



Parks, Recreation and Historic Preservation

REQUEST FOR PROPOSALS X001396 FOR THE TURNKEY OPERATION OF THE GOLF COURSES, GOLF PRO SHOP, AND RESTAURANT AT

**Saratoga Spa State Park
Saratoga Springs, NY**



**RFP Released: Thursday, May 27, 2021
Proposals Due: Wednesday, July 14, 2021**

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I. STATE PARKS MISSION & GOAL

The mission of the New York State Office of Parks, Recreation, and Historic Preservation (“State Parks”) is to provide safe and enjoyable recreational and interpretive opportunities for all New York State residents and visitors and to be responsible stewards of our valuable natural, historic, and cultural resources.

This request for proposals (“RFP”) seeks a private sector operator for the turnkey operation of the Championship and Executive golf courses, golf pro shop, restaurant, and related facilities collectively referred to as the “Concession or Concessions” at Saratoga Spa State Park (“the Park”) in Saratoga Springs, NY. The Concession will consist of maintaining and improving the Championship and Executive courses, providing professional golf course services, and affordable food and beverage offerings for golfers and park patrons alike. Proposals must reflect excellence, professionalism, and high quality for the Concessions including offerings, operations, customer service, and design and construction of capital and improvement projects. This RFP has mandatory minimum financial requirements for license fees, capital investment, and other required payments that are outlined in Section IX.

This RFP will result in the award of a new concession license agreement (“License”) to the successful party (“Licensee”). The specific premises comprising the fixed concession facilities are identified in Section VI and referred to collectively as the “Premises.” Please refer to Attachment B of the Sample License (Exhibit “E”) for an Inventory of Equipment.

The License granted will be in accordance with the terms and conditions of this RFP, State Parks’ operating requirements, and all applicable laws, rules, and regulations. The “Sample License” (including Appendix A-Standard Clauses for New York State Contracts) is provided in Exhibit “E” and substantially reflects the mandatory legal and operating requirements that will comprise the License to be granted. Questions of State Parks relating to the Sample License should be submitted in accordance with RFP Section IV prior to submission of a proposal.

II. LICENSE TERM

The term of the License will commence on January 1, 2022 and conclude on December 31, 2041 subject to contract approval by the Office of the State Comptroller. In accordance with Parks, Recreation and Historic Preservation Law (“PRHPL”) Title B, Article 3, §3.09(2)(a), State Parks’ authority to grant a maximum term of twenty years requires that Licensee provide at least one (\$1,000,000) million dollars in capital investment in the Premises, and demonstrate the term bears a direct relationship to the time required to amortize that investment. A respondent must include a sound financial justification in the proposal to satisfy this legal requirement of the PRHPL.

III. RFP TIMETABLE & SUBMISSION ADDRESS

The following timetable is established for this RFP and is subject to change. State Parks may extend the due date for proposals by issuance of published addenda to this RFP. Prior to submitting a proposal, respondents should check the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>) to confirm the issuance of addenda relating to the RFP schedule.

Released:	Thursday, May 27, 2021
Initial Questions Requested By:	Wednesday, June 16, 2021
Proposals Due:	Wednesday, July 14, 2021, 3:00 P.M.

Oral Presentations: July or August 2021

Proposals must be RECEIVED IN HAND by State Parks on or before the prescribed date and time at:

NYS Office of Parks, Recreation & Historic Preservation
Attn: X001396 Saratoga Spa State Park Golf Concession Proposal
Concessions Management Bureau
625 Broadway, 2nd Floor
Albany, NY 12207

Proposals not received in hand by State Parks at its Albany office by the official due date and time will be deemed untimely and returned.

IV. CONTACT INFORMATION

A. DESIGNATED CONTACTS

Important guidelines regarding communications during this procurement are included in this RFP (Exhibit D: Procurement Requirement #1). Interested parties are advised to be familiar with these guidelines before contacting State Parks' staff as prohibited contact or communication may result in disqualification from participation in the RFP.

The following individuals are the **ONLY** Designated Contacts for this RFP process.

Moriah Dorazio, Contract Management Specialist 1 Trainee
Daniel K. Munsell, Contract Management Specialist 2
Kathy O'Brien Rose, Director, Concessions Management Bureau

E-mail: Concessions@parks.ny.gov
Phone: 518-486-2932
Mailing Address: New York State Office of Parks, Recreation and Historic Preservation
Concessions Management Bureau, 2nd Floor
625 Broadway, Albany, NY 12207

NOTE: Interested parties may communicate with State Parks' representatives to schedule and pose questions during a site visit, and confirm receipt by State Parks of submitted inquiries, the issuance of addenda, and to verify the timely submission of a proposal.

B. SITE TOUR

A site tour of the Premises is required. Saratoga Spa State Park is open to the public on a regular schedule although access to certain concession areas, buildings, and structures may be limited or restricted. Respondents must contact David Guest, Park Manager, David.Guest@parks.ny.gov or phone #518-584-2000 ext. 115 to schedule a formal visit. State Parks will coordinate all scheduling and for efficiency may consolidate requests for site visits into group tours.

Parties should first carefully review the RFP and published addenda when scheduling a site visit. State Parks' tour staff provide site orientation and information about the Premises as set forth in the RFP and published addenda. To ensure a timely response to inquiries, substantive questions arising during a site visit

must be submitted in writing to State Parks, preferably within three days of the visit.

C. QUESTIONS & INQUIRIES

All other inquiries and requests for information regarding this RFP must be made in writing and emailed to State Parks at address listed in the “Designated Contacts” section. Individual responses will not be provided. State Parks will provide written responses to questions in the form of one or more addenda to the RFP which shall be published on the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>). Such official addenda are the only authorized method used to communicate substantive information, including the clarification or modification of the timeline, terms, or other requirements of this RFP.

V. BACKGROUND

A. THE PARK

Saratoga Spa State Park consists of approximately 2,200 acres in a landscaped and natural setting located within the southern border of the City of Saratoga Springs in Saratoga County. Saratoga Spa State Park, distinguished by its classical architecture and listed as a National Historic Landmark, is noted for its diverse cultural, aesthetic, and recreational resources. In addition to the nationally known Saratoga Performing Arts Center, the Spa Little Theater, the National Museum of Dance, the Saratoga Automobile Museum, the Gideon Putnam Resort, and Roosevelt Baths and Spa, the Park offers a multitude of traditional recreation opportunities including the very popular Saratoga Spa State Park Golf Courses which offers two beautiful golf courses; complete with pro shops and restaurant.

The 18-hole Championship and 9-hole Executive courses both offer challenging play among the majestic and stately pines. The Executive Course features wide, tightly clipped fairways, sloping greens, and tall pines. The Championship Course was home to the 1999 East Region Club Professional Championship.

The Park enjoys steady visitation throughout the year. Among the summer highlights are the performances at SPAC which can attract up to 30,000 attendees, which in turn drives additional visitation to the Park. In addition to a strong leisure travel trade, the Gideon Putnam Hotel hosts business meetings, and conventions throughout the year. Similarly, the City of Saratoga Springs has become well known for both its robust seasonal tourism as well as year-round convention business.

B. RECENT COURSE IMPROVEMENTS

Significant improvements have been made to the courses during the past ten years; a new pump system was installed in 2011, and during 2015 improvements included a complete bunker renovation and improvements to drainage enhancing the overall turf quality.

C. BUSINESS HISTORY

See the total number of golf rounds by course and concession Gross Receipts history as reported for years 2016 – 2020 in Exhibit C of this RFP.

VI. PREMISES

Annotated maps of Saratoga Spa State Park identifying the location of the Premises is annexed as Exhibit “B”. An inventory of equipment is available as Attachment “B” of the Sample License (Exhibit “E”).

The following outlines the Premises and the Concessions subject to this RFP:

18-hole Championship Golf Course: Located in the vicinity of the Gideon Putnam Hotel and Victoria Pool complex; this course offers highly manicured greens guarded by large sand traps, fairway bunkers, and mature conifers. From the blue tees the course plays over 7,000 yards and has three water hazards.

9-hole Executive Golf Course: This par 29 course is located north of the Saratoga Auto Museum between the Avenue of the Pines and Route 50.

Driving Range and Practice Green: These areas are located east of the Golf Pro Shop.

Golf Pro Shop: The Golf Pro Shop is approximately 3,500 sq. ft. used for checking in golfers, an office space for golf course operations, and a showroom for golf related merchandise sales.

Executive Course Clubhouse: The Executive course clubhouse is approximately 1,200 sq. ft. and is used for checking in golfers at the 9-hole Executive course. Ancillary golf related merchandise is also sold here. Adjacent to this building is a cart charging station and staging area.

Restaurant: Located within the Victoria Pool complex is approximately 3,600 sq. ft. with an additional 5,000 sq. ft. of outdoor dining space including an outdoor bar. The building has both men's and women's restrooms, indoor bar area, and food prep area with an updated kitchen to serve golfers, pool goers, and park patrons.

Snack Shack: This 300 sq. ft. food service building is located between the 9th and 10th holes of the Championship course.

Cart storage building: This 8,700 sq. ft. building is used to store and charge golf carts. Additionally, training area and locker rooms for golfers are in the building.

Maintenance Building (or "Gideon Garage"): Licensee will have approximately 2,270 sq. ft. of separated storage space for golf course maintenance equipment within the Gideon Garage. This building is a shared maintenance building with State Parks.

VII. SCOPE OF CONCESSION

This RFP invites proposals for the turnkey operation of two high-quality golf courses, golf pro shop, and restaurant concession, including related facilities, at the Premises located in Saratoga Spa State Park commencing for the 2022 season. All proposals must contemplate that all operations included in this RFP will be performed by the Licensee at its sole cost and expense including the necessary capital investment to replace the golf course irrigation system. Licensee is expected to establish and operate under a sustainable business plan and philosophy that encourages, attracts, accommodates, and facilitates excellence in golf and restaurant services while executing customer service in harmony with existing Park uses and schedules.

A. Golf Course Operations

1. The current golf course irrigation system is operable but is in need of replacement. Licensee shall outline in their proposal the necessary capital investment to replace the golf course irrigation system within

the first three years of the term. Refer to Section IX. C. of the RFP for more information regarding the required minimum capital investment.

2. Licensee will be responsible for all aspects of maintenance and operation of the golf courses and related facilities, including the collection of green fees, driving range, rental of golf carts (electric), and pro shop retail sales of golf-related merchandise.
3. Licensee will be required to implement golf course management methods consistent with prevailing industry standards and the principles of integrated pest management ("IPM"), including participation in State Parks' statewide IPM program.
4. Licensee shall procure and make available at minimum a total of 80 new or "like new" electric powered golf carts, 30 new or "like new" hand pull carts, two accessible carts for golfers with disabilities, and an adequate number of golf club rentals to meet demand. For additional information regarding the golf cart requirements, please refer to Section 8 of the attached Sample Draft License.
5. State Parks encourages proposals that include lessons and golf outing packages.
6. Licensee is required to develop a junior golf/learning program as approved by State Parks. Any employee providing golfing instruction or golf teaching shall, at a minimum, be certified Class "A" PGA member or registered PGA apprentice.
7. Licensee is responsible for the use and routine maintenance of the two (2) aboveground fuel tanks serving the Concessions, including the compliance with all applicable State and Federal regulations. All maintenance must be performed in accordance with generally accepted industry practices. Any required cleanup or remediation of spills, leaks, or discharges will be the sole responsibility of the Licensee. For further information regarding the fuel pump operations, please refer to Section 8 of the attached Sample Draft License.
8. Licensee may set and change prices and fees for all concession services subject to notice and approval by State Parks. For golf, Licensee must honor the New York State Access Pass, Golden Park Program (Senior Discount), and junior (under age 17) golf discounts, for information on these programs please refer to Section 8 of the Sample Draft License.
9. Licensee will be authorized to use and maintain the golf courses maintenance and other equipment set forth in the inventories attached to the draft Sample License as Attachment B. The equipment is owned by State Parks and may not be sold, bartered, exchanged, transferred, loaned or removed from the Park, except with the advance approval of State Parks. Licensee may not pledge a security interests in any State-owned property. Potential respondents should note that limited equipment for golf maintenance is provided with this opportunity, any additional equipment needed shall be the sole responsibility of the Licensee. This may be accomplished by utilizing Licensee owned equipment, and by purchasing or leasing additional equipment.

B. Food and Beverage Operations**1. Restaurant:**

- i. The minimum hours of operation for the restaurant shall coordinate when the golf courses are open to the public, generally beginning in April and concluding in November to serve patrons with a menu attractive to golfers and park patrons alike during the golf season. The restaurant is permitted to be open year-round and Licensee should be flexible to extended hours of operation to satisfy patron demand. Concession hours can be adjusted upon approval by State Parks.
- ii. The sale of alcohol is permitted at the Premises subject to approval by State Parks. The Licensee is also required to provide and operate a beverage cart on the golf courses on a schedule mutually determined by the Licensee and State Parks. The sale of alcohol is contingent upon the Licensee obtaining the appropriate liability insurance, and licenses from the State Liquor Authority (SLA). Proposals should specifically address how the Licensee will comply with these expectations.
- iii. Licensee shall accommodate and encourage restaurant food and beverage services for park-based private, non-profit, and charitable golf outings, fundraisers, and similar events, and should work to create and offer restaurant food, beverage, and catering service in connection with golf packages and outings. All catered events must be coordinated with the Park Manager prior to final booking of the event to avoid conflicts with other programs and activities in the Park. Please refer to Section 8 of the Sample License, Special Operating Requirements, for additional requirements regarding restaurant services and catered events.

2. **Snack Shack:** Licensee shall provide limited fast fare food and beverage service for golfers.

RFP REQUIREMENTS**VIII. BUSINESS CONSIDERATIONS & REQUIREMENTS**

- A. **Due Diligence:** A respondent must rely on independent research and investigations for all matters relating to development of a proposal, including without limitation assessing business case, market analysis, projected revenue, costs and opportunity for profit, construction projects and facility improvements. Consultant report and cost estimates in this RFP associated with required and suggested capital projects are merely good faith projections of the scale of anticipated costs for planning purposes; values are not the work product of a professional construction estimator. The Premises will be made available to Licensee in “as is, where is” condition at commencement of the term.
- B. **Sample License:** A sample license is annexed to this RFP as Exhibit “E” and represents the contract template and substantially all material terms and conditions of the License to be awarded to the successful respondent. The License will be tailored to the successful proposal to the extent there is no substantial conflict with the RFP and sample license. The License is a state contract subject to the independent review and approval of the New York Office of the Attorney General and Office of the State Comptroller. Accordingly, a respondent should review the sample license carefully when preparing a proposal as there are limited opportunities to negotiate language or change the material terms and conditions set forth therein.

- C. **Capital Improvements, Repairs & Maintenance:** The License requires, and proposals must contemplate that all construction and finishing work, repairs, and maintenance of the Premises during the term are the sole responsibility of the Licensee. Except as provided for in the License, State Parks is responsible for structural elements of buildings, but not the Premises. Capital improvements and repairs funded by Licensee become the property of the State upon acceptance of completed work by State Parks. The New York State Uniform Fire Prevention and Building Code and other applicable federal and state laws, rules, codes and regulations and executive orders apply to construction, including without limitation those relating to the Americans with Disabilities Act, energy efficiency and “green” initiatives. A respondent should carefully investigate the costs and implications of these requirements in developing a capital plan.
- D. **Concession Service, Offerings, Menus, and Pricing:** The operating schedules for the Concessions are subject to approval by State Parks. Proposals should contain golf fee schedules that include greens fees, cart rentals, lessons, as well as sample menus and pricing for food and beverage offerings associated with the concession that demonstrate quality, variety and price points to accommodate a range of user groups and clientele. Market-based prices and customary fees and charges should be incorporated into Licensee’s business plan and are subject to a reserved right of approval by State Parks. Exclusive memberships or similar “club” programs that restrict access by the public to the Premises are incompatible with State Parks’ mission and will not be approved. Licensee is expected to incorporate locally sourced foods, food products, and other items produced in New York in collaboration with New York’s Taste NY initiative. State Parks encourages proposals that reflect the Park’s location and incorporate healthy food options and seasonally available fresh foods. Licensee must report annually, in a prescribed format, the types and quantities of goods and products purchased, and the approximate dollar value of purchases from each provider. Respondents should note in the Sample License State Parks’ evolving policy including prohibition of polystyrene (Styrofoam) and certain single use plastics.
- E. **Golf Reservation System:** Licensee is required to utilize the internet golf reservation system under contract with State Parks. State Parks will provide the necessary equipment. The Licensee will have the option to also use the associated online credit card payment system through the reservation system.
- F. **Reporting & Data Access:** Licensee shall provide, utilize, and afford State Parks with meaningful access to a modern point of sale system used for generating daily, weekly, and monthly reports that clearly detail advance bookings and deposits, Gross Receipts, taxes, License Fees, golf rounds, tips, transaction types, and any other relevant business data that may be reasonably specified by State Parks. For audit, State Parks shall have access to raw or source data used for periodic reports, including but not limited to booking data, revenue and attendance tracking, and similar tools in a modern point of sales system. Licensee is responsible for all fees and costs associated with sales transactions.
- G. **Taxes:** There are no property taxes associated with the Premises. Licensee is responsible for payment/compliance with all applicable state and local tax requirements, including sales tax.
- H. **New legal entity formation:** A respondent must disclose if a new legal entity (e.g. a limited liability company) will be formed to contract with State Parks.

IX. MINIMUM FINANCIAL REQUIREMENTS

Proposals must meet the following minimum financial requirements:

- A. Bid Security Deposit: All proposal submissions must be accompanied by a certified or bank check in the amount of Five Thousand (\$5,000) Dollars payable to “NYS Parks” to serve as bid security. If the required bid security is not included, the proposal will be disqualified and returned.
- B. Minimum License Fees:
1. Base annual flat fee: A *minimum* fee (“License Fee”) of \$225,000 annually. During the term of the License, the flat annual license fee shall increase by \$25,000 every five years.
 2. Percentage of Gross Receipts: An additional monthly *minimum* license fee of 7.0% of Gross Receipts as defined in the Sample License is required.

If a respondent does not offer at least the required minimum License Fees, the proposal will be disqualified and returned. Respondents may provide escalating or enhanced license fees above the required minimum fees; however enhanced or escalating fees must be set forth in the financial proposal form, or will be excluded from consideration in the evaluation of the financial Return to State.

