreation Program. Vendor certifications or accomplishments.	**60**
Financial stability/resources, past performance and references.	**40**
Vendor's action plan (techniques and/or business approach for providing Public Outdoor Recreation Program, including **customer billing and payment processes/options, customer service, advertising and marketing plans, employee training procedures, and animal care plans (if applicable)).**	**100**
Vendor's marketing plan and timeline.	**40**
The value of Vendor's proposal to Delaware Parks (e.g. annual percent of gross receipts from the sale of products and services).	**80**
Capital investments and improvements offered by the Vendor.	**80**
Total	**400**

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

V. Contract Terms and Conditions

A. Contract Use by Other Agencies

REF: Title 29, Chapter 6904(e) Delaware Code. 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.

B. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

C. General Information

1. The term of the contract between the successful bidder and the Division shall be for **five (5) years with two (2) optional extensions for a period of three (3) years for each extension.** The Division reserves the right to enter into a contract for longer periods, not to exceed twenty-five (25) years if the awarded Vendor provides capital improvements and offerings that require longer timelines for return on investment. The Division shall be the sole determining authority for a contract that shall exceed the contract period stated above.

2. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.

3. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor’s response to this RFP will be incorporated as part of any formal contract.

4. If applicable, the State of Delaware’s standard contract may be supplemented with the vendor’s software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

5. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. As applicable to any payments due to the Vendor, no vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

a. Services provided by the Vendor shall be in accordance with the SCOPE OF WORK AND TECHNICAL REQUIREMENTS as included in this RFP.

6. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

7. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

8. Vendors are not restricted from offering better pricing at any time during the contract term.

D. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

E. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

F. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior

written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

G. General Contract Terms

1. Independent Contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the Contractor's services.

2. Temporary Personnel are Not State Employees Unless and Until They are Hired

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

3. Work Performed in a State Building

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

4. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C*. § 2101.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

5. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

ATTN: Office of Business Services
DNREC/Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

6. Indemnification

a. **General Indemnification**
By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract.

b. **Proprietary Rights Indemnification**
Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively “”Products”) is or in vendor’s reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

1) Procure the right for the State of Delaware to continue using the Product(s);
2) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
3) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

7. Insurance

a. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

b. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

c. As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

    1) Worker’s Compensation and Employer’s Liability Insurance in accordance with applicable law.

    2) Commercial General Liability - $1,000,000 per occurrence/$3,000,000 per aggregate.

    3) Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

        a) $1,000,000 combined single limit each accident, for bodily injury;

        b) $250,000 for property damage to others;

        c) $25,000 per person per accident Uninsured/Underinsured Motorists coverage;

        d) $25,000 per person, $300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and

e) Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

4) Product Liability - $1,000,000 per occurrence/$3,000,000 aggregate.

5) Liquor Liability (*if alcohol is involved in services*) - $1,000,000 per occurrence/ $3,000,000 aggregate.

d. Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

e. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

DNREC/Division of Parks and Recreation
Contract No: NAT26003_LUMS RECREATION
89 Kings Highway
Dover, DE 19901

f. Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

g. To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

h. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

i. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s).

j. Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

8. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

9. BID BOND

There is no Bid Bond Requirement.

10. PERFORMANCE BOND

Vendors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of the Division with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted using **Attachment 10** in the form of a good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware.

11. Vendor Emergency Response Point of Contact

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

12. Warranty

The successful Vendor(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this Contract against defective material, workmanship, and performance.

13. Costs and Payment Schedules

All contract fees and costs must be as detailed specifically in the Vendor's cost proposal. Contract fees due to the Division shall be paid in accordance with the negotiated contract terms and condition. No charges to the Division shall be allowed without written consent of the State of Delaware. The proposal fees and costs shall include full compensation for all taxes that the selected Vendor is required to pay.

If applicable to any Division monies owed, the State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

14. Liquidated Damages

The State of Delaware may include in the final contract liquidated damages provisions for non-performance.

15. Dispute Resolution

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose,

including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

16. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section V.G.15 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

17. Termination of Contract

The contract resulting from this RFP may be terminated as follows by the Division.

a) **Termination for Cause**
If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports, improvements, or other material prepared or provided by the Vendor under this Contract shall, at the option of the State, become its property. The Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

b) **Termination for Convenience**
The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for

any satisfactory work completed on such documents and other materials, and which is usable to the State.

c) **Termination for Non-Appropriations**
In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

d) **Other Grounds for Termination** may be included in the final Contract.

18. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

19. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20. Vendor Activity

No activity is to be executed in an offshore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

21. Vendor Responsibility

The Division will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of the Division.

22. Personnel, Equipment and Services

a) The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
b) All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors,

engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

c) None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the Division. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the Division.

23. Fair Background Check Practices

Pursuant to 29 Del. C. § 6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. § 711(g) for applicable established provisions.

24. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:
https://sexoffender.dsp.delaware.gov/

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

25. Drug Testing Requirements for Large Public Works

Pursuant to 29 Del.C. §6908(a)(6), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing

Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. §6962.

Final publication of the identified regulations can be found at the following:
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

26. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

27. Contract Documents

The RFP, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, and Vendor's response to the RFP. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

28. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

a) the laws of the State of Delaware;
b) the applicable portion of the Federal Civil Rights Act of 1964;
c) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
d) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
e) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (a) through (d) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

29. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent

necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

30. Assignment of Antitrust Claims

As consideration for the award and execution of this contract by the State, the vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

31. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

32. Affirmation

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

33. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

34. IRS 1075 Publication (If Applicable)

a. **Performance**
In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

1) All work will be performed under the supervision of the contractor.

2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.

5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.

7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.

9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.

10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and 202 obligated to the agency under this contract.

12) For purposes of this contract, the term “contractor” includes any officer or employee of the contractor with access to or who uses FTI, and the term “subcontractor” includes any officer or employee of the subcontractor with access to or who uses FTI.

13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

b. **Criminal/Civil Sanctions**

1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of $1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

4) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

5) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency’s security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency’s security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at

least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. **Inspection**
The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

35. Other General Conditions

a. **Current Version** – "Packaged" application and system software shall be the most current version generally available as of the date of the physical installation of the software.
b. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer's latest design. All material and equipment offered shall be new and unused.
c. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
d. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
e. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
f. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
g. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
h. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
i. **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
j. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH) or Purchase Card (P-Card). The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.

k. **W-9** - The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at http://esupplier.erp.delaware.gov. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching". If the Taxpayer ID and name do not match, the vendor record cannot be approved. It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services. Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

l. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number NAT26003_LUMS RECREATION on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

m. **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.

n. Additional Terms and Conditions – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

VI. RFP Miscellaneous Information

A. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

B. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: the words *shall*, will and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

C. Production Environment Requirements

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by at least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

VII. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2nd Tier Spend) Report
- Attachment 9 – Office of Supplier Diversity Application
- Attachment 10 – Performance Bond
- Attachment 11 – Bid Bond (Waived)
- Attachment 12 – Pricing Form
- Appendix A – Minimum Mandatory Submission Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C – Equestrian and Animal Requirements
- Appendix D – Site Photos
- Appendix E – DE State Park Programming
- Appendix F – Specifications and Additional Information
- Appendix G – Template/Sample Agreement

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5, and 12 must be included in your proposal**

- Attachment 6 must be included in your proposal if subcontractors will be involved

- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting or the Division will coordinate on approving existing vendor reporting templates if acceptable to the Division.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment 7) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to **Parks_OBS@delaware.gov**, with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15th will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with "no spend". Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 49, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's contract manager on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 1

NO PROPOSAL REPLY FORM

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

_____ 1. We do not wish to participate in the bid process.

_____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are: _____

_____

_____ 3. We do not feel we can be competitive.

_____ 4. We cannot submit a proposal because of the marketing or franchising policies of the manufacturing company.

_____ 5. We do not wish to sell to the State. Our objections are: _____

_____

_____ 6. We do not sell the items/services on which proposals are requested.

_____ 7. Other: _____

_____ _____

FIRM NAME SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services**.

_____ We wish to be deleted from the Vendor's List **for these goods or services**.

PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 2

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION
DEADLINE TO RESPOND: Wednesday, January 27, 2027 at 1:00 PM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this solicitation, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a bid/proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation.

It is agreed by the undersigned Vendor that the signed submission of this bid/proposal represents, subject to any express exceptions set forth on the Exception form, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation.

Company Name	
DBA (if applicable)	
Name of Authorized Representative	
Title	
Phone Number	
Email Address	

Company Address	
Phone Number	
Email Address	
Tax ID Number	
Diverse Vendor Self-Identification	
State Certified	
If yes, which State(s)	
Federal Certified	

AFFIRMATION: Within the past five (5) years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment? _____If yes, explain: _____

THIS PAGE SHALL BE SIGNED AND NOTARIZED (NOTARY SEAL MUST BE VISIBLE) FOR YOUR BID/PROPOSAL TO BE CONSIDERED.

Authorized Representative	**Notary**

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 3

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION

EXCEPTION FORM

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

Paragraph # and page #	**Exceptions to Specifications, terms or conditions**	**Proposed Alternative**

Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 4

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION

CONFIDENTIAL INFORMATION FORM

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. Ch. 100, Delaware Freedom of Information Act.

Confidentiality and Proprietary Information

Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.

Attachment 5

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list the contract(s).

Reference One

Contact Name	
Contact Title	
Business Name	
Address	
Email	
Phone	
Current Vendor?	
Work Performed	

Reference Two

Contact Name	
Contact Title	
Business Name	
Address	
Email	
Phone	
Current Vendor?	
Work Performed	

Reference Three

Contact Name	
Contact Title	
Business Name	
Address	
Email	
Phone	
Current Vendor?	
Work Performed	

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 6

SUBCONTRACTOR INFORMATION FORM

Contract No. NAT26003_LUMS RECREATION Contract Title: LUMS OUTDOOR RECREATION

Are you proposing the use of any subcontractors in the fulfillment of the requirements as outlined in the solicitation? If yes, complete this form.	

Responding Vendor Information

Company Name	
DBA (if applicable)	
Company Address	

Subcontractor Information

Company Name	
DBA (if applicable)	
Company Address	

Diverse Vendor Self-Identification	
State Certified	
If yes, which State(s):	
Federal Certified	

Description of Work by Subcontractor

Once completed, this form must be signed by both vendors.

Proposing Vendor		Subcontractor	
Authorized Signature:		Authorized Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

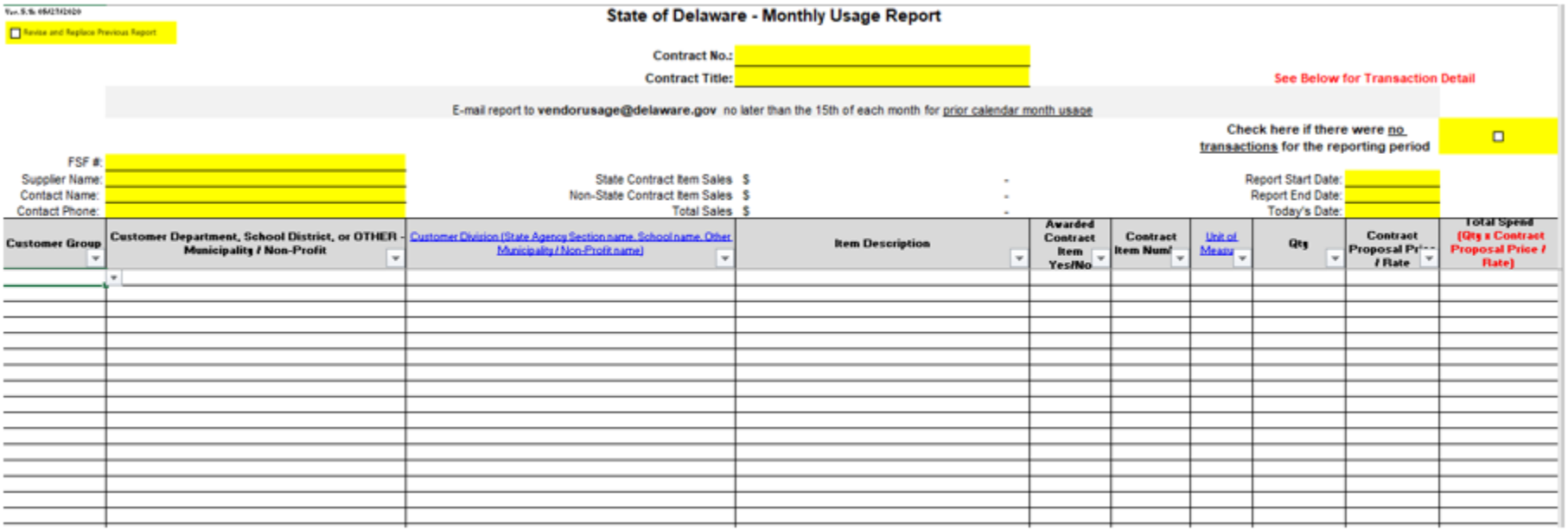
Use a separate form for each subcontractor

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 7

STATE OF DELAWARE
MONTHLY USAGE REPORT

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY



State of Delaware - Monthly Usage Report

Revise and Replace Previous Report

Contract No.:
Contract Title:

See Below for Transaction Detail

E-mail report to **vendorusage@delaware.gov** no later than the 15th of each month for prior calendar month usage

Check here if there were no transactions for the reporting period ☐

FSF #:
Supplier Name:
Contact Name:
Contact Phone:

State Contract Item Sales $ -
Non-State Contract Item Sales $ -
Total Sales $ -

Report Start Date:
Report End Date:
Today's Date:

Customer Group	Customer Department, School District, or OTHER - Municipality / Non-Profit	Customer Division (State Agency Section name, School name, Other Municipality / Non-Profit name)	Item Description	Awarded Contract Item Yes/No	Contract Item Num	Unit of Measu	Qty	Contract Proposal Pr... / Rate	Total Spend (Qty x Contract Proposal Price / Rate)

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to **Parks_OBS@delaware.gov**. It shall contain the six-digit department and organization code for each agency and school district.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 8

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																	
Subcontracting (2nd tier) Quarterly Report																	
Prime Name:							Report Start Date:										
Contract Name/Number							Report End Date:										
Contact Name:							Today's Date:										
Contact Phone:							*Minimum Required		Requested detail								
Vendor Name*	Vendor TaxID*	Contract Name/ Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran/Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id	Date Paid

Note: Completed reports shall be saved in an Excel format, and submitted to the following email address: osd@delaware.gov . The form can be located at Office of Supplier Diversity - Division of Small Business - State of Delaware, bottom of the page, 'Services and Information' section, 'Subcontractor Reporting Form'.