C. Minimum Capital Investment:

A proposal must make a minimum capital investment commitment in the Premises of not less than \$5 Million Dollars. The irrigation system is at the end of its useful life and must be replaced within the first three years; any other projects must be completed by not later than year 10 of the License. In accordance with PRHPL Title B, Article 3, §3.09(2)(a) the proposal must demonstrate the 20-year term bears a direct relationship to the time required to amortize the Capital Investment. The capital commitment must be expended on capital projects formally approved by State Parks according to the following priorities:

REQUIRED PRIORITY PROJECTS:

- Golf Course Irrigation System- complete replacement (estimate ~\$2.8 Million)
- Restaurant Rehabilitation (estimate ~\$520,000)
- Pro Shop Rehabilitation (estimate ~\$235,000)
- Cart Storage Facility Rehabilitation (estimate ~\$110,000)
- Locker Room and Training Facility (estimate ~\$600,000)
- Repaving Cart Paths (estimate ~\$155,000)
- Championship and Executive Golf Course Improvements (estimate ~\$430,000)

Supplement 1 consists of consultant evaluations of the Premises on behalf of State Parks and is available upon request. These evaluations contain information about the scope of the required priority projects as well as other recommended improvements to the Premises.

- D. Operations, Maintenance & Repairs: Licensee is completely responsible for all costs associated with the outfitting of the Premises in order to facilitate their proposal as well as the repair, replacement, and refurbishment of equipment located at the Premises. Additionally, all operations, maintenance, and repair costs relating to the Premises as set forth in the Sample License.
- E. Utilities & Trash Removal: Licensee will be responsible for costs of utilities as follows:
1. Electricity:
 - i. Licensee shall be billed by State Parks for 97% of the total costs of electricity based upon the utility meter used in connection with the golf course irrigation pumps.
 - ii. State Parks will bill Licensee for 100% of costs of electricity used in connection with the Restaurant, Snack Shack, Pro Shop, Golf Cart Storage Area and Training Area/Locker Rooms for actual usage by submeters.
 - iii. Licensee shall arrange service for all other usage in connection with the 9-hole Executive Clubhouse and shall be paid directly to the provider.

The average cost of electricity as billed by State Parks to the Concessionaire averages between \$16,000-\$18,000 annually.
 2. Water:

Licensee shall arrange and pay for water used in connection with the Restaurant, Snack Shack, Pro Shop, Training Area/Locker Rooms, and 9-hole Executive Clubhouse and shall be paid directly to the City of Saratoga Springs N.Y.
 3. Other Utilities and Trash:
 - i. Licensee shall arrange and pay for the costs of fuel oil, propane, cable television, internet, and telephone service used in connection with this License and shall be paid directly to the provider(s).
 - ii. Licensee will be responsible for the cost of recycling and refuse removal and will be paid directly to the provider. Licensee must provide an adequate number of waste receptacles, including dumpsters, in and around the vicinity of the Premises. The placement of dumpsters must be approved by State Parks.
- F. Point of Sale System: There is currently a POS system available for use at the Premises. Licensee may either utilize this system or provide its own. If the Licensee chooses to provide their own POS system, terminals must be provided at each location that conducts business transactions. The system and each terminal must have the capability to record all categories of Gross Receipts including but not limited to; green fees, cart rentals, driving range, golf merchandise, and restaurant sales separately at each location and where applicable. All POS systems must be PCI compliant.
- G. Insurance Coverage: Licensee shall procure and maintain at its sole expense commercial liability and other insurance as set forth in the Sample License, Sections 19, 20, and Attachment E.
- H. Bonds: Licensee will be required to procure and maintain financial payment and capital bonds, letters of credit, or provide other forms of security acceptable to State Parks. The principal value of the financial payment bond or security shall be equal to the sum of the projected annual License Fees, and any other

financial obligation of License, for the first full year of the term, subject to adjustment every three years in State Parks' discretion. Statutory labor and materials payment bonds are also required for certain work as set forth in the Sample License, Attachment C.

X. GUIDANCE ON FORM & CONTENT OF PROPOSALS

Proposals should clearly and concisely state the unique capabilities, experience, and strengths of the respondent, and demonstrate the capacity to satisfy the requirements and objectives set forth in this RFP. A complete proposal must include and address the following elements:

- A. Duly completed and executed Required Forms & Clauses (Exhibit "A") including the Proposal Checklist, Financial Proposal Form, and Business History Form with supporting materials.
- B. A comprehensive narrative including the respondent's experience, commitment, financial resources, and capacity to meet the goals of the RFP, including the design, construction, and commissioning of the new irrigation system; and the operation and maintenance of the Premises and the Concession as inviting, first class services for golfers and Park visitors. The narrative should address the proposed program for the Concessions including without limitation concept plans, drawings and renderings and other supportive and demonstrative materials that present the respondent's full vision. The following are critical components of a responsive proposal:
 - 1) Business plans: with a pro forma identifying and accounting for all projected costs and expenses and contemplated partnerships, sub-licenses, and sponsorships. The pro forma must be:
 - a. Itemized with financial projections for each year of the 20-year term with anticipated cash flows, and details of revenues and expenses, including proposed capital, operations, and maintenance costs. Any assumed or anticipated taxes, tariffs, grants, energy credits or other governmental benefits must be disclosed and included in the *pro forma*. Known financing contingencies, and assumptions or conditions that may impact the Concessions, including without limitation the projected capital investment, revenues, or expenditures should be clearly disclosed.
 - b. Inclusive of all financial requirements of this RFP, including without limitation the proposed License Fees, Utilities payments, and capital investment. In accordance with PRHPL Title B, Article 3, §3.09(2)(a) the pro forma must demonstrate the 20-year term bears a direct relationship to the time required to amortize the Capital Investment.
 - c. Submitted in an Excel spreadsheet format with the hard copy of the proposal and as a separate document saved on the required flash drive.
 - 2) Operations & Maintenance plans: Description of the plan to successfully develop, operate, manage and maintain the Premises and Concessions including without limitation operating budget and schedules, staffing, proposed menus, customer service and standards, marketing and promotion strategies, and comprehensive approach to facility inspection, code compliance, and meeting industry standards for service and maintenance..
 - 3) Capital Plan: Plan for the replacement of the irrigation system; and other required or contemplated capital projects, including phased improvements for capital repairs to be undertaken during the term. The proposed capital commitment should reflect respondent's total investment including, contingencies, and account for future capital repair or replacement projects supported by a budget and schedule.

- C. Resumes and/or professional histories demonstrating background, education, and experience (in park and analogous visitor services including golf course management, golf services, food, retail, and related capital development) of the principal members of the respondent's organization, project team, and other key partners or participants. Provide an organization chart/diagram reflecting the intended business and operating structures, owner/operator, chain of command, and/or composition of the respondent and other participants, partnerships, or joint ventures. A respondent must disclose if a new legal entity (e.g. a limited liability company) will be formed to contract with State Parks, and identify its anticipated organizational structure, ownership, management, and sources of credit and/or funding.
- D. Specific evidence of relevant operating experience, including designing and constructing capital projects for golf courses and related food and retail concessions and services of comparable scope and scale to the Concessions, including examples of similar projects completed, business enterprises developed, owned, or operated by respondent.
- E. A minimum of three current business references relevant to the scope of the RFP. Preferred references include from a financial institution that has extended credit; industry entities with which golf service and related retail and food business has been transacted; and/or a commercial owner, management company or government entity from or for which the respondent has leased or licensed property and provided services relevant to the Premises and the Concession
- F. A current verified financial statement, profit and loss statement, balance sheet or other commercially reliable written evidence of the respondent's good credit, secure financial standing, and capacity to perform the financial requirements of the License, including the capacity to procure bonds or other recognized forms of financial security, and insurance.

XI. PROPOSAL SUBMISSION INSTRUCTIONS

A complete proposal is due on or before the deadline established as per Section III ("RFP Timetable & Submission Address") and must be in accordance with the provisions, requirements, terms, and conditions of this RFP and the Sample License. Proposals that are contingent or conditioned, that include a modification of the Business History or Proposal Form, or that are submitted in other than the prescribed format are subject to disqualification.

Submit five printed copies of the complete proposal, including all attachments, enclosures, and required forms and one flash drive with the complete proposal in Adobe PDF format and all *pro forma* as an Excel spreadsheet document. Original signatures are required on at least one copy of all required forms. The proposal must be bound or stapled originals, typewritten, two-sided, and on 8½" x 11" sized paper with numbered pages. Please do not submit a proposal in plastic sleeves or three ring binders.

XII. PROPOSAL REVIEW

All materials comprising a proposal submitted in response to this RFP become State Parks' property without obligation for return. All determinations of sufficiency and completeness of a proposal and compliance with the requirements of this RFP, including the eligibility or qualification of a respondent, are in the sole discretion of State Parks. State Parks may utilize all materials and all available public information to evaluate a proposal and the capabilities of a respondent. State Parks will review proposals for completeness and compliance with

the terms and conditions of this RFP and may request from any respondent, at any time during the selection process, additional information, clarification, or confirmation of the proposal.

XIII. METHOD OF EVALUATION AND AWARD

State Parks evaluation and scoring process allows a maximum of 120 points per panelist and consists of a technical score based on evaluation of the substance of the proposal and respondent's qualifications (maximum of 90 points available), and a financial score based on comparative evaluation of the relative financial value of the return to the State offered by each proposal (maximum 30 points available). State Parks will schedule an interview/ oral presentation for each respondent that submits a proposal compliant with the RFP. The method of evaluation for the technical score and calculation for the financial score are provided in Paragraph "A" below; the scoring criteria for the technical score are set forth in Paragraph "B" below.

A) EVALUATION METHOD

1. Panel Evaluation (75% of score)

Proposals are evaluated by a review panel composed of agency staff familiar with the operation and management of the agency's concessions program and park operations. Panelists review all responsive proposals and attends the interviews/ oral presentations; all proposals are scored by the same review panel. Panelists score each proposal individually based on the technical selection criteria and point allocation outlined in Paragraph B below in two steps: first, prior to the interview/ oral presentation each panelist assigns preliminary scores based upon the written proposal; second, after the interview/ oral presentation, a panelist may adjust the preliminary scores based upon the interview/ oral presentation to determine a final score. Each panelist's final score is counted toward the total technical score for the proposal.

2. Return to State Calculation (25% of score)

The projected financial return to the State is a comparative score calculated by the agency Concessions Management Bureau based on the License Fees and capital investment offers set forth in the Financial Proposal Form submitted with each proposal. The proposal or proposals offering the highest estimated financial return is awarded the highest possible financial score of 30 points. Any additional or conflicting financial offer submitted other than on the Financial Proposal Form will not be considered in the Return to State calculation.

The projected financial return to State is equal to the total of the projected License Fees over the initial term of the License, plus the dollar value of the capital investment offered. For scoring purposes, the percentage based License Fee projections are based on a fixed model using the average historic annual Gross Receipts for the concessions (not the pro forma projections submitted by any respondent) and added to the aggregate sum of the proposed Annual flat License Fee. The proposal determined to offer the highest projected financial return is awarded 30 of the 30 available points allocated to this category. All other proposals offering a lower projected financial return to the State are awarded pro-rata points based on its percentage of the highest projected financial return, rounded down to a whole number.

For example, Proposal A offering the highest return to the State receives all 30 points; Proposal B offering 10% less than Proposal A as a return to the State receives 27 points.

3. Selection for Award

The calculated score for financial return to the State is added to the technical score of each panelist, and the

sum of those aggregate scores comprise the total score for the proposal. Proposals are ranked by total score by the Concessions Management Bureau; if proposals receive identical total scores, the tie is broken by ranking based on the higher technical score. The highest scoring (i.e., top ranked) proposal from a responsible respondent will be selected for award.

Selection for award is subject to a full vendor responsibility review of the respondent and execution of the License. If State Parks cannot achieve an executed License with the respondent initially selected for award, it may elect to proceed with the responsible respondent with the next highest ranking.

B) TECHNICAL CRITERIA

Category A: Background & Experience - 35 Points

- A. Demonstrated ability to establish and concurrently maintain a sustainable, high-quality, year-round, and highly seasonal operation of similar complexity, diversity, scale, and proximity. Demonstrated ability to execute construction projects and maintain timelines. Evidence and extent of operational performance providing top quality management and operation of a golf course including past performance establishing and building customer loyalty, golf membership, leagues and events, golf instruction and related food service: 10 points
- B. Personnel qualifications and experience, including, but not limited to managerial strength, organizational structure, training programs, the recruitment and retention of qualified staff; and the capacity to manage and promote the Concessions: 15 points
- C. Financial capacity, resources, and business relationships to perform as required by the RFP: 10 points
 - 1) Available financial resources, equipment, facilities, organizational and personnel resources, and expertise. Record of achieving sustainable profitability and goodwill in similarly diverse operations of comparable scale.
 - 2) Supporting materials providing evidence of the respondent's ability to fulfill the capital investment commitment and perform as required by the RFP and the License.

Category B: Response to the RFP - 55 Points

- A. Strength of the proposal and commitment to develop, operate, and maintain excellence with regard to the Concession while delivering sustainable, efficient, quality, and consistent customer experiences: 30 points
 - 1) Detailed description for proposed operations (including on site management and staffing structure, golf course maintenance, schedules, strategies, and resources) to support the services required by the RFP and License. Overall quality of proposed approach to meet the RFP's scope of services and descriptions.
 - 2) Offerings and pricing, operating and service standards, including hours of daily and seasonal service, golf outings and event booking, including sound and efficient management and operating practices.
 - 3) Innovative concepts and offerings for the Concession to enhance the overall golf experience.
 - 4) Plans for maintenance, repair, and replacement of the Premises including the courses, associated facilities, equipment, and furnishings.
 - 5) Quality, accuracy, specificity, and clarity of presentation of the proposed operating budget, pro forma projections, including consideration of assumptions, contingencies, conditions, and financial requirements of the RFP.

- 6) Alignment with New York State initiatives and policies promoting safe, environmentally-sound and energy-efficient operating policies and practices; support for local New York products and businesses; value of pricing.

B. Business Development, Public Image, Marketing and Promotion: 10 points

- 1) Concepts and approach for development for the Concessions, including any proposed new enhance operations and/or services engaging and appropriate to Saratoga Spa State Park within the scope of this RFP
- 2) Marketing, advertising and promotion strategies, branding, and outreach channels and social media.
- 3) Concepts and approach for development and expansion of customer base for the concessions.
- 4) Customer service standards, programs, and goals, including accessibility and responsiveness to patron demands, trends, and concerns.
- 5) Description of community health and wellness improvements.

C. Capital Plan for the Premises: 15 points

- 1) Plan for execution of the capital improvements.
- 2) Financial feasibility of the Capital Investment commitment and obligation.

Category C: Return to the State (“RTS”) - 30 Points

As described in subsection XIII A(2) above.

C) BID PROTEST PROCEDURE

It is the policy of the Office of Parks, Recreation and Historic Preservation (State Parks) to provide respondents with an opportunity to administratively resolve disputes or inquiries related to State Parks contract awards. Respondents are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award.

State Parks reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. State Parks also reserves the right to waive or extend the deadlines in this procedure.

Submission of Formal Written Protests

Protests must be received by the Designated Contact no later than five business days after a debriefing or 10 business days after the written notice of selection or non-selection for contract award, whichever is later. Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

Agency Response

Within 30 business days of receipt of a protest, State Parks’ protest officer (the Director of Audit or designee) will respond with a protest determination stating the agency’s decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal and factual grounds

stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

Finality; Appeal

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal Parks' protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations. For contract opportunities that are not subject to the approval of the Office of the State Comptroller, Parks' protest determination is the conclusive and final determination of the protest. Nothing in these bid protest procedures is intended to limit or impair the rights of any respondent to seek and pursue remedies of law through the judicial process.

XIV. MODIFICATION/WITHDRAWAL/REJECTION OF PROPOSALS

Modification or withdrawal of a proposal must be in writing, dated and signed by the signatory to the original proposal submission. The modification or withdrawal must be submitted in a sealed envelope clearly marked "Modification [or Withdrawal] of X001396 Saratoga Spa State Park Golf Concession Proposal Submitted by [respondent]."

State Parks reserves the right to reject proposals, postpone, or cancel this RFP, to waive technicalities, irregularities and omissions, request additional information or clarification of a proposal, or solicit new proposals if, in its judgment, the best interests of New York State will be served.

XV. PROCUREMENT REQUIREMENTS

A respondent is responsible for reviewing and understanding all listed Procurement Requirements provided in Exhibit D and The Standard Clauses for New York State Contracts provided in Appendix A of the Sample License.

- 1) PR #1: Summary and Implementation Guidelines For §139-J and §139-K of State Finance Law
- 2) PR #2: Freedom of Information Law (FOIL)
- 3) PR #3: Office of the State Comptroller Review
- 4) PR #4: Conditions, Terms, Limitations, and General Information

ATTACHMENTS & EXHIBITS FOLLOW

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NO BID LETTER

Parties that **DO NOT** submit a proposal are respectfully requested to return this **No Bid Letter** to the address below or email a completed scanned copy to concessions@parks.ny.gov. Thank you.

DO YOU WISH TO REMAIN ON OUR BIDDING LIST? ☐ YES ☐ NO

Date: _____

Director, Concessions Management Bureau
NYS Office of Parks, Recreation and Historic Preservation
625 Broadway, Albany, NY 12207

**Re: RFP X001396 Saratoga Spa State Park Golf Concession
Saratoga/Capital Region**

We will not submit a proposal for the above-referenced Request for Proposals for the following reason(s):

- 1) ☐ Not enough time to respond to the RFP.
- 2) ☐ Not the business we are interested in pursuing.
- 3) ☐ Not the location we are interested in serving.
- 4) ☐ The RFP is too complicated to understand.
- 5) ☐ The RFP has too many requirements.
- 6) ☐ Other: (please be specific)

Name: _____

Firm name: _____

Address: _____

City, State, Zip: _____

Email Address: _____

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EXHIBITS

A) REQUIRED FORMS & CLAUSES Page 21

Proposal Completion Checklist

Attachment #1: Financial Proposal Form

Attachment #2: Public Officers Law Certification

Attachment #3: Non-collusion Certification

Attachment #4: Business History Form

Attachment #5: SFL § 139-l and Executive Order #177 Certification

B) PARK MAP DEPICTING PREMISES.....Page 35

C) REPORTED GOLF ROUNDS & GROSS RECEIPTS HISTORY..... Page 37

D) PROCUREMENT REQUIREMENTS (PR) Page 38

PR #1: Summary and Implementation Guidelines For § 139-J and §139-K of State Finance Law

PR #2: Freedom of Information Law (FOIL)

PR #3: Office of the State Comptroller Review

PR #4: Conditions, Terms, Limitations, and General Information

E) SAMPLE LICENSE

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EXHIBIT A – REQUIRED FORMS

**PROPOSAL COMPLETION CHECKLIST
FOR THE TURNKEY OPERATION OF THE GOLF COURSES, GOLF PRO SHOP,
AND RESTAURANT AT SARATOGA SPA STATE PARK**

This Proposal Completion Checklist is the first page of the proposal.