Attachment 9

The Office of Supplier Diversity (OSD)

Supplier Diversity Certification Application Portal can be found here:
Office of Suppler Diversity Certification Application Portal

For more information, please send an email to OSD:
osd@delaware.gov or call 302-577-8477

Subscribe to the OSD Mailing List

Carvel State Building
820 N. French Street, 10th Floor
Wilmington, DE 19801

Telephone: 302-577-8477 / Fax: 302-736-7915
Email: osd@delaware.gov
Web site: https://business.delaware.gov/osd/

*Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 10

PERFORMANCE BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("**Principal**"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("**Surety**"), are held and firmly bound unto the **Department of Natural Resources and Environmental Control, Division of Parks and Recreation** ("**Owner**"), in the amount of _____ ($_____), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has been awarded by **Owner** that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse **Owner** sufficient funds to pay the costs of completing the Contract that **Owner** may sustain by reason of any failure or default on the part of **Principal**, and shall also indemnify and save harmless **Owner** from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by **Owner**, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause **Principal** fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

_____

_____ _____
Witness Name

_____
Title

_____
Date

_____
Company Name

_____
Company Address

SURETY

_____

_____ _____
Witness Name

_____
Title

Attachment 11

Bid Bond

BID BOND HAS BEEN WAIVED

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 12

PRICING FORM

The offer of a higher % of Gross Revenue payment than this minimum is generally beneficial to the Division and accordingly will generally result in a higher score; however, consideration of revenue to the State of Delaware is subordinate to the objectives of protecting, conserving, and preserving natural and cultural resources of the park area; providing investment through Capital Improvements and maintenance; and of providing high quality visitor services to the public.

Additional Revenue Sharing - In addition to the Annual Flat Fee, the Bidder(s) should indicate below and expressed as a percentage, the additional amount that will be paid to the Division based on Gross Revenues. "Gross Revenues" shall mean gross receipts of every kind and nature from the use and operation of all or any portion of the Facility whatsoever, whether for cash, credit or barter, including, without limitation, merchandise sales; venue rentals; receipts from vendor machines, catering, food & beverage; proceeds of any business interruption insurance (net of reasonable costs of settling such claim with the insurance carrier); any revenue not specifically excluded. Gross Revenues shall not include amounts received as rebates, refunds and discounts (but not credit and card discounts paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; excise, sales, use and similar taxes collected directly from customers as a part of the price of any goods or services and which are accounted for to any governmental agency or authority; tips and gratuities paid to employees; or income or interest derived from cash, securities, and other property acquired and held for investment. Any capital improvements made by the successful Bidder(s) during any time period of this Contract Duration Period may not be used to reduce the amount of Gross Revenue unless otherwise specified specifically in writing by the Division (to which a Contract Amendment may be required).

Gross Revenues shall include initiation fees and (refundable and non-refundable) deposits, if any, paid pursuant to any membership offering (if applicable) during the term of the Contract.

Gross Revenues shall also include a reasonable allocation, as determined by the Division, of any income received by the Bidder(s) for use of the Facility by customers of any of the Bidder(s) other facilities, such as but not limited to reciprocal access. Gross Revenues for the Facility may not be co-mingled with other operations of the Bidder(s) and any reciprocal rights or other cross-utilization programs must be approved in advance by the Division.

Insert the amounts using the table below. Any exceptions from the fee structure below (including tiered proposals for recouping return on investment) requires the Bidder to submit the “Exception Form – Attachment 3”.

FIXED ANNUAL FLAT FEE: $10,000.00

1) **Bid percent of annual gross receipts *$100,000.00 and lower*: <u>minimum 5%</u>**

Bid % Amount: _____

2) **Bid percent of annual gross receipts *$100,000.01 and higher*: <u>minimum 7%</u>**

Bid % Amount: _____

Please note the minimums - Vendors are encouraged to bid competitively.

Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.

2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. **Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.**

3. One (1) complete Pricing Form (**See Attachment 12**) - Pricing as identified in the solicitation.

4. One (1) complete, signed and notarized copy of the non-collusion agreement (**See Attachment 2**). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.** All other copies may have reproduced or copied signatures – Form must be included.

5. One (1) completed RFP Exception form (**See Attachment 3**) – please check box if no information – Form must be included.

6. One (1) completed Confidentiality Form (**See Attachment 4**) – please check if no information is deemed confidential – Form must be included.

7. One (1) completed Business Reference form (**See Attachment 5**) – please provide references other than State of Delaware contacts – Form must be included.

8. One (1) complete and signed copy of the Subcontractor Information Form (**See Attachment 6**) for each subcontractor – only provide if applicable.

9. One (1) complete OSD application (**See link on Attachment 9**) – only provide if applicable.

The items listed above provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

Vendors shall provide proposal packages in the following formats:

1. **Two (2)** paper copies of the vendor proposal paperwork. **One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**

2. **Two (2) electronic copies** of the vendor proposal saved to CD or DVD media disk, or **USB memory stick**. Copy of electronic price file shall be a separate file from all other files on the electronic copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a **separate** computer disk or **media**).

Appendix B - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

I. MINIMUM REQUIREMENTS

A. Introduction:

The Department of Natural Resources and Environmental Control, Division of Parks and Recreation (the "Division"), is seeking a qualified Vendor to operate Public Outdoor Recreation at Lums Pond State Park, 1030 Howell School Road, Bear, DE. The site, formerly the "Equestrian Center," is referred to in this RFP as (the "Property"). The Division is looking for recreation options open to the local community, park visitors, and campers.

Lums Pond State Park located in Bear, DE is built around the largest freshwater pond in Delaware. The park encompasses a total of 1,790 acres features boat rentals, excellent fishing, sports facilities, full-service campground including new cabin complex, a high ropes aerial adventure course, hiking trails and equestrian trails on the north side of the Chesapeake and Delaware Canal. The park hosts over 500,000 visitors annually. Before the pond existed, St. Georges Creek flowed through the hardwood forest and was the site of several Native American hunting camps. The creek was dammed in the early 1800's when the C & D Canal was built. Water from the pond was used to fill the locks of the canal and power a small mill. This area was first used as a state park in 1963. There are excellent recreational trails in the area open to pedestrians, bikers and horses such as the C&D Canal and Little Jersey's Trails. Lums Pond is less than ten miles from the University of Delaware and Newark, and under twenty miles from Wilmington, the state's largest city and major financial center.

The Property sits just before the Lums Pond State Park entrance and spans about fourteen acres, including a house, stables, an outdoor arena, and a storage barn with a second-floor office. It is provided to the Vendor "as-is," and any capital improvements needed for their operations are the Vendor's responsibility. The Division will remove or secure any structures (except the house) that the Vendor does not plan to use, but the Vendor must identify unused areas in its proposal.

The Division is interested in capital investment and improvements in the Property. In 2023, the Division installed new windows and siding on the main house. Vendors are encouraged to submit creative business proposals that include, but not limited to: (i) refurbishing the existing facility in accordance with the specifications listed herein, (ii) provide methods of increasing Park visitor satisfaction by offering Public Outdoor Recreation that may include equestrian or new outdoor recreation adventures that improve the existing operation. The Vendor shall include in their proposal any ideas or concepts for development, restoration, rehabilitation, preservation and reconstruction, including, but not limited to, capital investment, timeline for delivery of project work, projected costs and any other related items incidental to Public Outdoor Recreation at Lums Pond State Park. Vendors may propose modifications to existing land and buildings (tear down/build/modification). **Any proposed Plan shall compliment current Lums Pond State Park activities and programs. The Division is looking for innovative ideas that will enhance Lums Pond State Park and attract visitors for day use and extended camping stays at the campground.** Potential services identified by the Division include, but are not limited to: Equestrian, Adventure Sports (i.e., Mountain Biking, Paintball, Mini-Golf, and Rockwall), Agriculture Education (i.e. 4H, Community Supported Agriculture, Animal Yoga), Youth and Adult Camps, or Bed and Breakfast.

The Vendor(s) shall provide all equipment, materials and labor to supplement the State of Delaware's need for Public Outdoor Recreation at Lums Pond State Park as described herein.

The Division reserves the right to enter into a contract for longer periods, not to exceed twenty-five (25) years if the awarded Vendor provides capital improvements and offerings that require longer timelines for return on investment. The Division shall be the sole determining authority for a contract that shall exceed the contract period stated above. Further information to assist Vendors in this RFP is below:

- Equestrian and animal related proposals shall adhere to all required state and federal requirements, as well as base-line Division requirements included in **Appendix C**, Equestrian and Animal Requirements.
- Photos of the Property are available in **Appendix D**, Site Photos.
- Division programming information is available in **Appendix E**, Delaware State Parks Programming.
- Information related to projects is available in **Appendix F**, Specifications and Additional Information.

B. Site Address:

Lums Pond Equestrian Center
1030 Howell School Road
Bear, DE 19701

C. Products and Services:

1. The successful Vendor will be granted a contract herein for the provision to operate Public Outdoor Recreation at Lums Pond State Park. Activities shall complement, not conflict with Division programming, operations and any concession operations.

2. Retail and equipment items must be approved by the Division and may not be sold without the advance written approval by the Division. With the approval of the Division, prepackaged snack foods, canned sodas or other non-alcoholic beverages may also be included in this service. The Vendor agrees to withdraw from sale or rent any items disapproved by the Division.

3. Vendor bids should recognize: (i) the importance of a sound business model that will promote a safe, operable, sanitary, and inviting atmosphere at all times; (ii) will reflect regional cultural traditions; (iii) will support the local community by enhancing the Division's outdoor offerings and help grow outdoor recreation programs; (iv) promote safety in all activities; and (v) help protect the environment.

4. Vendors may submit proposals that contain capital investment/improvements for the operation or other proposed improvement offerings. The proposal should detail the concept, drawings, work and potential construction plans, financial investments, and projected return on investment for both the Vendor and the Division. **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.**

5. Vendor shall provide Public Outdoor Recreation by **May 1, 2027**. If improvements exceed that timeline, then Vendor shall provide a phased approach of improvements that minimize operational impacts. No capital improvements shall occur without Division approval. For any capital improvement projects, Vendor shall be responsible for all guidelines and requirements as stated herein.

6. The Vendor shall furnish all labor, personnel, equipment and supplies necessary to operate a Public Outdoor Recreation Service Program per the terms and conditions included herein.

7. In accordance with the Division's "smoking in the workplace" Policy No. D-0309(A), **no tobacco products shall be sold on the premises**. Vapor and marijuana products are also not acceptable. Additionally, Delaware State Parks prohibits the use of tobacco products in business and outdoor gathering areas.

No Alcoholic beverages shall be sold at the operation locations without prior notice, proof of a valid license as required by the State of Delaware for sale, and approval by the Park Superintendent.

D. Contract Fee:

1. The Vendor, as a fee for the Contract and operation rights herein granted, agrees to pay to the Division of Parks and Recreation **an annual contract flat fee of $10,000.00 and a negotiated percentage of gross receipts**.

b. **The annual Contract flat fee of $10,000.00** shall be due in two (2) installments on July 15th and September 15th during the term of this Contract. The Vendor agrees to pay the percentage of total gross receipts to the Division on or before December 31st of each calendar year.

c. **In addition to the annual Contract flat fee of $10,000.00, percentage of gross receipts shall be bid by the vendor as follows (please note these are minimums and Vendors are encouraged to bid competitively):**

1) **Bid percent of annual gross receipts *$100,000.00 and lower*: minimum 5%**

2) **Bid percent of annual gross receipts *$100,000.01 and higher*: minimum 7%**

d. Percent of gross payments shall be placed in the Division's dedicated operating fund for use with maintenance and capital projects.

2. Any "impact" fees levied by New Castle County Delaware related to structural, design, increased/decreased population resulting from this Contract, parking, roadway traffic, utilities, etc. shall be the responsibility of the Awarded Vendor and the Division shall "pass" these costs through an invoice with appropriate support documentation.

3. The Vendor agrees to submit to: OBS_Parks@state.de.us, a mandatory usage report no later than the 15th of each month, covering each day's operation under the Contract, **plus a tabulated annual gross receipts report and annual financial statement report** for the period of operation on or before December 31st of each year. All annual financial statement reports must be **"Reviewed"** by a **certified public accountant** prior to submission and proof of "Review" must be included in Vendor submission.

4. All Contract Fees shall be sent to:

ATTN: Office of Business Services/NAT26003_Lums Recreation
DNREC/Division of Parks and Recreation
89 Kings Highway
Dover, DE 19901

5. Vendor will not pay the daily Park entrance fees for participation in the Public Outdoor Recreation Program, however, **it is the expectation of the Division that all visitors to Delaware State Parks pay daily entrance fees where applicable or procure an annual park pass**. The Division reserves the right to add a fee booth, automatic fee collection system, QR Code payment process, or vehicle self-registration pay at this site.

E. Interest Payments:

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.

F. Utilities and Fuel:

1. Electricity, water, telephone and/or other utilities used in the operations will be at the Vendor's expense. The Vendor will be required to make independent arrangements for service not provided by the Division.

a. Water service is sub-metered by the Division, and the Vendor will be billed monthly based on consumption and related utility costs. If the Division stops providing water, the Vendor must arrange water service and metering directly with the local utility.

G. Taxes and Permits:

Vendor shall pay all State and Federal taxes and/or license fees which may be imposed or legally chargeable, and, 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.

H. Security:

Vendor is responsible for securing its property, including animals (as applicable), equipment, software, and payment systems. Vendor must provide, maintain, and fund any ongoing or new security systems needed for its operations. The Division will retain full access to all systems through park-specific codes and keys for emergencies or scheduled access.

I. Inspection:

Vendor will allow free access to the Property 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.

J. 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 related 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.

K. Operating Schedule:

1. Vendor agrees to operate in accordance with the agreed **minimum** schedule (**Vendor must provide proposed schedule with their submitted bid proposal to this RFP**). Vendor shall take into consideration that Lums Pond State Park is open daily from 8:00 a.m. to sunset. It's the Division's goal that Vendor's Public Outdoor Recreation provide year-round or mostly year-round services.

2. Vendor shall post the hours of operation in a conspicuous place in the concession area.

3. **Vendor is required to promptly contact the Park Management and receive approval prior to canceling service for the day.**

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

L. Trash Removal and Use of Recyclable Products:

1. Vendor shall ensure that the premises occupied during this Contract, including immediate area around the concession, are kept clean and sanitary at all times in conformity with rules and regulations pertaining to sanitation and public health. All rubbish, refuse garbage and debris collected by the Vendor shall be deposited in containers.