Submit FIVE (5) copies and one (1) flash drive with the entire proposal in PDF including all required forms, supporting documents, and any additional attachments. Pursuant to the instructions in the RFP all proposals will contain the following:

REQUIRED FORMS (Exhibit A)

- _____ 1) Proposal Completion Checklist with Complete Primary Contact Information (THIS PAGE)
- _____ 2) Financial Proposal Form
- _____ 3) Public Officers Law Certification
- _____ 4) Non-collusion Certification
- _____ 5) Business History Form with supporting materials
- _____ 6) SFL §139-l and Executive Order #177 Certification

PROPOSAL NARRATIVE

- _____ 7) Business plans, *pro forma* revenue and expense projections for the term in Excel format.
- _____ 8) Operations and maintenance plans
- _____ 9) Capital investment plan projects and schedule
- _____ 10) Resumes and/or professional histories for key personnel
- _____ 11) Evidence of skill, experience, and capacity to execute the proposal
- _____ 12) Three (3) current business references
- _____ 13) Proof of financial security/bonding capacity for performance obligations
- _____ 14) Bid Deposit (certified or bank check for \$5,000 payable to “New York State Parks”)

Original Signatures in Black or Blue Ink on all Copies

Signature: _____
Signature
Date

Name (Print/Typed): _____

Firm Name: _____

Address: _____

Email: _____ Phone #: _____

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ATTACHMENT #1: FINANCIAL PROPOSAL FORM

REQUEST FOR PROPOSALS X001396
FOR THE TURNKEY OPERATION OF THE GOLF COURSES, GOLF PRO SHOP,
AND RESTAURANT AT SARATOGA SPA STATE PARK
THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION
RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS.

To Whom It May Concern:

- I. Pursuant to and in compliance with the instructions, conditions and terms set forth in the attached Request for Proposals (“RFP”), the License documents and the proposal submitted, the undersigned hereby offers to pay State Parks as follows:

- A) **License Fee:** The undersigned shall pay to State Parks a flat annual License Fee as follows:

\$ _____ Dollars
(Numerals) (Words)

(Minimum: \$225,000 annually)

AND

- B) **License Fee:** The undersigned shall pay to State Parks a License Fee equal to a percentage of Gross Receipts as follows:

_____ % _____ Percent
(Numerals) (Words)
(Minimum: Seven (7%) Percent of Gross Receipts)

AND

- C) Capital Investment:**

\$ _____ Dollars
(Numerals) (Words)

(Minimum: \$5,000,000)

Set forth any additional, enhanced, or escalating license fee offer below, attach additional sheets if necessary.

- D) Licensee shall abide by and meet all other financial and operational obligations required by the License, including without limitation undertaking:
1. Flat annual license fee increase of \$25,000 every five years.
 2. 100% responsibility for operations, maintenance, and inspections of the Concession and Premises.
 3. Providing a minimum of 80 golf carts, 30 pull carts, two handicap accessible carts, and golf club rentals as stated in Section VII. A. of this RFP.
 4. 100% responsibility for all utilities and refuse removal as stated in Section IX. E. of this RFP.
 5. 100% responsibility for insurance coverage as specified in the Sample License.
 6. Bonds or other approved financial security required by the RFP and License, including financial payment, capital, and all legally mandated construction payment bonds.

II. The term of the License will commence on January 1, 2022, and conclude on December 31, 2041 subject to approval by the Office of the State Comptroller.

III. The undersigned hereby certifies review and compliance with the following documents:

- A) Financial Proposal Form
- B) Public Officer's Certification
- C) Non-collusion Certification
- D) Business History Form
- E) SFL§139-l and Executive Order #177 Certification

IV. The undersigned has carefully examined the RFP and License documents and has carefully prepared its proposal; the undersigned agrees to perform pursuant to the License and to provide all services, labor, material and equipment necessary in connection therewith. The undersigned acknowledges that the foregoing terms present a reasonable opportunity for profit by the undersigned.

***NOTE: Proposals that are not signed and dated may be rejected.**

Date: _____ SIGNED: _____

NAME (Print) _____

Company Name: _____

Street Address: _____

Mailing Address (if different from street address): _____

Federal I.D. Number: _____ Telephone Number: _____

Fax Number: _____ E-mail Address: _____



If respondent is a corporation, indicate officers, or if respondent is a firm, indicate members, or if respondent is a partnership, indicate partners.

NAME

LEGAL RESIDENCE

President/Member/Partner

Vice President/Member/Partner

Secretary/Member/Partner

Treasurer/Member/Partner

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ATTACHMENT 2: PUBLIC OFFICERS LAW CERTIFICATION**The Following Prohibitions Pertain to the Sale of Goods and Services by State Employees to New York State Agencies Pursuant to the NYS Public Officers Law**

A. Current employees of New York State cannot sell goods or services valued at \$25 or more to **any** state agency, either as a private contractor or through a company in which that employee holds ownership of at least 10%, unless the procurement opportunity is first advertised in the NYS Contract Reporter and competitively bid, and there are no other conflicts presented that would violate any provisions of §74 of the Public Officers Law.

B. Relatives (defined as any person living in the same household as you and any person who is a direct descendant of your grandparents or the spouse of such descendant) of current State Parks' employees working at the Park in which this concession is located may be barred from providing services to State Parks, depending on the specific circumstances. If this applies to any member of the proposing organization, please explain below.

C. Former employees of the New York State Office of Parks, Recreation and Historic Preservation (State Parks) cannot sell goods or services to State Parks under any circumstance for two (2) years following the date they leave Parks' employ. (This applies only to Parks and Parks' employees and does not preclude a former employee of another state agency from selling goods or services to Parks within two years following the last date of that person's state employment.)

Please check (x) as appropriate, sign and date

- [] **A.** I am currently a state employee, and/or own at least 10% of the company that is being asked to provide goods or services to Parks.
- [] **B.** I am a relative of _____, a State Parks' employee who works at the Park in which this concession is located. The employee's title is _____ and his/her responsibilities are _____.
- [] **C.** I am a former State Parks' employee, and my service with the agency ended less than two (2) years prior to the date of my signature below.
- [] **D.** **None** of the above applies.

(signature)

(date)

(name printed)

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ATTACHMENT 3: NON-COLLUSION CERTIFICATION

The undersigned: recognizes that all information and material provided on or with this Information Regarding Qualifications and Financial Capability form and all other information and material submitted by the undersigned in connection with its Statement of Interest and/or Proposal are submitted for the express purpose of inducing the Office of Parks, Recreation, and Historic Preservation (“Parks”), governmental agency of the State of New York (the “State”) to award a contract to the undersigned; acknowledges that each of the Parks, the State and the State’s agencies and instrumentalities may, each in its sole and absolute discretion, by any means which it may choose, determine the truth and accuracy of all statements made therein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law §210.40 or a misdemeanor under Penal Law §210.35 or §210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. §1001; and states that the information submitted is true, accurate and complete.

By submission of this statement of interest, the Respondent and each person signing on behalf of the Respondent certifies, and in the case of a joint proposal each party thereto certifies as to his or her own organization under penalty of perjury, that to the best of his or her knowledge and belief:

- (1) The prices, amounts and material in this proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices, amounts and materials with any other Respondent or with any competitor;
- (2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this statement of interest or subsequent proposal have not been/will not be knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to award, directly or indirectly, to any other Respondent or to any competitor, and
- (3) No attempt has been made or will be made by the Respondent to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The Respondent hereby authorizes Parks and the State and their agents and instrumentalities to contact the Respondent’s bank(s) and credit references and any other persons identified in its submission, including without limiting the foregoing, all persons and entities identified in its Information Regarding Qualifications and Financial Capability form and any financial information, in connection with the proposal, and any and all other persons identified in any investigation conducted by or on behalf of the State, and obtain release of pertinent financial and other information, as well as to obtain verification of information provided by or on behalf of the Respondent.

Name of Respondent

Signature of Respondent

Signature of Officer

Title

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ATTACHMENT 4: BUSINESS HISTORY

This License shall be awarded to the responsible Respondent selected by State Parks in accordance with the RFP as affording the “best value” to the State of New York. “Respondent” means any firm, affiliate, owner, officer, major stockholder (5% or more shares) or any person involved with the bidding or contracting process.

A Respondent is required to complete and submit this questionnaire. The questionnaire shall be completed by the owner of a sole proprietorship or by an officer or duly authorized representative as officer of the firm, corporation or partnership submitting the proposal.

Personal Information Notification

The Office of Parks, Recreation and Historic Preservation is authorized to collect and maintain this information by Section 3.09 of the Parks, Recreation and Historic Preservation Law. The information will be used to determine the reliability and capacity of the respondent to perform the work required in the proposal. If the information is not complete, the proposal may not be considered. The information will be maintained in the files of the Concession Management Bureau, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY, 12207, 518-486-2932. This information may be disclosed pursuant to the provisions of the Freedom of Information Act.

(USE ADDITIONAL SHEETS IF NECESSARY, TO FULLY ANSWER THE FOLLOWING QUESTIONS)

Date: _____

1. Legal Name: _____

2. Address of Place of Business: _____

Mailing Address (if different): _____

3. Federal I.D. No. or Social Security No.: _____

Telephone: _____

Fax: _____

E-mail: _____

4. Respondent is organized as: ____ Sole proprietorship; ____ Partnership; ____ Corporation;

Other (*please describe*):

- If a corporation, provide a certificate of incorporation.
- Provide written verification of authorization to conduct business in the State of New York.



5. As an attachment to this form or in the Proposal, provide the following information:

- A) Describe any training or experience that qualifies the Respondent to provide the services called for in this License. Provide relevant dates, locations, company names, etc.
- B) Describe the design, management and implementation plan for performing the services called for in this License.
- C) Provide other appropriate information, reflecting Respondent's capacity and reliability to perform under the License.
- D) Provide a current certified or verified financial statement and/or other commercially reliable written evidence of Respondent's credit, financial standing and capacity to perform and finance the proposed capital investment in accordance with the terms of the License.

All Respondents must answer questions 6 and 7. If a new business entity is formed to respond to this RFP or to execute the License, the questions shall be answered for each owner, principal or officer of the new business entity.

6. Has Respondent ever had a bond or surety canceled or forfeited, or a License or permit issued by New York State or the State of New Jersey terminated?

Yes _____ No _____

If **YES**, state the name of bonding agency (if a bond), date, amount of bond and reason for such cancellation or forfeiture; or details regarding the termination (if a License or permit).

7. Has Respondent during the past seven (7) years filed for bankruptcy, or been declared bankrupt?

Yes _____ No _____

If **YES**, state date, court jurisdiction, amount of liabilities and amount of assets:

The undersigned hereby certifies and affirms that the foregoing statements and all information provided herein are true and accurate. The undersigned also certifies and affirms that State Parks has made a sample License available for their review and agrees to comply with the terms contained therein.

DATE

SIGNATURE

TITLE

State Parks reserves the right to disqualify any proposal and/or terminate any License if it is determined that information provided to State Parks was intentionally omitted or falsified.

By signing this proposal, the Respondent(s) hereby give permission to State Parks to proceed with financial, credit and background checks as deemed necessary and prudent by State Parks.

ATTACHMENT 5: SFL § 139-I and EXECUTIVE ORDER # 177 CERTIFICATION**N.Y. State Finance Law § 139-I**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

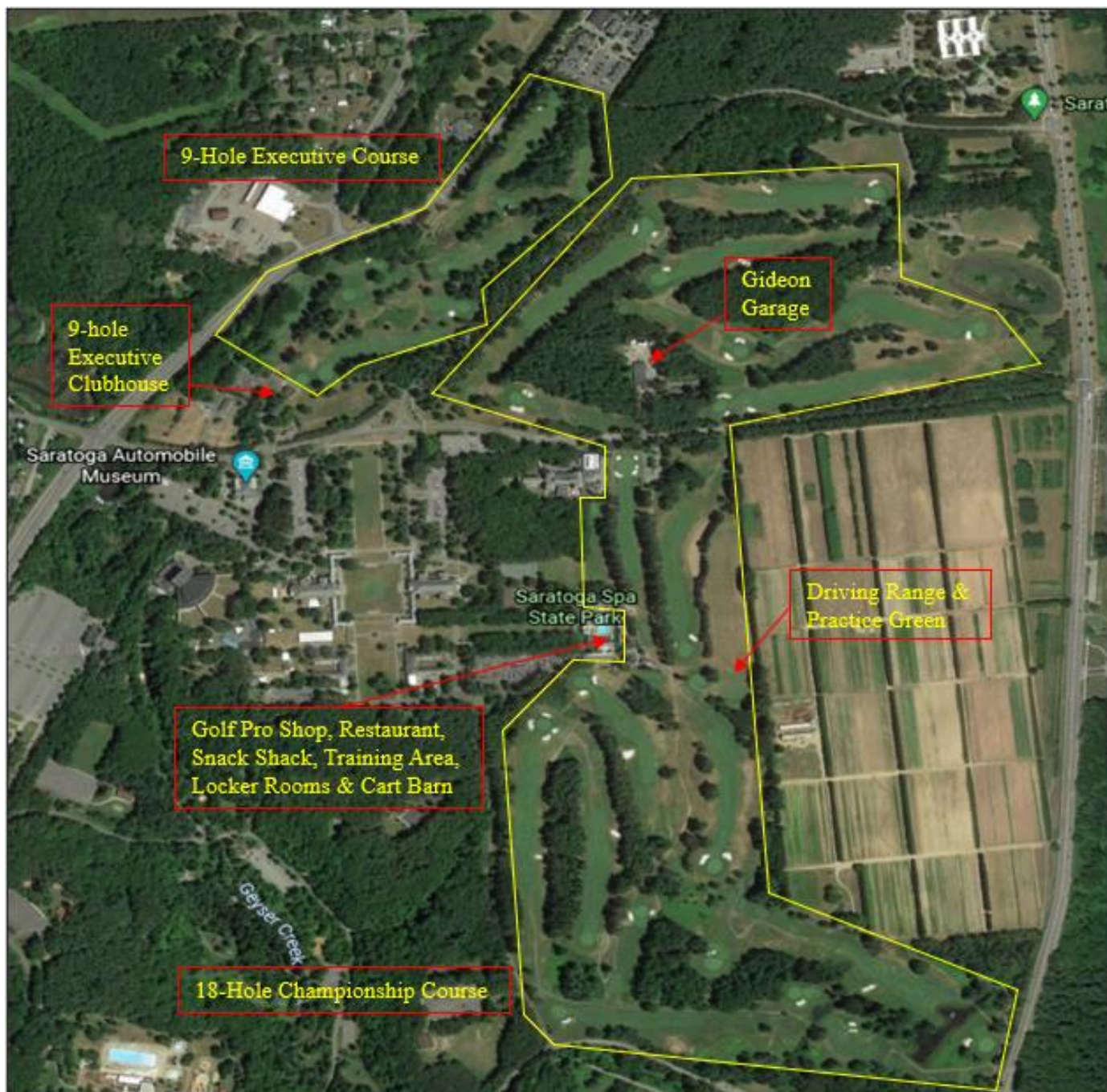
Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate.

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Bidder's Signature:	Printed or Typed Name:
Title:	Date:



EXHIBIT B – PARK MAP DEPICTING PREMISES



PARK MAP DEPICTING PREMISES CONTINUED

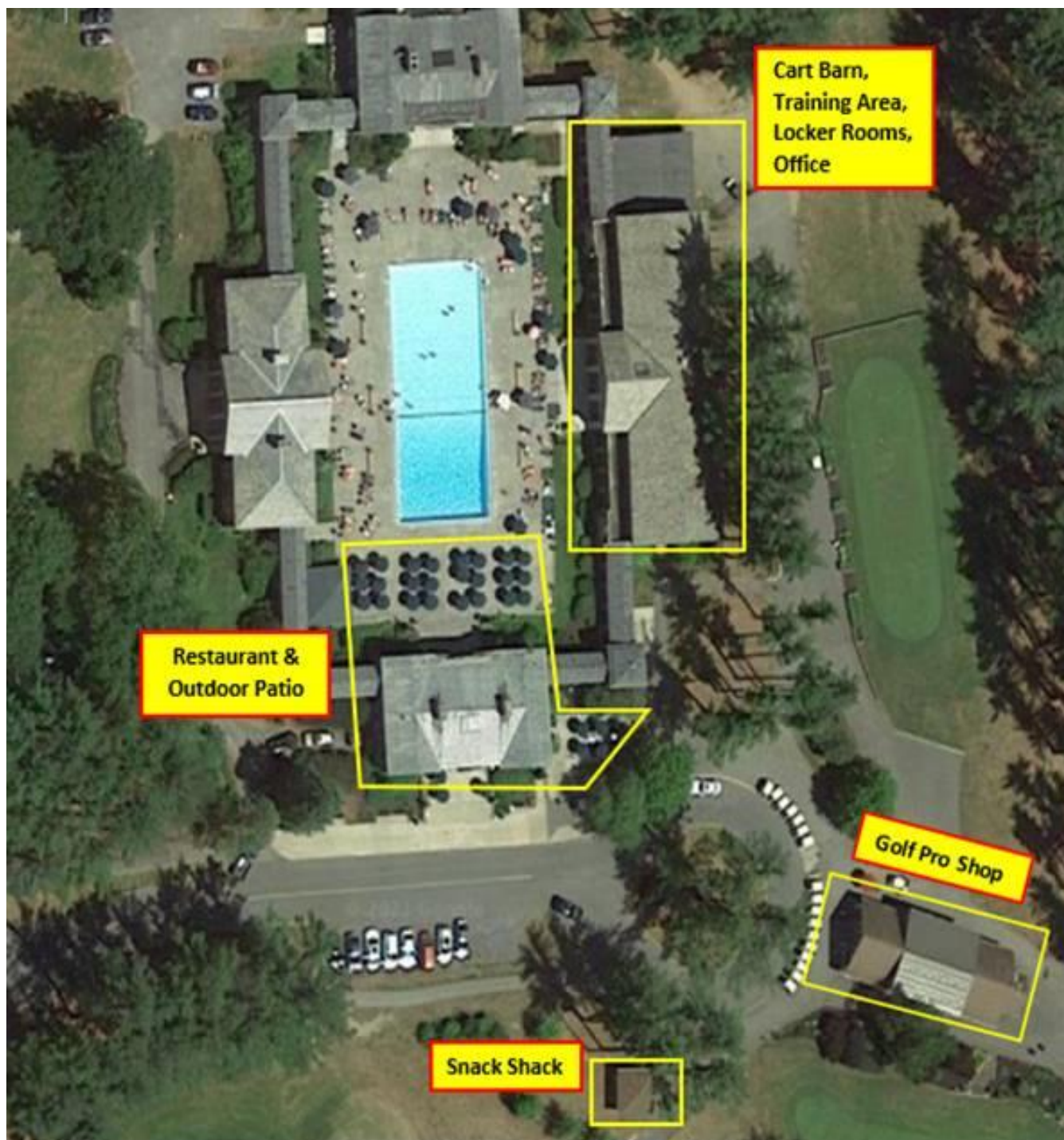


EXHIBIT C – REPORTED GOLF ROUNDS AND GROSS RECEIPTS HISTORY

		Golf Rounds			Total Rounds
		Weekday	Weekend	<i>Subtotal by Course</i>	
2016	Championship	23,133	13,018	36,151	50,160
	Executive	10,385	3,624	14,009	
2017	Championship	21,695	12,620	34,315	47,331
	Executive	9,170	3,846	13,016	
2018	Championship	21,748	11,669	33,417	45,410
	Executive	8,635	3,358	11,993	
2019	Championship	23,670	12,018	35,688	49,416
	Executive	9,449	4,279	13,728	
2020	Championship	25,005	11,519	36,524	55,120
	Executive	13,403	5,193	18,596	
<i>Annual Average</i>		33,259	16,229		49,487