2. Vendor is responsible for furnishing their own trash dumpster and recycling container. If the Division determines that the concession area becomes unsanitary to the general public, that issue will be handled as a performance deficiency under the terms of the Contract.

3. No trash or recycling items, even for larger items, shall be placed into Park dumpsters or recycling bins at any time.

4. Vendor shall serve food in recyclable materials and use care for the environment in all operational functions.

M. 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 shall be provided as part of Vendor's proposal.

N. Parking.

Parking spaces for the concession operator and their employees will be available within the boundaries of the Property. The Park Superintendent shall assign and approve additional parking if it is found to be necessary. The Division reserves the right to add a fee booth, automatic fee collection system or vehicle self-registration pay at the Facility and/or Lums Pond State Park.

O. Subletting.

Vendor may sublet rooms in the house or office for business use only. Under no circumstances shall any of the operation be sublet for residential purposes.

P. Franchise Limitations:

Vendor shall faithfully conform to all the provisions of this RFP and any contract signed between the Division and Vendor, and for as long as any Public Outdoor Recreation services are provided as heretofore described with exception to Division programing and events and the general public's use. No Vendor or other commercial business shall operate in these areas other than the Vendor for normal daily operations without express permission by the Division.

Q. Marketing and Promotion Plans; Signs and Advertising:

1. Vendor is encouraged to work with the Division of Parks and Recreation on a marketing and promotion plan for each calendar year. The agreed upon marketing plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with Lums Pond State Park individually. Copies of publications promoting Vendor's Public Outdoor Recreation shall be made available to park management for distribution.

2. Vendor's website must be clear, current, and consistently updated to reflect all available offerings for easy customer use.

3. 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 Services at Lums Pond State Park).

4. 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.

5. 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.

6. It is mutually agreed by the Vendor and the Division that no permanent or temporary advertising, signage, or trademark visibility for Vendor's operations and any tour or instructional information, equipment rental or for sale products will be displayed or permitted anywhere in the designated Park locations 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. clothing or other Vendor -owned products, etc.).

7. 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.**

R. 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

S. Quality and Pricing:

1. Vendor warrants that the Public Outdoor Recreation, 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.

2. 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.

3. 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.

4. 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.

T. Vendor Responsibilities:

1. The Vendor's Public Outdoor Recreation shall include activities for youth and adults. The program/service may also provide special events and special programs or events sponsored by the Division.

2. **Provide for an on-site presence at all times on the property**, including the house, during operating hours and any business activities outside of operating hours must be relative to the operation's needs. At no time shall the property be without a physical customer service contact during business hours and all phone systems shall be monitored and attended to daily. Under no circumstances shall customers contact the Vendor's Public Outdoor Recreation operation and not receive responsiveness to inquiries and booking/activity requests past a twenty-four (24) hour period.

3. Furnish and install any equipment needed to operate Public Outdoor Recreation services not already provided at the Facility. Any inventory or furniture on-site is considered "as-is" and the Division shall

not be responsible for repairs or replacement. Inventory not utilized by the Vendor shall be turned into the Division for Surplus action.

4. Supply and maintain in good health any animals if included in its services. Care shall be consistent with state and federal requirements, along with Appendix C. All animals shall have an animal care plan. Animals must possess the temperament needed for their stated use. The Division reserves the right to request animals be removed from the Property if complaints are received, for safety concerns, or any other reason in the sole determination of the Division.

5. Furnish a cash register or Point of Sale System (preferable) with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports (Attachment 7 and Attachment 8).

6. All of the Vendor-owned equipment or any permanently installed fixtures used in the concession operation shall be subject to approval by the Division, the Division of Public Health, Department of Agriculture, and the State Fire Marshal, if applicable, as to their workability, appearance, appropriateness, and compliance with codes

7. Daily collection and deposit of litter, garbage and refuse from the grounds and buildings assigned to or used by the Vendor into Vendor's dumpster.

8. Repairs and maintenance to interior building fixtures, utilities (locks, light bulbs, water faucets, clogged sinks/toilets, etc.) and appliances of small and large barn, house (including housekeeping) and garage.

9. Repairs and maintenance to all fencing on the property. This includes replacement.

10. Weed control, tree and shrub care, landscaping, leaf removal, snow removal and mowing around all building perimeters. Seeding, fertilizing and maintaining pastures, to include a rotation schedule.

11. If no bathroom facility is provided, Vendor shall provide and maintain portable toilets and hand-washing stations for public use. All portable toilets and hand-washing stations shall be cleaned on a routine schedule to ensure cleanliness for customers.

12. Safe and effective rodent and pest control when deemed necessary by Vendor and the Division.

13. Provide adequate materials to ensure good footing.

14. Ensure that all facilities and equipment supplied by the Division be returned to the Division in like condition, condition and repair, reasonable wear and tear expected.

15. Publicly display in a conspicuous place at the concession area a neat and legible sign listing rates, prices and charges for all products and services.

16. Establish and maintain books of account and records of all operations and establish systems of bookkeeping, records and accounting in a manner satisfactory to the Division.

17. All staff shall be First Aid and CPR (pediatric and adult) certified. Certification must be from a hands-on course. No on-line only certifications will be acceptable.

18. Maintain all required state or federal certifications and licenses prior to and throughout service

delivery.

19. Responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Contract. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards.

20. Assure that all products of its effort are technically sound and in conformance with all pertinent Federal and State statutes, codes, ordinances, resolutions and other regulations.

21. Any waivers used in business operations must be reviewed and approved by the Division before use.

22. Abide by the Division of Delaware Parks and Recreation's vehicular rules and regulations, (as provided on the state's official website: https://www.destateparks.com/policies-and-regulations/), including but not limited to the following:

a. Vehicles (including tractors, golf carts, mopeds, all-terrain vehicles, etc.):

1. Vehicles will only be permitted on approved roads within each of the Park location(s) or areas specifically designated by the Division for such purpose.

2. Vehicles are not allowed on paved pedestrian trails/paths or paved walkways.

3. Vehicles are not permitted to cut across lawns or gardens.

4. Vendor, their employees, subcontractors and customers shall park their vehicles only in the designated parking lot or area. No parking is permitted under the trees, on the lawn or any landscaped area of the Park.

23. Vendor, their employees and volunteers shall wear staff clothing that identifies them as Vendor's employee, guide or instructor.

24. 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.

25. Repair and maintain all equipment owned by Vendor. Equipment shall be clean and safe for use by Vendor customers and in maintained in proper serviceable condition at all times.

26. Maintain 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.

27. At all times generate and maintain an inviting atmosphere within the designated location for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this Contract.

28. Responsible for providing quality equipment, products, limited retail items and services included in this request for proposal at a reasonable price, in addition to providing excellent customer service to Park visitors.

29. 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 their natural state or return equipment to the Division at the end of the Contract term may result in the Division billing Vendor, as applicable.

30. Upon Contract expiration and payment of all fees, or termination, the Vendor shall remove all equipment, temporary storage, and inventory it furnished. Any items remaining after thirty (30) days become the property of the Division, or the Division may charge the Vendor for disposal at its discretion.

31. If the Division does not provide storage for Vendor equipment, then Vendor shall be responsible for installing temporary storage. All temporary and portable storage must be approved by the Division.

U. Modifications to Park Facilities:

1. Vendor may make alterations or improvements only with the Division's prior written approval. **No work may begin until written consent is received.** All approved work is at the Vendor's expense unless the Division agrees to share costs or provide materials/labor. Vendor must submit proposed layouts, obtain all required permits, and comply with all applicable codes. Subcontractor access must be coordinated with Park Management. **Any capital improvements made during the Contract become Division property upon expiration or termination.**

2. All improvements require written Division approval. The Vendor is responsible for all costs exceeding any Division contribution, as well as all permitting fees and related expenses for capital improvement plans.

V. 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.

W. 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.

X. Division Responsibilities:

1. The Division reserves the right to enlarge, close and/or reduce the size of the operation for the purposes of improvement, repair, construction or any other legitimate purpose including hosting a special event or adding pavilions which may restrict flow of business and onsite parking. 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.

2. 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 water use charges used in the performance of the operation services.

3. 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.

4. The areas to be included by the Division include ("as-is" condition*):

a. A 3000 square foot house with a front porch, 4 bedrooms, 2 bathrooms, a large kitchen, living room, dining room, a large den, and a half-basement. The house is on a septic system. Currently, water is provided by Artesian Water Co. and shall be invoiced monthly by the park as stated in - Utilities. Note – the house had new windows and siding installed by the Division in 2023.

b. A garage that has been converted to one office and a tack shop.*****

c. A small barn with 9 stalls.*****

d. A 40x100 foot barn with a tack room and capable of storing approximately 1000 bales of hay.*****

e. Approximately 14 acres of partially fenced-in land that includes a practice ring.

*** The Division will remove or secure any structures not proposed for use by the Vendor. If the house is not utilized, the Division may repurpose it at its sole discretion.**

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APPENDIX C
Equestrian and Animal Requirements

I. EQUESTRIAN REQUIREMENTS

A. While Equestrian or Animal operations are not required by this RFP, Vendor(s) submitting a bid proposal with an Equestrian or Animal operation included shall include that in their Action Plan and Animal Care Plan. Any Equestrian or Animal operation shall comply with the following standards which are minimum requirements of the Division:

1. Trail rides may be offered (for Equestrian proposals) which take riders through Delaware's scenic Lums Pond wildlife areas, which may also include access to longer trails at the C&D Canal. Horses used for trail rides should be safe for their purpose of use for beginner riders. Other offerings shall include riding lessons for all ages, birthday parties, school field trips and a summer day camp program. Additional programs and ideas including 4-H & FFA groups, Mom & Baby Programs, petting zoos, agriculture education, horse camping and/or horse hotels, etc. are also welcome.

2. The program may also provide special equestrian events, horses and carriage rides for special programs or events sponsored by the Division, offer same day equestrian programs to visitors of the park and boarding in accordance with the terms and conditions set forth in the contract. The successful Vendor shall not house more than a total of fourteen (14) horses and/or ponies including boarded horses in the current Facility footprint. **The exception to this would be if the awarded Vendor made capital improvements to expand the size of the operation and allow additional horses. If this is planned, Vendor shall include this in their proposal.**

3. Additional items such as tack and related riding equipment, horse care supplies, retail items, hay and straw may be sold with approval from the Division. With the approval of the Division, prepackaged snack foods, canned sodas or other non-alcoholic beverages may also be included in this service. The Vendor agrees to withdraw from sale or rent any items disapproved by the Division.

4. The Vendor shall be required to furnish and install the necessary equipment, if not provided, at the Facility for the operation of an equestrian or animal program in order to provide the specified service. Current facilities are "as-is" and Vendor shall ensure that facilities are evaluated for safety and appropriateness prior to

5. The Vendor shall be required to supply and maintain in good health all horses and animals involved in the services provided. Equines and animals shall possess the temperament needed for their stated use.

6. All of the equipment and fixtures used in the concession operation shall be subject to approval by the Division and Department of Agriculture, if applicable, as to their workability, appearance, appropriateness and compliance with all applicable codes.

7. Mowing and dragging of paddock areas and any riding rings is required. Mowing shall be accomplished at least every two (2) weeks and dragging shall be accomplished every week.

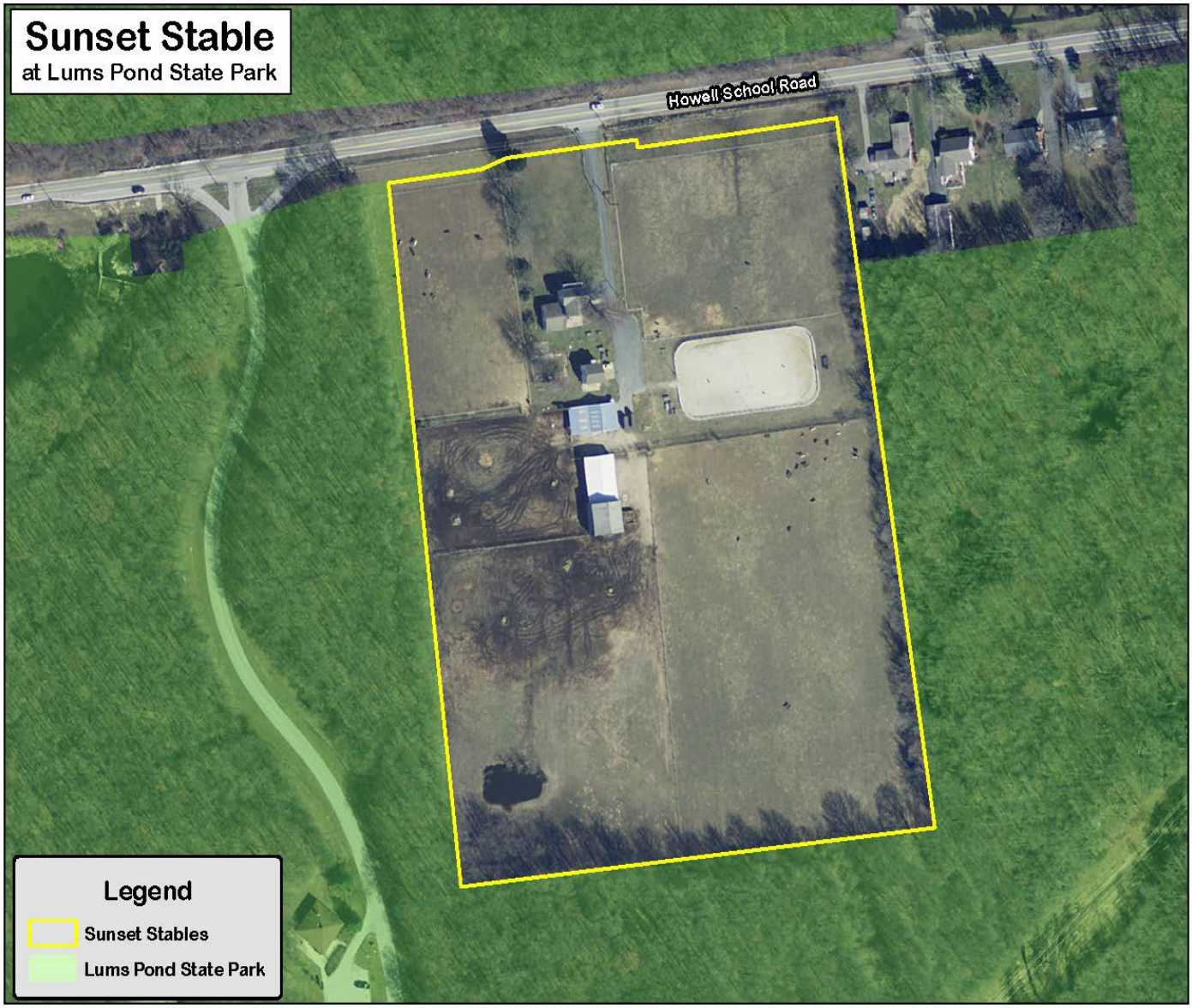
8. Daily cleaning of stalls, barns, tack rooms, lounges, office and any other space furnished by the Division and designated for use by Vendor.