		GOLF								
		Retail	Pull Carts	Cart Rentals	Club Rentals	Greens Fees	Subtotal by Course	Lessons	Driving Range	Golf Total
2016	Championship	\$156,986	\$4,347	\$347,329	\$11,501	\$1,149,649	\$1,669,812	\$4,625	\$55,407	\$1,961,083
	Executive	\$11,744	\$5,219	\$23,494	\$1,154	\$194,253	\$235,864			
2017	Championship	\$161,321	\$4,173	\$328,239	\$10,707	\$1,133,543	\$1,637,983	\$3,445	\$53,733	\$1,912,191
	Executive	\$10,104	\$5,227	\$22,270	\$957	\$178,472	\$217,030			
2018	Championship	\$168,350	\$4,160	\$335,869	\$11,477	\$1,136,938	\$1,656,794	\$2,980	\$60,184	\$1,934,406
	Executive	\$15,213	\$6,002	\$24,362	\$1,422	\$167,449	\$214,448			
2019	Championship	\$175,661	\$4,043	\$354,368	\$11,367	\$1,233,487	\$1,778,926	\$4,100	\$63,283	\$2,108,491
	Executive	\$17,293	\$5,025	\$30,426	\$1,094	\$208,345	\$262,183			
2020	Championship	\$102,697	\$3,109	\$342,003	\$2,634	\$1,164,660	\$1,615,103	\$4,085	\$56,139	\$2,000,201
	Executive	\$2,275	\$6,226	\$34,568	\$19	\$281,785	\$324,873			
Annual Average		\$164,329	\$9,506	\$368,586	\$10,466	\$1,369,716	\$1,922,603	\$3,847	\$57,749	\$1,983,274

	Food and Beverage (beverage cart sales are included under food and alcohol further breakdown is not available)				TOTAL GROSS RECEIPTS (Golf and F&B)
	Food	Alcohol	Snack Shack	F&B Total	
2016	\$260,887	\$216,327	\$48,786	\$526,000	\$2,487,083
2017	\$207,351	\$194,903	\$56,597	\$458,851	\$2,371,042
2018	\$224,906	\$222,916	\$38,308	\$486,130	\$2,420,536
2019	\$214,394	\$225,826	\$45,995	\$486,215	\$2,594,706
2020*	\$166,414	\$108,197	\$0	\$274,611	\$2,274,812
<i>Annual Average</i>	<i>\$214,790</i>	<i>\$193,634</i>	<i>\$37,937</i>	<i>\$446,361</i>	\$2,429,636

EXHIBIT D – PROCUREMENT REQUIREMENTS**PROCUREMENT REQUIREMENT #1:** *(Communication with State Parks during bidding and evaluation)***SUMMARY OF AND IMPLEMENTATION GUIDELINES FOR § 139-j and §139-k
OF THE STATE FINANCE LAW**

*** This summary is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.**

Section 139-j of the State Finance Law imposes restrictions on how a person may communicate with a governmental entity, such as the Office of Parks, Recreation and Historic Preservation (hereafter, referred as “OPRHP”), concerning a governmental procurement during a period of time called the “restricted period,” which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement until the award is approved by the comptroller.

These new requirements cover a wide range of government contracting transactions, including the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any person in the private sector (hereinafter referred to as “person”) interested in contacting OPRHP concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with OPRHP during the “restricted period.”

For every procurement OPRHP will designate an employee(s) that may be contacted for all aspects of the procurement. With very few statutory exceptions, you are required to communicate during the restricted period with this designated person or persons. If your communication can be inferred by a reasonable person to be an attempt to influence the procurement, by law you are required to only communicate with the designated person or persons. If your communication is interpreted as an attempt to influence the procurement, the designated person is required to record your name, address, telephone number, place of principle employment, and occupation of the person making the contact and inquire and record whether the person making the contact is a principle or was hired by the principle to make the contact. This recorded information must be retained in the procurement record.

If, however, you communicate with someone other than the designated person or persons and your communication can be construed by a reasonable person to be an attempt to influence the governmental procurement, and the communication is not otherwise listed as an exception to the law, this communication will be deemed impermissible per the terms of the law which requires that the communication be reported to OPRHP’s Ethics Officer for investigation. If a communication during the “restricted period” may be deemed an attempt to influence the procurement such communication may only be with the individuals designated by OPRHP.

It is the policy of OPRHP to interpret as broadly as possible what communications are intended to influence the governmental procurement and are not just those attempts to influence the procurement in such a manner that would be in violation of the ethical prohibitions against gifts or which would result in any violation of the Ethics Law. Communications of a nature that are in violation of the Ethics Law will be immediately reported to the Ethics Officer for investigation regardless of whether the contact was made to the designated person or persons or someone else.

As referenced before, the law specifically permits certain types of contacts by persons to OPRHP concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;
- written complaints made to the General Counsel's Office of OPRHP concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either OPRHP or an outside agency.

Any contact alleged to be an impermissible contact under the law will be immediately referred to and investigated by OPRHP's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees or persons involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the person being investigated shall be given notice that an investigation is ongoing and such person shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Commissioner.

In addition, a finding by the Ethics Officer that a person has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such person and all associated subsidiaries of such person shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any person who fails to disclose findings of non-responsibility within the previous four years.

February 2006

PROCUREMENT REQUIREMENT #2:

FREEDOM OF INFORMATION LAW (FOIL)

State Parks is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by State Parks (NY State Public Officers Law, Article 6 and regulations adopted pursuant thereto). In keeping with all submissions to State Parks, proposals and/or subsequent stages are subject to the FOIL process and accessible as public domain unless the Respondent secures an exemption.

Regarding exemption, Respondents that submit materials to State Parks in response to this RFP may request that State Parks exclude all or part of such material from public disclosure pursuant to Section 87(2) (d) of the Public Officers Law, on the grounds that the material contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. **To ensure consideration of an exemption request, the request should be written, placed on the final page of the submitted proposal, and state in detail the specific reasons for the requested exception. It must also clearly specify the specific material submitted, or portions thereof, for which the exception is requested.** If State Parks grants the request for exception from disclosure, State Parks shall keep such material or portion thereof in a secure place.

If any Respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, the New York State and State Parks shall not be liable if either releases information, whether or not pursuant to FOIL which the Respondent believes to be a trade secret or detrimental to its business.

PROCUREMENT REQUIREMENT #3:

OFFICE OF THE STATE COMPTROLLER REVIEW

The contract resulting from this RFP is subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to State Finance Law and the regulations issued thereunder. The contract shall not be valid and enforceable, nor shall State Parks have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.

Under New York State procurement policies, a “responsible vendor” is one that has the capacity to fully perform its contractual obligations, and the integrity to justify the award of public dollars. New York State Finance Law dictates that state agencies take reasonable steps to ensure that public contracts are awarded to bidders that are responsive and responsible, including the capability to meet bid requirements and fully perform contractual obligations, and possessing the integrity to justify the award of public dollars. In short, businesses must demonstrate their vendor responsibility prior to the award of the contract. Prior to entering into contracts, New York State agencies must formally make a “responsibility determination” that is based upon a financial, legal, integrity, and past performance (“FLIP”) review of a prospective vendor. The FLIP review involves assessments of a company’s:

- Financial and organizational capacity;
- Legal authority to do business with the State of New York;
- Integrity of the owners, officers, principals, members and/or contract managers; and
- Past performance of the bidder on prior government contracts.

The selected company under this procurement must demonstrate its responsibility as a vendor and must maintain **responsibility** throughout the term of the agreement. For more information, visit the New York State Office of the Comptroller’s Vendor Responsibility website to download and complete the required Vendor Responsibility Questionnaire: (http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

PROCUREMENT REQUIREMENT #4:**CONDITIONS, TERMS, LIMITATIONS, AND GENERAL INFORMATION**

In addition to any other terms and conditions stated elsewhere, this RFP is subject to the following:

1. Responses and/or proposals will be accepted from principals only. No brokerage fees, finder's fees, commissions, or other compensation will be payable by State Parks in connection with the selection of a Respondent. Respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the transaction. A Respondent's proposal is not assignable.
 2. A Respondent will obtain its own independent legal, accounting, engineering, technical, etc. advice on all matters relating to site locations of interest, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of New York State, State Parks, and/or its advisors; land and improvements constituting the Project site and adjacent to site locations of interest; all local laws, regulations and conditions that may affect the use and adaptive re-use transition of site locations of interest; and all other matters that may be material.
 3. Responses will be prepared at the sole cost and expense of the Respondent. New York State and State Parks will not pay for or refund any costs and expenses incurred by any Respondent in responding to this RFP or subsequent selection stages or by any License following selection and/or designation. Submission of a proposal in response to this RFP is an undertaking by the Respondent to defend, indemnify and hold harmless New York State and State Parks from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys' fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such Respondent's response to this RFP or subsequent stage, selection (or non-selection) thereunder or execution (or non-execution) of a lease.
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SAMPLE LICENSE FOLLOWS

CONCESSION LICENSE X001396

TURNKEY OPERATION OF THE GOLF COURSES, GOLF PRO SHOP, AND RESTAURANT AT SARATOGA SPA STATE PARK SARATOGA SPRINGS, NEW YORK



**Parks, Recreation
and Historic Preservation**

-- SUBJECT TO FURTHER REVIEW BY OPRHP--

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CONCESSION LICENSE X001396**TURNKEY OPERATION OF THE GOLF COURSES, GOLF PRO SHOP, AND RESTAURANT
AT SARATOGA SPA STATE PARK**

This agreement is dated _____, and is between the STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation (“**State Parks**”) and _____ (“**Licensee**”), a {New York corporation}.

RECITALS:

Section 3.09(2-a) of the Parks, Recreation and Historic Preservation Law, authorizes State Parks to contract for the operation and improvement of park facilities and concessions. State Parks’ authority to grant a maximum term of twenty years requires that Licensee provide at least one (\$1,000,000) million dollars in capital investment in the Premises, and demonstrate the term bears a direct relationship to the time required to amortize that investment.

State Parks formally issued a request for proposals for a turnkey concession license to operate the golf courses, golf pro shop, restaurant, and related facilities at Saratoga Spa State Park (the “**Park**”).

Licensee was the successful respondent and has agreed to assume responsibility for the turnkey operation of the golf courses, golf pro shop, restaurant, and related facilities at the Park.

Now, therefore, the parties agree as follows:

Section 1. Contract Documents

- (a) This agreement is comprised of the following documents, all of which are hereby incorporated by reference:
 - (i) Concession License X001396
 - (ii) RFP X001396 and any addenda thereto (the “**RFP**”)
 - (iii) Licensee’s Proposal and Proposal Form (collectively the “**RFP Response**”)
 - (iv) Attachment A – Description of the Premises
 - (v) Attachment B – Inventory of Equipment
 - (vi) Attachment C – Requirements for Capital Construction Projects
 - (vii) Attachment D – Capital Investment Work Plan
 - (viii) Attachment E – Insurance Requirements
 - (ix) Appendix A – Standard Clauses for New York State Contracts
- (b) In the event of any inconsistency in or conflict among the document elements of this agreement, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Appendix A, (2) Concession License X001396, including all attachments (3) the RFP, (4) the RFP response.

Section 2. Term

The initial term of this agreement begins on January 1, 2022 (the “**Commencement Date**”) and terminates on December 31, 2041 (the “**Expiration Date**”), subject to the approval of the New York State Office of the State Comptroller.

Section 3. Grant of License

- (a) State Parks hereby grants to Licensee the right to use and occupy the Championship and Executive golf courses, pro shop, restaurant, and related facilities, including its structures, and associated property, as shown in Attachment A (the “**Premises**”) for the exclusive purpose of the turnkey golf operation, golf pro shop, restaurant, and related facilities as described in the RFP and proposed in the RFP Response (the “**Use**”).
- (b) Licensee acknowledges that the Premises are public, non-residential spaces within a State park and that for all purposes hereunder State Parks licenses the Premises “as is/where is” and without warranty. Licensee states that it has thoroughly examined and inspected the Premises that, unless and except as expressly set forth in this agreement, it has not relied upon any representation or statement of State Parks or its officers or employees as to the suitability of the Premises for the Use.
- (c) State Parks is not required to undertake any build-out or other preparation of the Premises for the Use. If any preparation is required to make the Premises suitable for the Use, Licensee shall perform such preparation at its own expense. If such preparation constitutes a Capital Project, such work is subject to the requirements of Section 23. Licensee shall not use any portion of the Premises that is in a condition unsafe or improper for the conduct of the Use.
- (d) Licensee shall not use any other portion of the Park or place any display tables, equipment, merchandise, or other items or property outside the Premises without the express written permission of the State Parks.
- (e) Licensee states that its RFP Response identified and accounted for all anticipated revenue sources and business opportunities sought to be captured by Licensee. Licensee shall not commercially exploit the Premises except through the Use. Notwithstanding the foregoing, State Parks may authorize new or additional revenue sources identified by Licensee during the term of this agreement and in such instance, Licensee shall pay State Parks an equitable portion of such additional revenue, as determined by good faith negotiations between the parties.
- (f) State Parks reserves for its sole benefit the right to authorize the installation of cellular telephone antenna and other related equipment at the Premises and the right to authorize the installation of any utility system at the Premises.
- (g) State Parks reserves the right to use the Premises without a facility rental cost for limited official events and purposes, subject to written notice to Licensee and Licensee’s prior or conflicting bookings.

Section 4. Fees and Other Payments; Payment Bond

- (a) During the term of this agreement, Licensee shall, by check or wire transfer and by the 15th day of September each year of this agreement pay the Annual License Fee owed and by the 15th day of the month, pay the Additional License Fee owed for the previous calendar month.
- (i) In this agreement “**Annual License Fee**” means \$XXXXXX each calendar year of this agreement, and “**Additional License Fee**” means XX% of Gross Receipts. During the term of the License, an increase to the Annual License Fee of \$25,000 will occur every five years.
- (ii) In this agreement “**Gross Receipts**” means the total amount received by or accruing to Licensee and its agents and employees, from all sales for cash or credit, for consumption or use on or in connection with the Premises of any goods or services (including without limitation, mobile or portable food, catering, catalog, Internet, and telephone sales), including from Licensee’s contractors, by reason of the privileges granted under this agreement, less the following allowable exclusions and deductions:
- (a) Excise, sales, or other taxes that are imposed upon the sale of goods or services and which are collected by Licensee;
- (b) Refunds, discounts, items sold at cost or otherwise discounted per State Parks’ request, rebate, or allowances received by Licensee from wholesalers or suppliers, and refunds or other approved adjustments paid or given to patrons;
- (c) Tips or gratuities that are included in the account or bill of a patron.
- (b) To secure the payment of the License Fee, State Parks may, in its sole discretion, require Licensee to provide an annual, renewable bond or letter of credit from a surety company or other security satisfactory to State Parks in the principal amount of US \$XXXX (a “**Payment Bond**”) to be kept in full force and effect for the remaining term of this agreement.
- (i) State Parks may, in its sole discretion, annually adjust the required principal amount of the Payment Bond to an amount not to exceed the combined total of the projected Annual and Additional License Fees, projected utility charges, and annualized estimate of any other financial obligations due to State Parks in the upcoming year.
- (ii) Licensee shall not terminate or reduce any Payment Bond without the prior written approval of State Parks.
- (iii) A Payment Bond provided under this section must (i) name State Parks as the sole beneficiary, (ii) guarantee the faithful payment by Licensee of the License Fee and other fees due, and (iii) require the issuer to give State Parks notice in writing not less than 30 days prior to the expiration date thereof of the issuer’s intention not to renew the Payment Bond. A Payment Bond covering the final year of the term of this agreement must extend at least one business day beyond the date the final License Fee payment is due.
- (c) Licensee shall pay any other amounts due under this agreement as expressly provided for in this agreement or, if not specified, upon invoicing by State Parks.
- (d) Licensee is solely responsible for all fees and other amounts due until paid and delivered to State Parks.

Section 5. Capital Investment; Capital Bond

- (a) Over the term of this agreement, Licensee shall expend no less than US\$###.00 on capital improvements to fixed assets owned by State Parks at the Premises (the “**Minimum Capital Investment**”) in accordance with the budget and work plan in Attachment D (the “**Capital Plan**”). Changes to the Capital Plan must be approved by State Parks in writing.
- (b) Unless an approved change to the Capital Plan provides otherwise, Licensee shall expend \$XXX of the Minimum Capital Investment to replace the golf course irrigation system by December 31, 2024 and the full Minimum Capital Investment by December 31, 2031. If Licensee does not do so Licensee shall, by the close of business on the applicable deadline, pay to State Parks the unexpended portion of the Minimum Capital Investment in one lump sum. To secure performance of the Capital Plan or payment of the Minimum Capital Investment, Licensee shall provide an annual, renewable bond or letter of credit from a surety company or other security satisfactory to State Parks in the principal amount of US\$###.00 (a “**Capital Bond**”) to be kept in full force and effect until the deadline for the full expenditure of the Minimum Capital Investment.
 - (i) A Capital Bond provided under this section must (i) name State Parks as the sole beneficiary, (ii) guarantee the faithful performance or payment by Licensee of the Minimum Capital Investment, and (iii) require the issuer to give State Parks notice in writing not less than 30 days prior to the expiration date thereof of the issuer’s intention not to renew the Capital Bond, an (iv) be provided in the original copy to State Parks.
 - (ii) If the term of any Capital Bond provided under this section includes the Expiration Date, the term of such Capital Bond must continue for at least one business day past the Expiration Date.
 - (iii) Licensee shall not terminate or reduce any Capital Bond provided under this section without the prior written approval of State Parks.
- (c) Licensee shall submit all proposed expenditures it wishes to credit against the required Minimum Capital Investment to State Parks for approval in accordance with State Parks’ capital expenditure approval process, which requires submission of proposed expenditures prior to making the expenditure, reasonable documentation of fair, reasonable, and competitive pricing, and proof of payment. Only expenditures approved by State Parks will be credited against the Minimum Capital Investment.