9. Deposit all manure/bedding collected from stalls in the manure bunkers. Dispose of all manure/bedding from the operation, off state property, when bedding is no more than ¾ full. Manure spreading is permitted and must follow Department of Agriculture regulations.

10. Provide adequate materials to ensure good footing in riding areas and pastures.

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APPENDIX D
Site Photos



Additional site photos are available at:
https://destateparks.photoshelter.site/library/show/C0000TYrbw_GFxtg/G0000OJd0pJUlsqM

APPENDIX E
Delaware State Parks Programming

Vendor(s) proposal shall compliment, not conflict with existing programming run by the Division. Information on Delaware State Parks Programming is available at: https://destateparks.com/Programs

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APPENDIX F
Specifications and Additional Information
(Note – this section is subject to change as required by state and federal requirements)

I. State of Delaware Project Review and Approval Procedures

In meeting our goal to provide safe, code compliant and efficient facilities to State agencies and the public, certain public works projects are reviewed by the Office of Management and Budget, Division of Facilities Management (DFM). All State departments and agencies (including school districts) are required to submit to DFM proposed contracts for architectural, engineering or construction management services as well as all architectural, structural, electrical/mechanical plans, specifications and cost estimates (source Delaware Code, Title 29, Chapter 74, Section 7419 and Chapter 63A, Section 6307A).

In addition to DFM, projects must be reviewed and approved by the Department of Natural Resources and Environmental Control (DNREC) and other entities depending on the scope and status of the project. These entities may include DNREC Sediment and Stormwater Management Plan, State Historic Preservation Office (SHPO), DelDOT, State Fire Marshal, County and City. This process may require 6 to 8 weeks minimally for single reviews and longer for multiple reviews.

It is recommended that initial reviews be held with the appropriate agencies at the onset of a project to review the proposed scope. The initial meeting may result in decreasing the number of reviews and reducing the amount of time needed for approvals.

A. Projects Requiring Submission

Plans, specifications and professional services agreements are required by DFM for those projects that are:

1. Constructed by or on behalf of the State of Delaware.

2. Financed in whole or in part by the State or by bonds in whole or in part by the State.

3. Financed by the federal government through a state agency. Highway construction projects do not need to be submitted for review and approval except those identified by the AAB as requiring submission.

4. Facilities leased by the State (regardless of whether alterations will be made).

B. Agencies Affected

All State departments and agencies (including all school districts).

C. Accessibility Requirements

The Architectural Accessibility Board (AAB) is housed within the Office of Management and Budget for administrative reasons, but as a separate agency of the State, maintains an independent review and approval process. The Architectural Accessibility Act (Delaware Code, Title 29, Chapter 73) requires submission of certain plans and specifications to the Architectural Accessibility Board. Submission to the AAB and their approval must be made prior to the final DFM application.

D. DNREC Sediment and Stormwater Management Plan

Projects involving 5,000 SF or more of site disturbance must be reviewed and approved by DNREC Sediment and Stormwater Management Plan. This process can require 6 to 8 weeks minimally.

E. State Historic Preservation Office

Projects that are on the National Register, have covenants or easements, are within historic districts and/or having landmark status must be reviewed and approved by this office. It is recommended that an initial meeting be held with this office to determine their stance on the scope of work. Final documents are to be submitted and approval can require four weeks. This should be done prior to the final DFM review.

F. State Fire Marshal

All construction projects must be reviewed and approved by the State Fire Marshal. It is recommended that an initial meeting be held with this office for mid-level to complex projects. Final signed and sealed documents are to be submitted and approval can require two to four weeks. This should be done prior to the final DFM review.

G. Delaware Division of Health and Social Services (DHSS)

All construction projects must be reviewed and approved by the DHSS Office of Engineering. It is recommended that an initial meeting be held with this office for mid-level to complex projects. Final signed and sealed documents are to be submitted and approval can require two to four weeks. This should be done prior to the final DFM review.

H. County and City

The State-funded projects are required to submit construction documents for building permits with fees waived except for water and sewer fees. Privately funded projects built on State property will be required to pay all fees associated with the building permit. Issuance of the building permit can take four to twelve weeks. This is typically done by the contractor after award of the project. The Owner, architect or engineer cannot submit for the building permit.

1. The construction documents must be signed and sealed by a registered architect, structural engineer, site engineer and mechanical engineer.

2. The general contractor, plumbing contractor, mechanical contractor and electrical contractor must be licensed by the State and local jurisdiction.

3. The local jurisdiction will complete inspections during construction. These inspections will minimally include foundation, framing, ADA, mechanical, plumbing and electrical.

I. Asbestos Requirements (if present)

Delaware Code, Title 16, Chapter 78, Section 7805 (1) requires that all agencies utilizing State funds from any source to perform asbestos abatement and must have plans and specifications approved by DFM if asbestos is found.

J. Necessary Documentation for DFM Review

1. **Public Works Project Review Form**: All contracts, plans and specifications submitted to the Division of Facilities Management for review must be accompanied by a completed Public Works Project Review Form.

2. **Professional Design Service or Construction Management Contract/Agreement**: If the purpose of the submission is for the review and approval of architectural, engineering or construction management services, the proposed contract or agreement and the Professional Services Contract Review Form must be completed and submitted with the requested information.

3. **Construction Plans and Specifications**: Three (3) complete sets of final plans and specifications must be submitted (cover page of project manual and every drawing shall be signed and sealed). Two (2) copies are sent to the Chief of Engineering and Operations and one (1) copy is sent to the Architectural Accessibility Board. Note: for DFM-managed projects, address documents to the DFM project manager assigned.

4. **Life Cycle Cost Analysis**: As outlined in Delaware Code, Title 29, Chapter 69, section 6909A, the use of life cycle cost analysis is required in the purchasing of equipment and in public works projects. See here for LCCA Requirements.

5. **Design Review Checklist**: Submissions of plans and specifications must be accompanied by a completed and signed Design Review Checklist. (see below for further details)

6. **Asbestos Plans and Specifications**: One copy of final plans and specifications must be submitted to the Chief of Engineering and Operations.

K. DFM-Managed Design Review Process

DFM will review projects at the preliminary schematic, schematic, design development and final design stages. The number of reviews can be decreased upon discussion with DFM at the preliminary schematic design stage.

L. State Agency Project Design Review Process

Includes all State-funded Public Works projects including DNREC Parks & Recreation, DelDOT non-highway projects, and other projects in State-owned or leased facilities.

M. Project Design Review Process Response

1. The Chief of Engineering and Operations will issue a letter, indicating the overall findings of the review.

2. For reviews that have been “Not Approved”, the agency must provide a new review package (plans and specifications) or submit a letter that addresses the issues/comments that were a basis for disapproval.

3. All environmental compliance issues (asbestos abatement, underground storage tank, etc.) will require approval from the Chief of Engineering and Operations.

4. The Architectural Accessibility Board will issue an approval/disapproval letter indicating that the plans and specifications comply with State accessibility standards.

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APPENDIX G
Template/Sample Agreement
This Template/Sample Agreement will be used to negotiate the final version of the Contract between Vendor and the State of Delaware.

These are ONLY Samples and as Placeholders

The final contract terms and conditions will depend on the awarded vendor's service proposal.

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STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

SAMPLE - APPENDIX G
PROFESSIONAL SERVICES AGREEMENT
for
[ENTER CONTRACT NAME]
Contract No. [Enter Contract Number]

This Professional Services Agreement ("Agreement") is entered into as of _____, 20__ (Effective Date) and will end on _____, 20__, by and between the State of Delaware, Department of _____,Division of _____, _____ ("Delaware"), and _____, (the "Vendor"), with offices at _____.

WHEREAS, Delaware desires to obtain certain services to _____; and _____.

WHEREAS, Vendor desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Vendor agree as follows:

1. **Services**

1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix ___; and (c) Vendor's response to the request for proposals, attached hereto as Exhibit ___. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment

2. **Payment for Services and Expenses**

2.1. The term of the initial contract shall be from _____, 20__ through _____, 20____. The Contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Delaware.

2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

2.3. Delaware will pay Vendor for the performance of services described in Appendix ___, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix ___.

2.4. Delaware's obligation to pay Vendor for the performance of services described in Appendix ___, Statement of Work will not exceed the fixed fee amount of $_____. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.

2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (PCard), Single Use Account (SUA), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number ENTER CONTRACT NUMBER on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

2.6. The agencies or school districts using this contract will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the Purchase Card (PCard) and Single Use Account (SUA) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any PCard or SUA transaction under the contract. While it is the State's intention to utilize the PCard or SUA payment method the State reserves, at its discretion, the right to pay by ACH/ACI.

2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.

2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services,

including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.9. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers and tractors. More detail is included in IRS Publication 510 Excise Taxes located at https://www.irs.gov/publications/p510 . Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.

2.10. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.

2.11. Invoices shall be submitted to:

3. Responsibilities of Vendor

3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at http://dti.delaware.gov/, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.

3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement

3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. **Time Schedule**

4.1. A project schedule is included in Appendix A.

4.2. Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3. In the event that Vendor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

5. **State Responsibilities**

5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members and shall so inform Vendor by written notice before the effective date of each such delegation.

5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

a. Copies of reports, surveys, records, and other pertinent documents;

b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

5.6. Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. **Work Product**

6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2. Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. **Confidential Information**

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled, or prepared in connection with the performance of this Agreement.

8. **Warranty**

8.1. Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. **Indemnification; Limitation of Liability**

9.1. Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:

a. the negligence or other wrongful conduct of the Vendor, its agents or employees, or

b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.

9.2. If Delaware promptly notifies Vendor in writing of a third-party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:

a. Delaware's misuse or modification of the Deliverable;

b. Delaware's failure to use corrections or enhancements made available by Vendor;

c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;

d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or

e. Information, direction, specification, or materials provided by Vendor or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either

   i. Procure the right for Delaware to continue using it,

   ii. Replace it with a non-infringing equivalent,

   iii. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

10. **Employees**

10.1. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee, or independent contractor and with which a party comes into direct contact in the course of the services.

10.3. Possession of a Security Clearance, as issued by the Delaware Department of Safety and Homeland Security, may be required of any employee of Vendor who will be assigned to this project.

11. **Independent Contractor**

11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to,

sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3. Vendor shall be responsible for providing liability insurance for its personnel.

11.4. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Dispute Resolution

12.1. At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

13. **Remedies**

13.1. Except as otherwise provided in this Agreement, including but not limited to Section 12 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

14. **Suspension**

14.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

14.2. In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable

adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

15. **Termination**

15.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

a. Not less than 20 calendar days written notice of intent to terminate; and

b. An opportunity for consultation with the terminating party prior to termination.

15.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:

a. Not less than 20 calendar days written notice of intent to terminate; and

b. An opportunity for consultation with Delaware prior to termination.

15.3. If termination for default is affected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:

a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and

b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.

c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

15.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been affected for the convenience of Delaware.

15.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

15.6. Gratuities.

a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

b. In the event this Agreement is terminated as provided in 15.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.

c. The rights and remedies of Delaware provided in Section 15.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

16. **Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. **Assignment; Subcontracts**

17.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

17.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.

17.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

17.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.

17.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

18. **Force Majeure; Applicability**

Neither the Vendor nor Delaware shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

a. Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;

b. Diseases, plagues, quarantine, epidemics or pandemics;

c. Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or

d. The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

19. **Non-Appropriation of Funds**

19.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

19.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

20. **State of Delaware Business License**

Vendor and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2101.

21. **Complete Agreement**

21.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

21.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

21.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

22. **Miscellaneous Provisions**

22.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

22.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

22.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

22.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

22.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

22.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

22.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22.9. The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

22.10. Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

23. **Insurance**

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below

with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

b. Commercial General Liability - $1,000,000 per occurrence/$3,000,000 per aggregate.

c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

    1. $1,000,000 combined single limit each accident, for bodily injury;

    2. $250,000 for property damage to others;

    3. $25,000 per person per accident Uninsured/Underinsured Motorists coverage;

    4. $25,000 per person, $300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and

    5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

a. Medical/Professional Liability - $1,000,000 per occurrence/$3,000,000 per aggregate

b. Miscellaneous Errors and Omissions - $1,000,000 per occurrence/$3,000,000 per aggregate

c. Product Liability - $1,000,000 per occurrence/$3,000,000 aggregate

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

ENTER AGENCY NAME
Contract No: ENTER CONTRACT NUMBER
State of Delaware
ADDRESS
ADDRESS

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

24. **Performance Requirements**

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

25. **Performance Bond**

Contractors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of the Agency with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted in the form of good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware.

26. **Assignment of Antitrust Claims**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

27. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.

28. **Notices**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

DELAWARE:
(Agency contact address)

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

VENDOR:
(Vendor contact address)

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE
DEPARTMENT OF _____

_____

_____ _____
Witness Name

_____
Title

_____
Date

VENDOR

_____

_____ _____
Witness Name

_____
Title

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF PARKS AND RECREATION

Attachment 1

PERFORMANCE BOND

Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, _____, as principal ("**Principal**"), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety ("**Surety**"), are held and firmly bound unto the _____ ("**Owner**") (***insert State agency name***), in the amount of _____ ($_____), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has been awarded by **Owner** that certain contract known as Contract No. _____ dated the _____ day of _____, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse **Owner** sufficient funds to pay the costs of completing the Contract that **Owner** may sustain by reason of any failure or default on the part of **Principal**, and shall also indemnify and save harmless **Owner** from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by **Owner**, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause **Principal** fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

_____

_____ _____
Witness Name

_____
Title

_____
Date

_____
Company Name

_____
Company Address

SURETY

_____

_____ _____
Witness Name

_____
Title