Section 6. State Equipment

- (a) Licensee may use the equipment, fixtures, and other items listed in Attachment B, as such list is updated in accordance with this section, (the “**State Equipment**”) for the Use at its option. Licensee acknowledges that the State Equipment is the personal property of State Parks and that by accepting the use of the State Equipment it accepts responsibility for the maintenance of upkeep thereof. Within 45 days of the Commencement Date, Licensee and State Parks shall finalize an actual written inventory of State Equipment accepted by Licensee, such inventory to be maintained by Licensee and reviewed and updated jointly by the parties on at least an annual basis.
- (b) Title to any equipment purchased by Licensee as part of a Capital Project or to replace any existing State Equipment will vest in State Parks upon installation and such equipment will be deemed State

Equipment unless otherwise agreed to by State Parks in writing prior to the purchase. Such equipment must be purchased new; State Parks shall not accept used equipment as part of a Capital Project or to replacement any existing State Equipment. However, for the sole purpose of achieving depreciation over the term of this agreement in accordance with generally accepted accounting principles, Licensee may retain legal title to replacement State Equipment for the duration of this agreement, title to vest in State Parks upon termination of this agreement. Licensee shall update the written inventory promptly upon the purchase of any such equipment and shall inform State Parks of the same. State Parks may place its own inventory labels on all State Equipment.

- (c) Licensee shall not remove any State Equipment from the Premises except for disposal or repair approved in advance by State Parks.

Section 7. General Operating Requirements

- (a) *Obligation to Operate.* Licensee shall undertake the Use.
- (b) *General Operating Standards.* Licensee shall conduct a first-class operation and shall furnish and maintain all necessary and proper equipment, fixtures, personnel, supplies, and materials required to do so. Licensee shall conduct all its operations in an orderly manner and so as not to annoy, disturb, or be offensive to other licensees or patrons of the Park. Licensee warrants that any food, food products, merchandise, and other goods and services sold or kept for sale under this agreement will be of high quality and standards and will conform in all respects to applicable federal, State, and local laws, regulations, ordinances, and codes. All goods and services offered for sale must be in good taste and considered appropriate, proper, and consistent with the State of New York and State Parks' obligations and responsibilities to patrons of the Park. If in State Parks' judgement any good or service offered by Licensee is inconsistent with the image, policies, or reputation of the State of New York or State Parks or otherwise unsuitable, at State Parks request Licensee shall cease offering such good or service immediately.
- (c) *Housekeeping and Sanitation.* Licensee shall at all times keep the Premises in a clean and sanitary condition.
 - (i) Licensee shall keep all interior spaces within the Premises free from ants, flies, roaches, rodents, and all other insects and vermin its own cost and expense. Licensee shall keep use of rodenticide and other chemical pesticides to a minimum, consistent with State Parks' Pesticide Reduction Policy.
 - (ii) Licensee shall adhere to all applicable State and local health and sanitary codes, standards, regulations, and guidelines including sanitary standards, guidelines, and recommended best practices established and issued by State Parks, at all times. If, during an inspection under Section 16 or at any other time, State Parks determines a violation of such codes, standards, or regulations exists, it will inform Licensee in writing. Immediately upon receipt by Licensee's on-site management of any notice, inspection report, and/or citation issued by any State or county health agency, Licensee shall forward a copy of the same to State Parks' Regional Headquarters and Counsel's Office. If Licensee fails to correct any health or sanitation deficiency within two days of notice, either by State Parks or any State or County health agency, State Parks may correct the

deficiency and Licensee shall pay the actual cost thereof, including any expense for labor and materials.

- (iii) Licensee shall leave the Premises in broom clean condition at the end of each operating season.
- (d) *Fire Safety Standards.* Licensee shall comply with all current and future applicable regulations and requirements and with the standards and best practices of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other agency, board, or organization exercising similar functions, that apply to the Licensee's Use in the Premises.
- (e) *Operating Licenses.* Licensee shall obtain and maintain all necessary licenses, certificates, permits, or other governmental authorization for the Use, and shall provide for the inspection and review of such governmental authorizations by State Parks and other persons authorized by law. Licensee shall comply with all current and future governmental laws, regulations, codes, or orders applicable to the Licensee's conduct of the Use at or its occupancy of the Premises ("**Licensing Requirements**"). If any current or future Licensing Requirement requires a Capital Project, such work is subject to the requirements of Section 23. This provision does not constitute consent by State Parks to the application of any Licensing Requirements to State Parks or the State of New York.
- (f) *Method of Sales Transactions.* Licensee shall accept, at minimum, the following methods of payment:
 - (i) cash, (ii) debit cards, and (iii) at least two major credit cards.
- (g) *Payment of Taxes.* Licensee is solely responsible for and shall pay in a timely manner all applicable taxes.
- (h) *Identifying Signage.* Licensee shall post signage within the Premises, in a place and manner that is easily visible to the public, signage approved by State Parks that identifies the Premises as operated and maintained by Licensee under a license from State Parks and lists Licensee's corporate name and contact information.
- (i) *Hours of Operation.* Licensee shall conduct the Use between 6:00am and 9:00pm and coordinate with the golfing season, generally beginning in April and concluding in November ("**Normal Business Hours**"). The Restaurant must be open when the golf course is open to the public. If Licensee desires to operate outside Normal Business Hours, it may do so only with the express written permission of State Parks, such permission to be subject to the Park's operating hours and security staffing but not to be unreasonably withheld. If such operation requires State Parks' staff, security, or other support beyond normal Park operations, State Parks may condition its permission on Licensee's reimbursement of such costs.
- (j) *Fireworks.* Licensee shall not undertake or permit any firework displays or performances involving pyrotechnics of any kind without the specific prior written approval of State Parks and a permit from the New York State Office of Fire Prevention and Control.
- (k) *Deliveries.* Licensee shall schedule and coordinate deliveries to the Premises by commercial vehicle with the applicable Park manager so as to not conflict with the Parks' operations. State Parks' park manager may designate specific routes or ways for the delivery and removal of supplies and equipment by commercial vehicle.

- (l) *Closures.* Although State Parks shall make commercially reasonable efforts to avoid interference with Licensee's use of the Premises, State Parks may, with two weeks' notice to Licensee, require Licensee to temporarily close in order for State Parks to make repairs, alterations, changes, or improvements to the Premises or the Park. Licensee acknowledges that State Parks might close the Park, or a portion of the Park encompassing the Premises, with little or no advance notice for the protection of public health and safety, and that in such event Licensee shall close until the Park or affected portion of the Park is re-opened and State Parks will have no liability to Licensee for such closures.
- (m) *Prohibition on Vape, Nicotine, and Tobacco Products.* Licensee shall not sell any vape, nicotine, or tobacco products, or faux-tobacco products (e.g., candy cigarettes, bubble gum cigars) at the Premises.
- (n) *Restriction on Vending.* Licensee shall not operate a vending facility or vending machine, as those terms are defined in Section 8714-a of the Unconsolidated Laws, without the prior written approval of State Parks in consultation with the New York State Commission for the Blind. Licensee acknowledges that all vending machine income, as that term is defined in Section 8714-a of the Unconsolidated Laws, obtained from the operation of vending machines at the Premises must accrue to the New York State Commission for the Blind.
- (o) *Information Security; State Technology Policies.* Licensee shall comply with the provisions of the New York State Information Security Breach and Notification Act, General Business Law Section 899-aa. Licensee shall be liable for the costs associated with such breach if caused by Licensee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Licensee's agents, officers, employees or subcontractors. Licensee shall ensure that any network-based information or applications developed or delivered in connection with the Use comply with all applicable policies issued by the New York State Office of Information Technology Services.
- (p) *Park Regulations.* Licensee shall comply with all applicable State Parks regulations and Park rules, except that if with respect to Licensee's use of the Premises such regulations and rules conflict with the provisions of this agreement, the provisions of this License will prevail.
- (q) *Exterior Signage.* State Parks has adopted a uniform style of signage for the Park and may erect, display, or change signage at the exterior of the Premises in its sole discretion. Licensee shall not erect, display, or change any advertising, identifiers, or other signs at or on the exterior of the Premises or elsewhere in the Park without the prior written consent of State Parks.
- (r) *Operation of Motor Vehicles and Heavy Equipment.* Licensee shall not allow the operation of a motor vehicle by anyone under the minimum age required by law or who does not hold a valid license for such operation. Licensee shall not permit the operation of heavy equipment, including trailers, by anyone other than a motor vehicle operator who is properly trained in the safe use and handling and the limitations of the equipment. Licensee shall not operate motor vehicles on any public use pedestrian/bicycle paths without written approval from State Parks.
- (s) *Security.* Licensee shall be responsible for providing all necessary security measures, including armored car or courier service, to protect the patrons, guests, employees, and all other individuals from any disturbance or other occurrence that may be attributable to Licensee's operation of the Premises, including without limitation the collection and movement of cash from registers or points of sale.

- (t) *Automated External Defibrillators.* State Parks shall provide and maintain one automated external defibrillator at a location within the Premises of its choosing. Licensee may, along with any other person, use the automated external defibrillator and Licensee may, in consultation with State Parks as to the location, provide and maintain additional automated external defibrillators at the Premises.

Section 8. Special Operating Requirements

- (a) *Menus; Pricing.* Licensee acknowledges that its food and beverage pricing and menu are subject to review and approval by State Parks. Licensee shall submit an initial menu and price list to State Parks for approval prior to beginning the Use. State Parks' approval of pricing continues unless and until such approval is expressly revoked upon reasonable written notice to Licensee. State Parks may require Licensee's pricing be consistent with other similar venues in the general area.
- (b) *Beverage Cart.* Licensee must provide and operate a beverage cart on the golf course on a schedule mutually determined by the Licensee and the Park Manager. At a minimum, the licensee is required to operate the beverage cart on the weekends and holidays when the golf course is open to the public. Licensee will be required to obtain the applicable New York State Liquor Authority license for the sale of alcohol from the mobile cart. This license is a separate license required for alcohol service in the Restaurant. The design and appearance of the cart is subject to the review and prior approval of State Parks. The mobile unit must adhere to insurance requirements in accordance with section 19 of this license.
- (c) *Catered Events.* Licensee shall notify State Parks of events at least ten days in advance by providing the event name and estimated number of attendees, or as otherwise agreed in writing.
- (d) *Alcohol Service and Sales.* Licensee may sell alcohol at the Premises provided it obtains and holds the applicable New York State Liquor Authority license. Licensee must comply with the terms of its liquor license in all serving and sale of alcoholic beverages. Licensee shall obtain the prior approval of State Parks for all alcohol-related signs, media messaging, advertisements, and sales promotions.
- (e) *Golf Operations.* The Licensee is responsible for all aspects of maintenance and operation of golf services, including without limitation the operation and maintenance responsibilities described in this subsection (f).
 - (i) *Pest and Greens Management.* Licensee is expected to participate in State Parks' Integrated Pest Management program to the fullest extent practicable.
 - (ii) Licensee shall develop and operate a junior golf/learning program as approved by State Parks. Any employee providing golfing instruction or golf teaching shall, at a minimum, be certified Class "A" PGA member or registered PGA apprentice.
 - (iii) Licensee may set and change prices and fees for all golf services subject to notice and approval by State Parks. However, Licensee must honor the State Parks' golf discount programs. The following list summarizes the golf discount programs in effect as of the Commencement Date; however, these programs are subject to change in State Parks sole discretion.:
 - (a) Access Pass: 100% discounts on greens fees

- (b) Golden Park Pass: 20% discount on greens fees on weekdays.
- (c) State Parks' junior golf program: 20% discount on greens fee on weekdays
- (iv) *Professional Golf Course Personnel.* State Parks reserves the right to review the credentials and approve the candidate(s) selected by Licensee for the positions of Head Golf Professional and Golf Course Manager, or equivalent job titles, which shall be permanent positions during the golf operating season. Licensee shall possess a PGA "Class A" card or, if a corporation, an officer or principal owner of the corporation shall have demonstrable experience providing golf professional services and shall employ a "Class A" golf professional assigned exclusively to the Park. Licensee shall employ or contract only duly trained, qualified and experienced personnel to professionally manage and maintain the golf courses in accordance with appropriate industry standards, such as those promulgated by the United States Golf Association, including without limitation, for agronomy, playability, pest management, and irrigation.
- (v) *Golf Carts.* Licensee shall procure and make available for rental 70 electric powered golf carts and 15 hand-pull carts at the Championship Course and 10 electric powered golf carts and 15 hand-pull carts at the Executive Course. All electric powered golf carts and hand-pull carts shall be new, or upon approval of State Parks, "like new". Licensee is responsible for all cleaning, maintenance, and repair of golf carts, and for the replacement of such carts as necessary. Licensee shall make available two handicapped-accessible golf carts to comply with State and federal requirements with respect to availability of an appropriate number of handicapped-accessible golf carts in accordance with the Americans with Disabilities Act.
 - (a) Licensee shall, upon State Parks request, make a powered golf cart available to State Parks personnel without charge as reasonably necessary for purpose of conducting inspections and other official business at the Premises.
- (vi) *Rental Golf Clubs.* Licensee shall provide an inventory of golf equipment for public rental (not less than five (5) sets of adult golf clubs and bags, and two (2) sets of clubs and bags suitable for junior golfers) to meet public demand. Each set of equipment shall contain, at a minimum, two woods, four irons and a putter in an appropriate club bag. The rental clubs shall be maintained in good working and attractive condition.
- (f) *Emergency Response.* Licensee shall, in collaboration with State Parks, develop an Emergency Action Plan ("EAP") for Saratoga Spa State Golf Course. Licensee shall adhere to and train its employees on the EAP to address possible emergency situations associated with the Use. Licensee's EAP must meet the following minimum requirements.
 - (i) The EAP must include the contact information for each employee of Licensee charged with implementing the EAP, as well as the contact information for Park management and local emergency services.
 - (ii) The EAP must include incident reporting requirements consistent with State Parks' Emergency Notification Protocol and document all accidents and injuries on State Parks' incident reporting form.

(g) *Fuel Pump Operations.* Licensee shall be responsible for adhering to all applicable laws, rules, codes and/or regulations pertaining to the use of fuel tanks at Saratoga Spa State Park including, but not limited to the following:

- (i) Licensee shall establish and follow a regular inspection schedule to ensure that all equipment is in safe and operational condition. Licensee shall maintain monthly inspection documents and send copies to the appropriate park manager. Licensee shall not use any equipment that does not meet the regulations in 6 NYCRR PART 613, or the manufacturer's specifications. Licensee shall identify and remove from service unless and until repaired any equipment that fails to meet all applicable safety standards and regulations, including the manufacturer's specifications. Such inspection protocol must provide for, at minimum:
 - (a) Monthly visual inspections of all tanks on premises which includes: Looking for cracks, swelling, corrosion, thinning or deficiencies of all aspects of the tanks (secondary containment, piping, fill gauge, overfill/spill prevention protection, dispensers etc.).
 - (b) Monthly test of the fuel tank high level probes and leak detector probes using the test function on the Proteus unit;
 - (c) Monthly test of the high-level alarm audible panels on all tanks by using the test button on the panels;
 - (d) Every 10 years a "10-year inspection" needs to be conducted (includes tightness testing to be done by a certified contractor).
 - (e) All monthly inspections should be kept on site for at least 3 years. All 10-year inspections should be kept on site for at least 10 years.
 - (f) If a spill/release greater than 5 gallons or inventory, tests or inspections indicate a leak, it will be reported to the NYS DEC Spill Hotline (1-800-457-7362) within 2 hours.

Licensee shall promptly submit the results of all testing to State Parks and shall maintain copies of all test results at the Premises for the duration of this agreement. If any alarm conditions are found during any test or if any tests result is failures, Licensee shall immediately inform State Parks.

- (ii) Licensee shall cooperate and comply with all policies and procedures developed by State Parks for safe and environmentally sound operation of fuel systems, including without limitations Saratoga Spa State Park's Emergency Action Plan.
- (iii) Licensee will retain and remit to State Parks each month proper documentation of all deliveries and fuel pump readings at the time of delivery.
- (iv) Licensee shall conduct daily inventory monitoring including logging OEL8000 readings, dipping tanks or printing out inventory slips from OEL8000 and submit a ten day reconciliation of daily inventory (in a manner prescribed by State Parks). Licensee shall promptly submit copies of readings, with copies of fuel invoices attached, to the appropriate park manager within two days of completion.
- (v) Licensee must maintain minimum fuel levels above 25 percent of tank capacity, or 75 gallons for both the 300 gallon aboveground diesel fuel tank and 300 gallon aboveground unleaded gas tank.

- (vi) Licensee shall perform routine maintenance of the fuel tanks and associated systems. Such maintain shall include the following at minimum:
 - (a) Monthly cleaning of fuel dispenser sumps;
 - (b) Painting, marking, signage, and cleaning required by NYSDEC or as directed by State Parks; and
 - (c) Any maintenance or repair as indicated by the results of inspection and testing.

Section 9. Maintenance and Repairs

- (a) Licensee shall maintain the Premises in in safe, operable, and inviting condition at all times and maintain and keep the Premises in good and acceptable repair as determined by State Parks. Except as otherwise specifically set forth in this agreement, Licensee shall perform all routine repairs, replacements, and maintenance as needed on a turnkey basis at its own cost, including such work that is required as a result of vandalism or other destructive acts.
- (b) Licensee shall at its sole cost repair, replace, rebuild, or repaint, as necessary, any part of the Premises or of the Park that is damaged or destroyed by the acts or omissions of Licensee, its customers, or other persons who are at the Premises at Licensee's invitation. Licensee shall notify State Parks within three business days of any damage to or destruction of the Premises. If such work constitutes a Capital Project, such work is subject to the requirements of Section 23.
- (c) Licensee shall maintain and keep the State Equipment in good and acceptable condition. Licensee shall be responsible for the repair of and, if necessary, the replacement in kind of any of the State Equipment at its sole expense during the term of this agreement.
- (d) Licensee shall maintain proper maintenance and repair records and make such records available to State Parks upon request.

Section 10. Advertising

- (a) Licensee shall use commercially reasonable efforts to promote its Use.
- (b) State Parks reserves the right to require Licensee to use a standard design, style, template, or format in all advertisements and other promotional materials, including website design and social media. State Parks may prohibit any advertising sign by Licensee that, in the sole judgement of State Parks, impairs the aesthetics of the Park of that restricts the movement of patrons in the area.
- (c) Licensee shall not advertise or offer for sale, hire, or use any Park amenities, areas, or activities outside of the Premises without the prior approval of State Parks.

Section 11. Qualified Staff

- (a) Licensee shall employ all necessary staff in sufficient force to conduct the Use properly, efficiently, and to the high standards for operation required by this agreement. Licensee shall employ only duly qualified and competent staff, including professional and experienced managers to oversee and administer the operation of the Premises. At least one person specifically designated as a supervisory manager must be on duty when the Premises is open for business.

- (b) Licensee's employees and contractors must be able to communicate effectively with State Parks' officials, the public, vendors, public safety personnel, and all others with whom they must interact in the course of their employment.
- (c) Licensee is solely responsible for the recruitment and screening of personnel and verification of credentials.
 - (i) Licensee shall check each prospective personnel against United States Department of Justice's national sex offender registry.
 - (ii) Licensee shall not hire or retain any person in connection with the Use who:
 - (a) refuses to provide the names of references, documentation of credentials, information on criminal conviction records, or any other requested information that bears on the applicant's fitness to work with or in close proximity to the public, including children; or
 - (b) has not completely and truthfully reported information concerning their criminal convictions; or
 - (c) subject to and consistent with Article 23-A of the New York State Correction Law, whose criminal convictions record directly bears on their fitness to work with or in close proximity to the public, including children, or whose employment would involve an unreasonable risk to the safety or welfare of the public, including children; or
 - (d) has been the subject of, or who is the subject of an ongoing investigation pursuant to, an indicated child abuse and maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment.
- (d) Licensee shall train its employees in appropriate operational procedures and standards, including, as applicable and without limitation, pricing definitions; item specifications; first aid, CPR and use of automated external defibrillators; housekeeping and maintenance standards; courtesy, guest relations, and speed and manner of customer service; personal appearance; safety; and individual job performance. Licensee shall additionally train its managerial employees in quality and cost controls; marketing and advertising; supervision; and accounting and cash control procedures.
- (e) Licensee shall arrange for all employees involved in the preparation and serving of food to be certified through the ServSafe® program offered by the National Restaurant Association or an equivalent industry standard approved by State Parks. Line staff must be certified through a food handler module, and management-level employees shall be certified through a manager training module. Certifications shall be provided to State Parks upon request. Licensee shall arrange for all employees serving alcohol to receive industry-standard alcohol service training.
- (f) Licensee shall provide its employees with identification credentials and distinctive attire or uniforms that foster a neat and appropriate public image. The style of uniforms is subject to approval by State Parks.
- (g) Licensee shall take prompt and appropriate action in response to complaints about the conduct, demeanor, or appearance of its employees, contractors, customers, and other business invitees. Upon the request of State Parks, Licensee shall immediately take all reasonable steps necessary to remove or otherwise resolve the cause of such complaints, including to discipline, retrain, or replace any employee whose conduct or appearance is unprofessional or inconsistent with the standards of State

Parks. To the extent commercially reasonable, any collective bargaining agreement between Licensee and any labor union or organization must recognize the foregoing right of State Parks, and no such collective bargaining agreement shall in any way affect or diminish the rights of State Parks hereunder.

Section 12. Licensee Responsibilities

- (a) Licensee shall comply with all federal and state laws, codes, regulations, and policy or guidance documents applicable to the conduct of the activities authorized by this agreement, including all applicable governmental regulations regarding the sale, use, and storage of foodstuffs, beverages, alcohol, and fuel.
- (b) During the term of the agreement Licensee shall maintain policies on sexual harassment prevention, workplace violence prevention, and non-discrimination and shall train its employees on such policies.
- (c) Licensee shall, to the same extent required of State Parks' own operations, comply with all State of New York and State Parks policies implemented to address the environmental impacts of its operations, including, without limitation, those on the use of non-biodegradable material, the purchase of "green" products, and the conservation of energy. Consistent with such policies, at a minimum Licensee:
 - (i) shall use recyclable materials whenever practicable;
 - (ii) shall provide appropriate receptacles to allow for separation of recycling material and biodegradable waste from other trash and debris; and
 - (iii) shall not provide or distribute Styrofoam products or single-use plastic bags, condiment packets, drinking straws or drink stirrers, except that Licensee shall provide plastic drinking straws upon request to customers with a physical or medical need therefor.
- (d) Licensee shall make reasonable efforts to purchase goods and services from New York State businesses and suppliers sourcing products from New York State businesses, including minority- and women-owned businesses certified by Empire State Development, and service-disabled veteran owned businesses certified by the Office of General Services ("**New York Vendors**"). Licensee shall make reasonable efforts to participate in the New York State Department of Agriculture and Markets' TasteNY program.
- (e) Licensee shall not commit any nuisance on the Premises or do or allow to be done anything which may result in the creation or commission of a nuisance on the Premises. Licensee shall not cause or produce, nor allow to be caused or produced, any unusual, noxious, or objectionable smoke, gas, vapor, odor, or noise on the Premises, nor allow the same to permeate the Premises or emanate therefrom.
- (f) Licensee shall not use or connect any equipment or engage in any activity or operation that will cause or tend to cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication, or other system or portion thereof serving the Premises; nor shall Licensee do or allow to be done anything that might interfere with the effectiveness or accessibility of existing and future utility, mechanical, electrical, communication, or other systems or portions thereof on the Premises or elsewhere at the Park. Licensee shall connect all electrical appliances directly to an electrical outlet or fused power strip.

- (g) Licensee shall not overload any floor, roadway, passageway, pavement or other surface, or any wall, partition, column, or other supporting member, or any elevator or other conveyance within the Premises or at the Park.
- (h) Licensee shall not discharge any acids, vapors, or other harmful materials into the water lines, vents, or flues of the Premises. Licensee shall not use the water and wash closets and other plumbing fixtures for any purpose other than those for which the same were designed and constructed, and shall not throw or deposit any sweepings, rubbish, rags, acids, or other foreign substances therein. Licensee shall not store, sweep, or throw anything into the shared common or public areas of the Park, or into or upon any heat or ventilating vents or registers in the Premises, or into any plumbing apparatus in the Premises, or onto any buildings or land adjoining the Premises.
- (i) Licensee shall not use or store, or allow the use or storage, at the Premises of any explosives of any kind, illuminating oils, oil lamps, turpentine, benzene, naphtha, or other similar hazardous materials or substances. Licensee shall properly handle, store, and use all fuel, including propane tanks, Sterno, or other portable warming fuel and apparatus.
- (j) Licensee shall not place objects against glass partitions, doors or windows, ceilings or floors, or walls in a manner that is unsightly from any exterior within the Premises and shall promptly remove the same upon notice from State Parks. Licensee shall not install or place, or permit to be installed or placed, any lights, fixtures, or decorations of any sort or any flashing, blinking, neon, or animated signs or lights in windows or areas visible to public view.

Section 13. Sponsorships

Licensee shall not sell, lease, license, market, or otherwise offer sponsorship opportunities to the Premises or the Use without the express written permission of State Parks. Sponsorship includes, without limitation, naming rights, recognition of contributors and donors of money, property, services, or anything of value to Licensee. Sponsorship of the Premises or the Use is subject to the approval of State Parks as to form, content, and manner of presentation, and Licensee shall not enter into any sponsorship agreement without the prior written approval of State Parks. Sponsorship by companies, interests, or organizations that are directly identified with the sale or use of vape, nicotine, or tobacco products is strictly prohibited. Sponsorship opportunities include, without limitation, program inserts, product sampling, and advertising displays at the Premises.

Section 14. Special Events

- (a) Licensee may, by written permit issued in advance by State Parks' Saratoga/Capital Regional Office, conduct the Use outside the Premises (a "**Special Event**"). State Parks may condition or deny approval for Special Events on the basis of impacts to the Park; impacts to public access, use, and enjoyment of the Park; and on additional costs to the Park imposed by the Special Event. Licensee shall use best efforts to make all Special Event requests at least three weeks prior to the proposed date.
- (b) Licensee acknowledges that it is solely responsible for payment of any State Parks' staffing and security costs beyond normal Park operations associated with a Special Event.

Section 15. Utility Service; Trash and Debris

- (a) Licensee is responsible for costs of utilities as follows:
 - (i) Electricity:
 - (a) Licensee shall be billed by State Parks for 97% of the total costs of electricity based upon the utility meter used in connection with the golf course irrigation pumps.
 - (b) Licensee shall be billed by State Parks for 100% of costs of electricity used in connection with the Restaurant, Snack Shack, Pro Shop, Golf Cart Storage Area and Training Area/Locker Rooms for actual usage by submeters.
 - (c) Licensee shall arrange service for all other usage in connection with the 9-hole Executive Clubhouse and shall be paid directly to the provider.
 - (ii) Water: Licensee shall arrange and pay for water used in connection with the Restaurant, Snack Shack, Pro Shop, Training Area/Locker Rooms, and 9-hole Executive Clubhouse and shall be paid directly to the City of Saratoga Springs N.Y.
 - (iii) Licensee shall arrange and pay for the costs of fuel oil, propane, cable television, internet, and telephone service used in connection with this License and shall be paid directly to the provider(s).
- (b) State Parks may, upon 24 hours' notice to Licensee or in the event of an emergency no advance notice, temporarily disrupt or disconnect any water, electricity, sewer, ventilation, or other utility infrastructure serving the Premises in order to make necessary or desirable repairs, alterations, or improvements to Premises or the Park. In such event, Licensee shall provide, at its own expense, its own sources of temporary power or other utilities as may be necessary for the Use.
- (c) State Parks is not required to install any water supply, sewer, or drain pipes or fixtures or electric, fuel oil, or gas lines or fixtures at the Premises beyond those already in place on the date of this agreement. If the installation, upgrade, or maintenance of any utility infrastructure within the Premises is necessary, Licensee shall undertake such work at its own cost. Such work constitutes a Capital Project and it must be completed in accordance with Section 23.
- (d) Licensee shall provide for trash removal and recycling service at the Premises at its own cost. Licensee shall collect all trash and debris in sanitary and adequate closed containers reasonably protected from public view until transferred to dumpsters. Licensee is solely responsible at its own cost for any grease or other specialty waste disposal services.

Section 16. Inspection

- (a) *General Inspection.* Licensee shall coordinate and obtain all state, federal, and local authority inspections necessary for legal operation and code compliance of the Premises, including but not limited to food service and fire suppression systems. Licensee shall notify State Parks of such inspections in advance and submit the results of all inspections to State Parks upon completion.

- (b) *Fire Prevention Inspection.* Upon request by State Parks Licensee shall arrange with the local fire department for periodic fire prevention inspections.
- (c) *State Inspection.* State Parks may, upon 24 hours' notice and during Normal Business Hours, enter the Premises to making an inspection. If, as a result of such inspection, it is the determination of State Parks that any deficiencies exist in the condition of the Premises, State Parks shall inform Licensee of said deficiencies in writing and Licensee shall correct said deficiencies within ten calendar days of such notice, after which period State Parks may conduct a follow-up inspection and correct any outstanding deficiencies itself at Licensee's expense. For any deficiencies corrected by State Parks, State Parks shall invoice Licensee for the actual cost thereof, including any labor and materials used.

Section 17. Financial Records

- (a) Licensee shall keep books and records of account for its Use at the Premises ("**Financial Records**") in an electronic format and in accordance with generally accepted accounting principles. Licensee shall keep its Financial Records for the balance of the calendar year in which they were made and for six additional years thereafter.
 - (i) During the term of this agreement and for six years thereafter, State Parks, the Office of the State Comptroller, the Office of the Attorney General, and their authorized representatives and contractors (collectively, "**State Auditors**") may inspect and audit Licensee's Financial Records during at any time during Normal Business Hours upon at least 24 hours' notice. As part of such an inspection or audit, the inspector or auditor may make copies of Licensee's Financial Records.
- (b) Licensee shall immediately and properly record all sales of any nature within the Premises using a point of sale system approved by State Parks that has industry standard features or controls to prevent or limit theft and fraud to the fullest extent practicable. Licensee shall record sales from remote, portable, or mobile operations transacted outside the Premises at soon as commercially reasonable and shall use only a process pre-approved by State Parks for such sales.
 - (i) If Licensee uses cash registers, Licensee shall take consecutive daily readings from each cash register in each sales and tax category, post the same to a daily sales report for each register location; and provide such daily sales reports to State Parks on a weekly basis. Licensee shall not reset cumulative cash register readings and shall turn over all keys for cash register reset purposes to State Parks.
 - (ii) If Licensee uses an automated point of sale system, Licensee shall provide full and complete transaction reports to State Parks on a schedule set by State Parks.
 - (iii) If a point of sale system, requires repair or service off the Premises, Licensee shall record and State Parks shall verify all transactions, readings, and data reports before the system or any part thereof is removed and upon its return to service at the Premises.
 - (iv) If readings or data reports are not recorded or stored on a point of sale system, or if the system is cloud-based, Licensee shall undertake all commercially reasonable efforts to comply with the requirements of this section.

- (v) State Auditors may audit point of sale transactions at any time and Licensee shall provide State Auditors access to all such systems for audit purposes.

Section 18. Reporting

- (a) *Monthly Reporting.* During the term of this agreement and for one month thereafter, Licensee shall on the 15th day of each month provide State Parks a report of the following information:
 - (i) Monthly, for the month immediately preceding the report date, and cumulative account of Gross Receipts, showing revenue activity in all categories of sales;
- (b) *Annual Reporting.* During the term of this agreement and for one year thereafter, Licensee shall on or before April 15th of each year provide State Parks with:
 - (i) a certified financial statement in a format approved by State Parks covering Licensee's Use for the preceding calendar year; and
 - (ii) a list of Licensee's New York Vendors, the type of goods and services purchased therefrom, and the approximate dollar value of purchases from each New York Vendor for the preceding calendar year; and
- (c) At State Parks request, Licensee shall provide its state and federal income tax filings for any preceding calendar years falling within the term of this agreement.

Section 19. Liability Insurance

- (a) On or before the Commencement Date, Licensee shall procure liability insurance coverage that complies with the policy requirements, coverage types, and liability limit minimums set forth in Attachment E (the "**Required Insurance**"). Licensee shall name "the State of New York; its Office of Parks, Recreation and Historic Preservation; and their officers, employees, and agents" as additional insureds.
 - (i) State Parks reserves the right to modify the Required Insurance if the scope of Licensee's operations under this agreement significantly changes or in connection with a Capital Project presenting additional risks.
 - (ii) All policies of Required Insurance must:
 - (a) be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-", Class "VII" or better;
 - (b) provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York;
 - (c) be written such that State Parks is afforded at least 30 days' prior notice of cancellation or modification of coverage; and

- (d) include a waiver of the insurer's right of subrogation against the Indemnitees, as that term is defined below, or, if such waiver is unobtainable, either an express agreement that such policy will not be invalidated if the Licensee waives or has waived before the casualty its right of recovery against the Indemnitees or another form of permission for the release of the Indemnitees.
- (b) On or before the Commencement Date, Licensee shall provide State Parks with evidence it holds the Required Insurance in the form of a certificate of insurance or other written confirmation of insurance coverage, including declarations of insurance and endorsements. Such evidence must, at minimum:
 - (i) reference the agreement number;
 - (ii) be issued to "New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, New York, 12238";
 - (iii) be completely filled out with the date of issuance, name(s) of the insured, carrier, carrier's National Association of Insurance Commissioners number, policy number(s), coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy;
 - (iv) be signed by an authorized representative of the referenced insurance carriers;
 - (v) be either an original copy or an electronic version of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means; and
 - (vi) include a copy of the endorsement by which the State of New York and State Parks are additional insureds.

While State Parks generally accepts certificates of insurance together with additional insured endorsements as evidence of the Required Insurance, State Parks reserves the right to request other proof of insurance including the entire insurance policies. State Parks is not obligated to review and is not chargeable with knowledge of the contents of any insurance policy submitted as evidence the Licensee holds the Required Insurance without specific request therefor by State Parks. Submission of an entire insurance policy not requested by State Parks does not constitute evidence the Licensee holds the Required Insurance and does not discharge Licensee's obligations under this subsection.

- (c) During the term of this agreement, Licensee shall maintain in force the Required Insurance. At least 30 days before the expiration of any policy of Required Insurance, Licensee shall provide State Parks with evidence of the renewal or replacement of such policy; such evidence must meet the requirements of subsection (b) of this section.
- (d) If at any time during the term of this agreement Licensee does not hold the Required Insurance, State Parks may prohibit Licensee from using and occupying the Premises until Licensee holds the Required Insurance and provides acceptable evidence of insurance.
- (e) Licensee shall notify State Parks of any potential claims under the policies of Required Insurance as soon as practicable, but in no event more than three days from Licensee's receipt of notice of the accident or claim.

- (f) Licensee shall require any of its contractors retained in relation to this agreement to hold the commercial general liability insurance covering claims arising out of such contractor's ongoing and completed operations at the Premises with a minimum liability limit of \$1,000,000 per occurrence / \$2,000,000 aggregate and comprehensive business automobile liability insurance covering liability arising out of any automobile used by such contractor at the Premises, if any, with a minimum liability limit of \$1,000,000. Prior to any such contractor beginning work at the Premises, Licensee shall obtain evidence that such contractor holds the insurance required by this subsection and make such evidence available to State Parks upon request.

Section 20. Workers' Compensation and Disability Benefits Insurance Coverage

Licensee acknowledges that pursuant to Workers' Compensation Law Section 57 and 220(8), State Parks cannot enter into this agreement without receiving proof of Licensee's compliance with or exemption from the coverage requirements of the Workers' Compensation Law. Unless otherwise determined by the Workers' Compensation Board, the following forms are the only acceptable means of proof of compliance: for workers' compensation, the C-105.2, U-26.3, or SI-12; for disability benefits, the DB-120.1 or DB-155.

Section 21. Indemnity and Claims

- (a) Licensee assumes all risks in its performance under this agreement and agrees to defend, indemnify, and hold harmless the State of New York, State Parks, and their officers, employees, agents, and assigns ("the **Indemnitees**") from and against all claims, suits, losses, damage, or injury to persons or property of whatsoever kind and nature, whether direct or indirect, that are caused or contributed to by Licensee or Licensee's contractors, vendors, employees, agents, and invitees and that arise out of Licensee's conduct or Licensee's performance of this agreement; provided, however, that Licensee's indemnity will not extend to any claims, suits, losses, damage, or injury to persons or property directly caused by and but for the negligence of any Indemnatee.
- (b) For all purposes hereunder, State Parks will not be liable for any injury, loss, or damage to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any person happening on, in, or about the Park or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Licensee or to any other person, that may be caused by fire, theft, breakage, vandalism, or any other use or misuse or abuse of any portion of the Park, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Park, or that might arise from any other cause whatsoever, unless and only to the extent of the proportion of which any such injury, loss or damage is determined to be directly caused by and but for the negligence of State Parks.
- (c) For all purposes hereunder, State Parks will not be liable to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any other person for any failure of water supply, gas supply, or electric current, nor for any injury or damage to any property of Licensee or any other person or to the Premises caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity; leakage of any substance from pipes, appliances, sewers, or plumbing works; hurricane, flood, tornado, wind, or similar storm or disturbance; water, rain, or snow that might leak or flow from the street, sewers, or subsurface areas, or from any part of Park or any body of water within or adjacent to the Premises; or any public or quasi-public work, unless and only to the extent of the proportion by which

any such injury, loss, or damage is determined to be directly caused by and but for the negligence of State Parks.

Section 22. Intellectual Property

Except for the descriptive use of facility names in its advertising and any rights specifically granted in this section, Licensee shall not use any State Parks or State of New York trademarks, service marks, logos, and other brand identification and indicia (“**State Marks**”). Licensee acknowledges that it does not acquire any right, title, or interest in or to any State Marks by virtue of this agreement, and Licensee hereby disclaims any other such right, title, or interest. Licensee shall not register or apply to register any State Marks or any related word and/or design marks that may be developed and used by State Parks in the future (“**Related Marks**”) or any other terms or designs confusingly similar thereto with the United States Patent and Trademark Office, the State of New York, or any other jurisdiction administering a register of trade and/or service marks. Any rights asserted by Licensee in any State Marks will vest in the State of New York and any goodwill from the use of the State Marks by Licensee will inure solely to the benefit of State Parks.

Section 23. Capital Projects

- (a) Licensee shall not erect any structures; make any modifications, alterations, additions, improvements, repairs, or replacements; or do any construction work on, to, or affecting the Premises or the Park, or install any non-removeable fixtures in or on the Premises (a “**Capital Project**”) without the prior written consent of State Parks. Licensee shall remove or modify any Capital Project undertaken without State Parks’ consent if State Parks so directs. No review or approval of any Capital Project is made by the virtue of the granting of this agreement. State Parks reserves the right to condition the approval of any Capital Project that would materially increase the capacity or expand the traditional operating season of the Premises upon financial terms that directly address any new cost to State Parks associated therewith.
- (b) Any Capital Project undertaken by Licensee must be in accordance with the provision of Attachment C and comport with the master plan for the Park, if one has been adopted.
- (c) Capital Projects undertaken by Licensee, whether with or without the consent of State Parks, will become the property of State Parks upon completion unless the consent of the State Parks expressly provides otherwise. Licensee shall not remove or modify any Capital Project during the term of this agreement or at its expiration or termination without the prior written consent of State Parks.
- (d) In addition to requiring insurance coverage under Section 19 and Attachment C, Licensee shall require all its Capital Project consultants and contractors to indemnify the Indemnitees as set forth in Section 21.
- (e) All of Licensee’s consulting, construction, or other contracts for a Capital Project must be in accordance with the terms of this agreement and must not impair the rights of the State or of State Parks under this agreement or create or be deemed to create a contractual or third-party beneficiary relationship between State Parks and any contractor of Licensee.
- (f) If a code compliance certificate for the Premises has been issued by State Parks, nothing in this section will prohibit Licensee from operating prior to or during the completion of a Capital Project.

Section 24. Liens

- (a) Licensee shall not create or cause to be created any lien, encumbrance, or charge upon the Premises, the Park, or any part thereof.
- (b) If any mechanics, laborers, or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Licensee by law or by a provision of this agreement) caused or created by Licensee is filed against the Premises, or if any public improvement lien created or caused to be created by Licensee is filed against any assets of or funds appropriated by State Parks, then Licensee shall within 45 days after receipt of notice of the lien cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise.
 - (i) Licensee will not, however, be required to discharge any such lien if Licensee has: (i) furnished State Parks with, at Licensee's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to State Parks), or other security reasonably satisfactory to State Parks in an amount sufficient to discharge the lien and all applicable interest, penalties, and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Licensee's efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies Licensee, Licensee shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by Licensee in order to discharge the lien.

Section 25. Coordination with State Parks

Licensee shall cooperate with State Parks and comply with all reasonable requests made with respect to the operation and maintenance of the Premises. Licensee shall meet with State Parks on a regular basis to review, plan, and improve the development, construction, maintenance, and operation of the Premises.

Section 26. Designated Contacts; Consents by State Parks

- (a) The parties hereby designate the following individuals as their designated contacts for day-to-day operations under this agreement.

For State Parks:
David Guest, Park Manager
Email: David.Guest@parks.ny.gov
Telephone: 518-584-2000 ext. 115

For Licensee:
[Name], [Title]
Email:
Telephone:

- (b) The parties may designate replacement or updated contacts under subsection (a) of this section by giving 15 days written notice to the other party.
- (c) Any consent by State Parks permitted or required under this agreement shall be given by State Parks Saratoga/Capital Regional Office unless the provision permitting or requiring such consent expressly provides otherwise. State Parks shall not unreasonably withhold or delay any such consent or approval.

Section 27. Notices

- (a) All notices permitted or required under this agreement shall be in writing and shall be transmitted:

- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by personal delivery;
 - (iii) by expedited delivery service; or
 - (iv) by e-mail.
- (b) Such notices must be addressed as follows or to such different address as the parties may from time-to-time designate:

If to State Parks:
 Attn: Regional Director
 Saratoga/Capital Regional Headquarters
 19 Roosevelt Drive
 Saratoga Springs, NY 12866
 Email: Alane.BallChinian@parks.ny.gov with a
 copy to David.Barone@parks.ny.gov

and

NYS OPRHP
 625 Broadway
 Albany, NY 12238
 Attn: Director, Concessions Management Bureau
 Email: concessions@parks.ny.gov, with a copy to
counsel@parks.ny.gov

If to Licensee:
 [Licensee]
 [Address]
 [City, State ZIP]
 Attn: [Name/Title]
 Email:

- (c) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address, or in the case of email, upon receipt.

Section 28. Sublicensing

- (a) Licensee may, with the prior written approval of State Parks and, if required by law, the New York State Office of the State Comptroller, and subject to the terms and conditions of this agreement, sublicense its rights and obligations, including applicable insurance requirements, under this agreement to an independent third-party or subcontract for an independent third party to undertake a portion of the Use on its behalf. Such third-party must meet State Parks' vendor responsibility requirements and have demonstrable qualifications and experience for the sublicensed obligations.
- (b) Licensee shall require its sublicensees and subcontractors to comply with the provisions of this agreement and shall name the State of New York, through State Parks, as the sole intended third-party beneficiary of the sublicense or subcontract. State Parks reserves the right to review and approve or reject the sublicense or subcontract, as well as any amendments thereto; this right does not make State Parks or the State of New York a party to any sublicense or subcontract or create for the sublicensee or subcontractor any right, claim, or interest in the sublicense against State Parks.

- (c) If Licensee sublicenses or subcontractors as provided for in this section, State Parks may in its sole discretion require additional financial security from the Licensee or the sublicensee or the subcontractor.
- (d) Licensee shall give State Parks immediate written notice of the initiation of any legal action or claim arising out of a sublicense or subcontract that may affect Licensee's performance under this Agreement.
- (e) No sublicense or subcontract will relieve Licensee of any duty, obligation, or responsibility owed to State Parks under this agreement.

Section 29. Surrender

- (a) Licensee shall yield and deliver peaceably to State Parks possession of the Premises on the date of expiration or termination of this agreement. Licensee shall return the Premises to State Parks in broom clean condition, reasonable wear excepted as would not adversely affect or interfere with the efficient and proper utilization of the Premises or any part thereof, or in compliance with an alternative agreement reached by the parties at the time of surrender.
- (b) On or before the expiration or termination of this agreement, Licensee shall:
 - (i) remove its equipment and other personal property and all property of third parties for which it is responsible from the Premises;
 - (ii) remove any advertising, identifiers, or other of its signs from the interior and exterior of the Premises and from any other location within the golf course, clubhouse, and the Park; and
 - (iii) repair all damage caused by such removals.

State Parks may lawfully remove or dispose of any personal property remaining at the Premises after the expiration or termination of this agreement.

- (c) No agreement of or to accept a surrender will be valid unless and until the same is reduced to writing and signed by the duly authorized representatives of the parties. Except as expressly provided in this section, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of State Parks will be deemed an acceptance of a surrender of the Premises or this agreement. Without limiting the foregoing, no officer or employee of State Parks is authorized to accept the keys of the Premises as an act of surrender prior to the expiration or termination of this agreement and no delivery of the keys to State Parks by Licensee will constitute a termination of this agreement or acceptance of surrender.

Section 30. Rights of Entry and Re-Entry

- (a) In addition to any other rights of entry in this agreement, State Parks may, upon 24 hours' notice and during Normal Business Hours, enter the Premises for the purposes of observing the performance by Licensee of its obligations under this agreement or for the doing of any official act or things which State Parks may be obligated or have the right to do under this agreement or in accordance with law. In case of emergency or exigent circumstances threatening the health, safety, or welfare of the public or the physical integrity of the Premises or the Park, State Parks reserves an unrestricted right of entry to the Premises at all times.

- (b) State Parks may upon the expiration or termination of this agreement re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of Licensee under this agreement, and shall in no event constitute an acceptance of surrender.

Section 31. Rights Upon Loss from Casualty

- (a) If the Premises suffers a loss or damage from casualty, Licensee shall notify State Parks as soon as practicable.
- (b) If the loss or damage from casualty does not substantially interrupt or impede Licensee's Use, Licensee shall proceed with performance of this agreement, including Licensee's affirmative responsibility for all capital repair and replacement of any and all elements of the Premises. In such event, State Parks and Licensee shall negotiate an equitable abatement of the License Fee to the extent reasonably feasible and proportionate to the extent that Licensee's operations are impeded or interrupted by such loss or damage.
- (c) If the loss or damage from casualty is to the extent that Licensee's Use is substantially interrupted or impeded, State Parks shall consult with Licensee prior to making a determination of whether or in what manner the loss or damage can or should be restored to substantially the same condition as existed prior to such loss from casualty. State Parks shall make a preliminary determination within 24 hours of the Premises being sufficiently safe to access and make its final determination within 45 days of its preliminary determination.
 - (i) If State Parks determines that the loss or damage cannot or should not be restored, State Parks shall inform Licensee of such determination and set a date on which the agreement will terminate. In such event, Licensee shall pay State Parks the unamortized amount of Licensee's Minimum Capital Investment out of its share of any insurance proceeds. For purposes of this paragraph, Licensee's Minimum Capital Investment will be amortized on a straight-line basis over the term of this agreement.
 - (ii) If State Parks determines that the loss or damage can and should be restored, Licensee may, within thirty days of State Parks' determination and by written notice to State Parks, elect to restore the Premises at Licensee's sole cost and expense, in which case this agreement shall continue in force. Licensee may apply the proceeds of its required policy of property insurance to the restoration of the Premises. Any restoration work will be deemed a Capital Project. If Licensee does not wish to undertake its own restoration of the Premises, Licensee shall, within thirty days of State Parks' determination, provide State Parks with written notice of its decision and pay to State Parks the full proceeds it received under its required policy of property insurance and this agreement will terminate upon written confirmation of receipt of such funds by State Parks.
- (d) If this agreement is terminated because of loss or damage from casualty Licensee shall pay to State Parks all fees and other amounts due for the period through and including the date of casualty and the parties shall otherwise finalize all open matters and obligations between them.

- (e) Nothing in this section releases Licensee from its obligation to carry the property insurance required by Section 19 and Attachment E.

Section 32. Force Majeure

- (a) If either State Parks or Licensee is delayed or prevented from performing any act required by this agreement by reason of acts of God, weather, earth movement, pandemic or epidemic, lockout or labor trouble, or acts of war, riot, or other similar causes without fault and beyond the reasonable control of the party obligated, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Nothing in this section however, excuses Licensee from the prompt payment of any all fees and other financial obligations due and owing to State Parks prior to the act constituting force majeure.
- (b) Licensee waives any and all claims for compensation from the State of New York and State Parks for any and all loss or damage sustained by Licensee resulting from weather, fire, water, tornado, civil commotion, riots, earth movement, or other similar or dissimilar causes beyond the control of State Parks.

Section 33. Freedom of Information Law

Licensee acknowledges that State Parks is subject to the requirements of the Freedom of Information Law and that any information or records submitted by Licensee to State Parks are presumptively subject to disclosure unless specifically exempted by statute. In accordance with Public Officers Law Section 89(5)(a)(3), State Parks will maintain any information or records that Licensee requests be exempted from disclosure pursuant to Public Officers Law 87(2)(d) apart from all other information or records and, in the event of a request under the Freedom of Information Law for such information or records, shall contact Licensee to determine the extent to which such information or records might properly be exempted from disclosure.

Section 34. Responsibility Determination by State Parks

- (a) Licensee acknowledges that State Parks' execution of this License is contingent upon the State Parks' determination that Licensee is responsible. State Parks relies in part upon the Licensee's responses to the Vendor Responsibility Questionnaire developed by the Office of the State Comptroller to make its responsibility determination, but may make its determination based on any information available to it.
- (b) Licensee shall remain responsible throughout the term of this agreement. Upon request by State Parks, Licensee shall present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.
- (c) If State Parks discovers information that calls into question Licensee's responsibility, State Parks may suspend any or all activities under this agreement by written notice to Licensee outlining the basis of the suspension and listing activities to be suspended. Upon the issuance of such suspension notice, Licensee shall not engage in or undertake the listed activities unless and until State Parks issues a written notice ending the suspension and Licensee shall comply with all reasonable requests from State Parks to cure the basis for suspension.

Section 35. Conflicts of Interest; Former State Employees

- (a) Consistent with its attestation made in the RFP Response, Licensee states there is no actual or potential conflict of interest that could prevent Licensee's satisfactory and ethical performance of its obligations under this agreement. Licensee shall notify immediately State Parks of any actual or potential conflict of interest that arises after the signing of this agreement.
- (b) Licensee shall not hire former State Parks employees in violation of the New York Public Officers Law, other laws applicable to the service of State employees, or the rules, regulations, opinions, guidelines, or policies of the New York State Joint Commission on Public Ethics or its predecessors (the "**Ethics Requirements**"). Consistent with its certification made in the RFP Response, Licensee shall not assign any of its employees in violation of the Ethics Requirements or allow any of its employees to provide services in violation of the Ethics Requirements. Licensee shall identify to State Parks all of its employees who are current or former employees of State Parks; State Parks may require Licensee to provide reasonably necessary information to determine whether any such employee's work is consistent with or violates the Ethics Requirements and may require Licensee to seek the opinion of the New York State Joint Commission on Public Ethics or its successor. Licensee acknowledges that any person who is disqualified from providing services under this agreement by the Ethics Requirements is prohibited from sharing in any net revenues derived by Licensee from the Use.

Section 36. Termination

- (a) If Licensee is in breach of this agreement in any of the following ways and such failure continues for more than or is not commenced to be cured within 30 days from Licensee's receipt of notice of default issued by State Parks, State Parks may terminate this agreement for cause by notice to Licensee:
 - (i) Licensee fails to operate or occupy the Premises;
 - (ii) Licensee's operation significantly departs from the Use;
 - (iii) Licensee fails to pay the License Fee in accordance with 4(a);
 - (iv) Licensee fails to meet its capital investment obligation in accordance with Section 5;
 - (v) Licensee fails to hold the security required under (b); (b);
 - (vi) Licensee fails to pay for utility services in accordance with Section 15 resulting in termination or shut-off of utility service to the Premises;
 - (vii) Licensee fails to file the monthly reports due under 18(a);
 - (viii) Licensee fails to hold the Required Insurance in accordance with Section 19;
 - (ix) Licensee attempts to assign or sublicense its rights and obligation under this agreement in contravention of either Section 28 or Paragraph 2 of Appendix A.
- (b) If State Parks or the State of New York determines that Licensee is not a responsible vendor as required under Section 34, that a conflict of interest exists that could prevent Licensee's satisfactory and ethical performance of its obligations under this agreement, or that Licensee or any of its employees has violated any of the Ethics Requirements, State Parks may terminate this agreement for cause upon notice to Licensee after providing Licensee notice of the basis for the determination and 15 days to challenge the determination.
- (c) If any one or more of the following events occurs, State Parks may, upon the occurrence of such event or at any time thereafter, terminate this agreement by giving Licensee at least 10 days' notice:

- (i) Licensee becomes insolvent; takes the benefits of any present or future insolvency statute; makes a general assignment for the benefit of creditors; files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, Licensee's reorganization, or the readjustment of Licensee's indebtedness under the federal bankruptcy laws or under any other law of statute of the United States or any State thereof; or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;
 - (ii) by order or decree of a court, Licensee is adjudged bankrupt or an order is made approving a petition filed by any creditor seeking Licensee's reorganization or the readjustment of Licensee's indebtedness under the federal bankruptcy laws or under any other law of statute of the United States or any State thereof;
 - (iii) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Licensee and not dismissed within 45 days after the filing thereof;
 - (iv) the interest or estate of Licensee under this agreement is actually or purportedly let to, transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, or corporation except upon the express written approval of State Parks;
 - (v) a receiver, trustee, or liquidator takes possess or control of all or substantially all of the property of Licensee by, pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer;
 - (vi) any execution or attachment is issued against Licensee or any of its property whereupon possession of the Premises or any portion thereof is taken by someone other than Licensee and such possession or control continues for a period of 20 days;
 - (vii) any lien is filled against the Premises because of any act of omission of Licensee and not removed or bonded as provided for in this agreement;
 - (viii) Licensee ceases to be duly authorized to conduct business in the State of New York.
- (d) State Parks may also terminate this agreement without advance notice to Licensee if any member, partner, director, or officer of the Licensee is convicted of any of the following offenses: Bribery Involving Public Servants and Related Offenses, as defined in Article 200 of the New York State Penal Law; Corrupting the Government, as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
- (e) No waiver by State Parks of any default on the part of Licensee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Licensee is or will be construed to be a waiver by State Parks of any other or subsequent default in performance of any of the said terms, covenants, and conditions. No acceptance by State Parks of Rent or other amounts due under this agreement will be construed to be a waiver by State Parks of any right of the State to terminate this agreement.
- (f) Licensee hereby waives its right to trial by jury in any summary proceeding, ejectment, or other action that may hereafter be instituted by State Parks against Licensee in respect of the Premises or in any action that may be brought by State Parks to recover fees, damages, or other amounts payable under this agreement. Licensee shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment that may be brought by State Parks unless such claims would be deemed waived if not so interposed.

- (g) The rights of termination described in this section are in addition to any other rights of termination provided in this agreement and any rights and remedies that State Parks would have at law consequent upon any breach of this agreement by Licensee. The exercise by State Parks of any right of termination will be without prejudice to any other such rights and remedies.
- (h) Licensee hereby waives all rights of redemption arising if it is evicted or dispossessed for any cause set forth in this agreement or if State Parks obtains or retains possession of the Premises in any lawful manner.

Section 37. No Third Party Beneficiaries

There are no third party beneficiaries to this agreement.

Section 38. Claims

- (a) Any and all claims against State Parks arising out of this agreement are limited to money damages and will be commenced exclusively in, and subject to the jurisdiction of, the New York State Court of Claims.
- (b) Any and all claims against Licensee for damages brought by State Parks and/or any actions to enforce the terms and conditions of this agreement shall be enforceable in any appropriate court in Albany County, New York, which shall be the exclusive venue.

Section 39. Agency

Nothing contained in this agreement constitutes or will be construed to create or constitute a legal or *de facto* partnership or joint venture or an agency relationship between the parties.

Section 40. Integration Clause

This agreement shall not be materially amended or otherwise modified except in writing signed by both parties and approved by the Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed herein shall be effective to interpret, change, or restrict the express provisions of this agreement. This agreement shall be interpreted without construing any provision in favor of or against either party by reason of the drafting of the provision.

Signature Page Follows

In witness whereof, the parties are signing this agreement on the date stated in the introductory clause.

Licensee

By: _____

Name:

Title:

Federal EIN:

Acknowledgement

STATE OF _____)
) SS:
COUNTY OF _____)

On this ___ day of _____ in the year 20__, before me, the undersigned a notary public in and for said state, personally appeared _____, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as the _____ of _____, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Notary Public

State of New York, Office of Parks, Recreation and Historic Preservation

Recommendation of Regional Director: _____
Alane BallChinian, Saratoga/Capital Region

By: _____
Melinda Scott, Deputy Commissioner for Finance and Administration

Office of the Attorney General

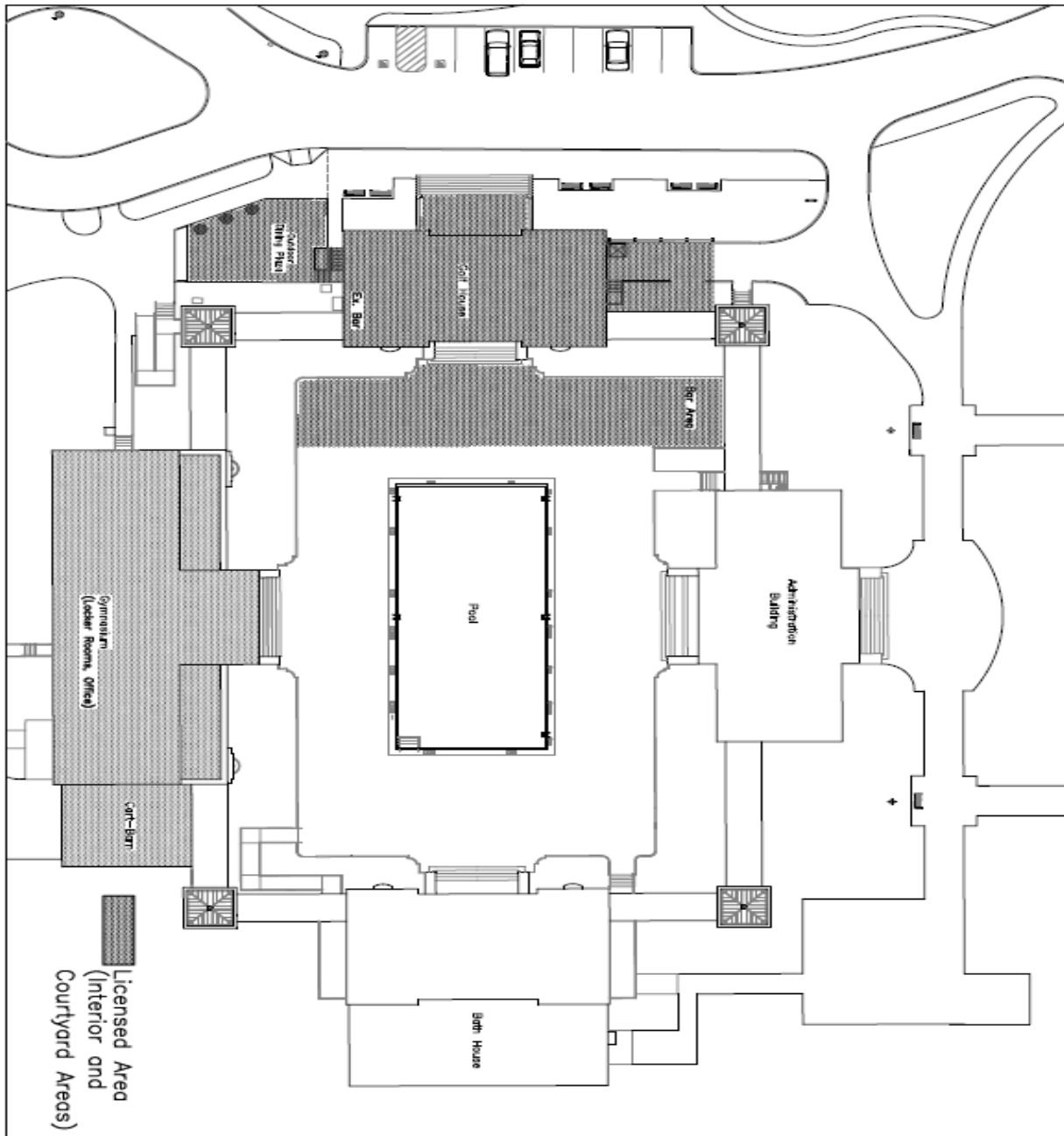
Office of the State Comptroller

Attachments Follow

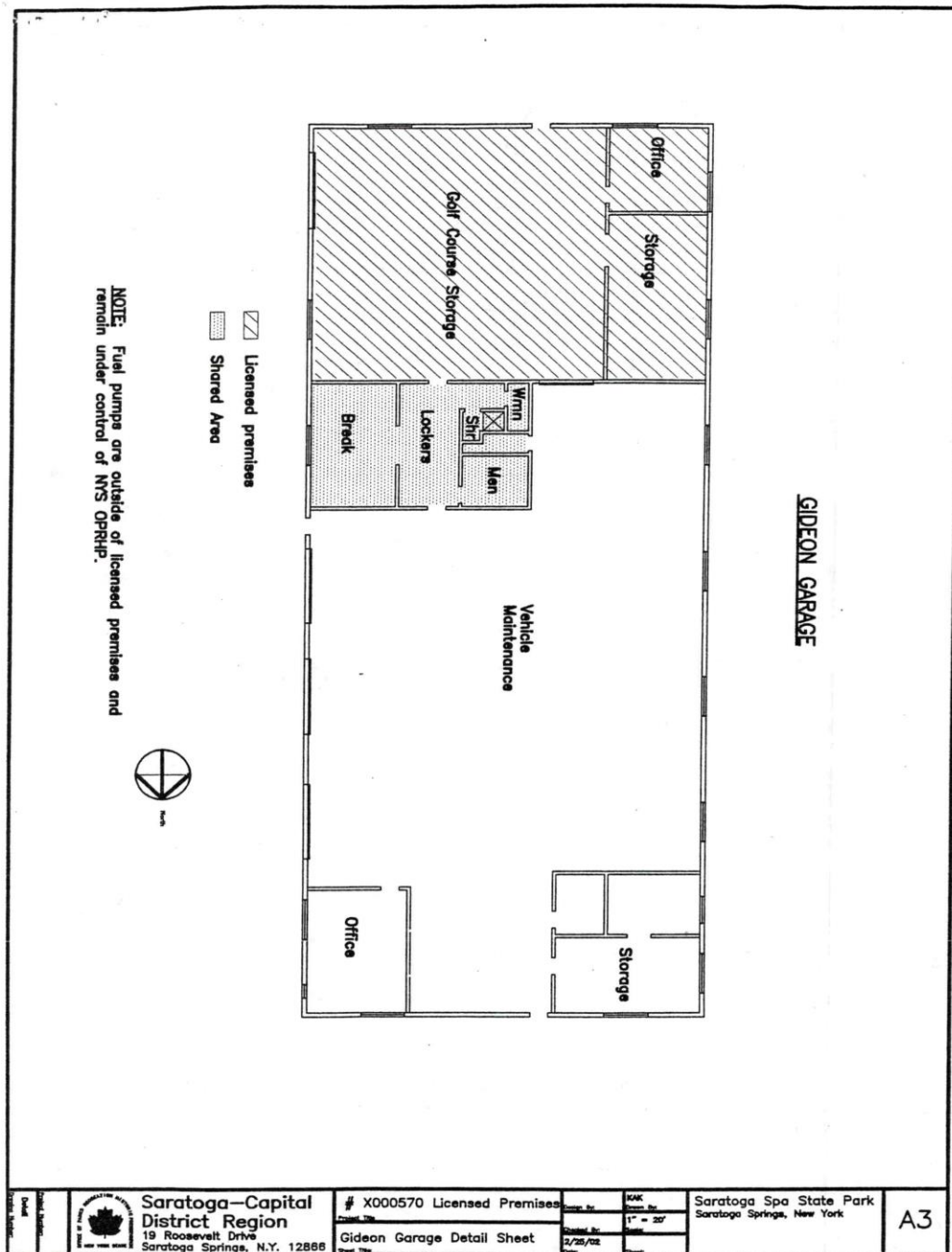
Attachment A

DESCRIPTION OF THE PREMISES

Concession Restaurant is approximately 3,600 sq. ft. with an additional 5,000 sq. ft. of outdoor dining space. The Snack Shack is approximately 300 sq. ft. The Golf Pro Shop is approximately 3,500 sq. ft. The cart storage building is approximately 8,700 sq. ft. The Executive course clubhouse is approximately 1,200 sq. ft. Licensee will have approximately 2,270 sq. ft. of storage space for golf course maintenance equipment within the “Gideon Garage”.



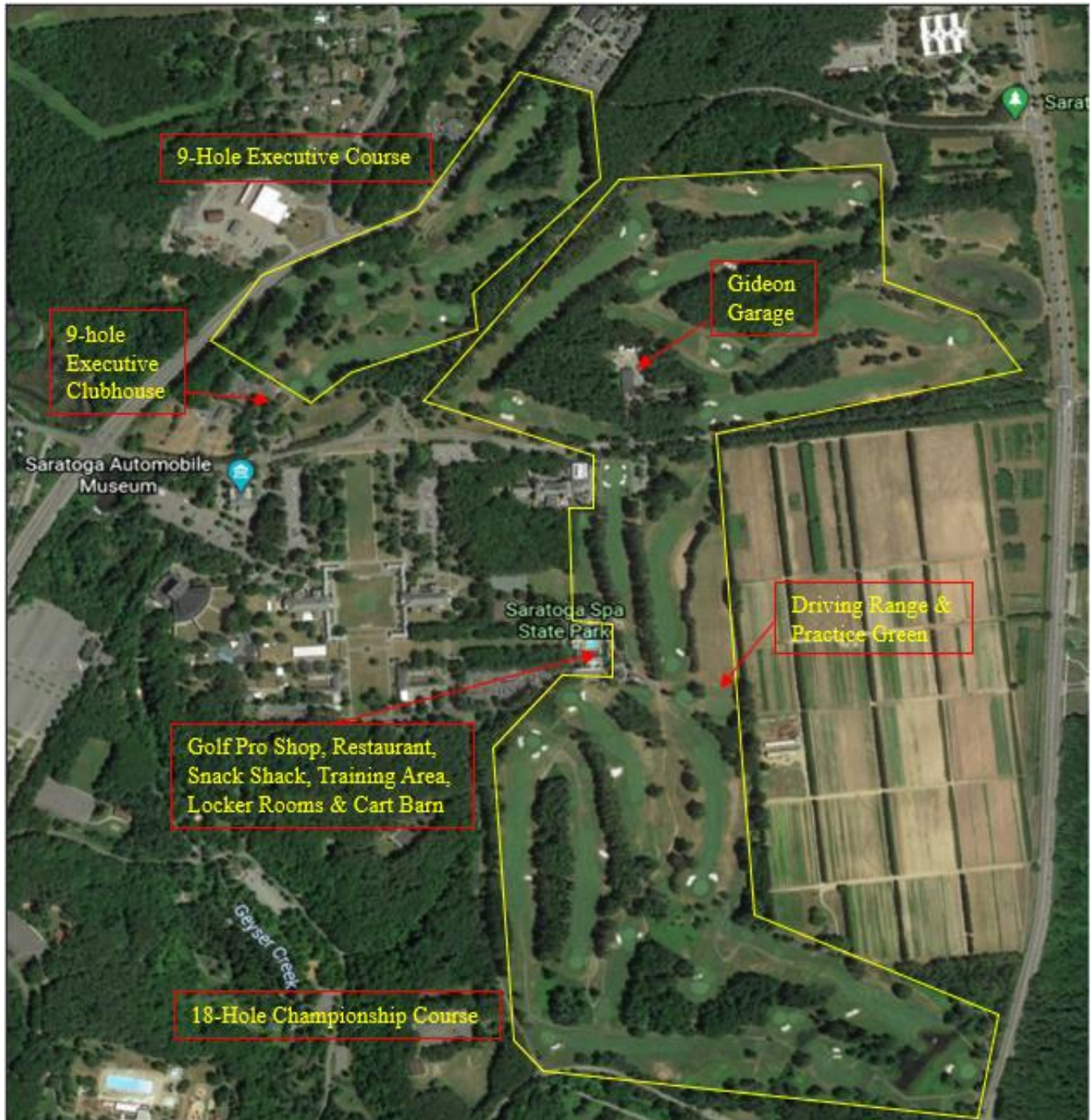
Gideon Garage



Saratoga Spa State Park Golf Course Map

18-hole Championship Golf Course: 18-hole golf course includes a practice green and driving range.

9-hole Executive Golf Course: Par 29 course separate from 18-hole Championship Golf Course.



Attachment B

INVENTORY OF EQUIPMENT**Golf Course Inventory:**

Location	Item	Description	Quantity	Control #
Golf Course	Smokers Outpost	N/A	1	SS-00369
	Bag Racks	N/A	3	SS-01099
	A-frame sign holder	N/A	4	SS-01531
	Aluminum Cups	N/A	27	SS-01693
	11" Arrow Signs	N/A	10	SS-01840
	Course Marking Stakes	N/A	176	SS-01908
	Tee Signs	N/A	27	SS-02514
	Rope Stakes	N/A	260	SS-02555
	Water Coolers	N/A	1	SS-03108
	Golf Cart Directional Signs	N/A	50	SS-03123
	Trash Receptacles	N/A	2	SS-03203
	Bench	N/A	1	SS-03205
	Driving Range - tee dividers	N/A	14	SS-03280
	Bag Stands	N/A	4	SS-03292
	Club Washers	N/A	2	SS-03302
	Driving Range - yardage poles	N/A	4	SS-03304
	Course - yardage poles	N/A	20	SS-03310
	Course - yardage markers	Plates	28	SS-03328
		Poles	14	N/A
	Bunker Rakes	N/A	115	SS-03680
	Putting Cups	N/A	45	SS-04540
	Practice Green Supplies	Flagsticks	35	SS-04649
		Flags	8	N/A
	Tee Markers	Red	40	SS-04890

		Gold	36	N/A
		White	40	N/A
		Blue	42	N/A
		Black	44	N/A
	Flags and Flagsticks	Flags - Blue	32	SS-05086
		Flags - Red	32	N/A
		Flags - yellow	24	N/A
		Flagsticks - Blue	25	N/A
		Flagsticks - White	15	N/A
		Flagsticks - Red	20	N/A

Golf Course Maintenance Equipment:

Location	Item	Serial #	Quantity
Gideon Garage	Ford Tractor	BCG9822	1
	Ryan Walk-Behind Seeder	544873	1
	Ryan Sod Cutter	63476	1
	Weidenmann Greens Terra Spike	435KE2175	1
	Toro Dingo 220	22317-260000233	1
	Dingo Trencher Attachment	22470-280000179	1
	Dingo Bucket Attachment	22409-29000189	1
	Toro Greensmaster Flex 2100 (walk behind)	04251-314001207	1
	Toro Greensmaster Flex 2100 (walk behind)	04251-314001208	1

Golf Pro Shop & Office Inventory:

Location	Description	Make	Model	Quantity	Control #
Admin Office	Desktop computer and monitor	Dell	Optiplex GX2060T, E771	1	SS-00001-02
	Desktop computer and monitor	Dell	370 minitower, Ultrasharp	1	SS-01062-63
	Desktop computer	Dell	Optiplex 320	1	SS-01467
	Laptop, disk drive, cables, and case	IBM	thinkpad	1	SS-00072-75
	Scanner	Canon	DR 3080C11	1	SS-01061
	Office furnishings, incl desks, chairs, hutches, tables, and various accessories	Bus. Environs by RAS	assorted	N/A	SS-00003-68
	Track Lighting	Warren Electric	N/A	N/A	SS-00827-41
	Irrigation computer upgrade	Toro	N/A	1	SS-05070
Pro Shop	Desktop computer and monitor	Dell	Optiplex GX240, E771	1	SS-00070-71

Pro Shop	Desktop computer and monitor	Dell	Optiplex 170L, E153FP	2	SS-01030-33
	Desktop computer and monitor	Dell	Optiplex 170L, E153FP	1	SS-01064-65
	Desktop computer	Dell	Optiplex 320	1	SS-01466
	Desktop computer and monitor	Lenovo (Acer monitor)	510S-08ISH	1	SS-04956
	Desktop computer and monitor	Gateway	E-2100c	1	SS-00925-26
	Desktop computers and monitors	Lenovo	H520	2	SS-03655-56
	Computers	N/A	N/A	2	SS-02544-45
	Point of sale computers	N/A	N/A	2	SS-03630-31
	Point of sale computers	Lenovo desktops	510a	2	SS-05079-80
	Laptop	N/A	N/A	1	SS-03528
	Laptop	Lenovo	premium	1	SS-04957
	Touch screen laptop	Lenovo	Yoga 710	1	SS-04960
	Credit card machines	Equinox	I5300	2	SS-04892-93
	Credit card terminal	Equinox	L5300	1	SS-04958
	Credit card terminals	Equinox	L5300	2	SS-05107-08
	Barcode scanners	Honeywell	Voyager ms9540	2	SS-05081-82
	Battery backups for computers	APC	N/A	5	SS-04910
	Label maker	DYMO	DYMO 330	1	SS-00927
	Color inkjet printer	HP	HP 5550	1	SS-00268
	Cash Register	Samsung	ECR 4915	2	SS-00394-95
	Receipt printer	Citizen	ct-s651	1	SS-04891
	Portable radios	N/A	N/A	6	SS-03618-23
	Radio repeater and duplexer	N/A	N/A	1	SS-03262
	radio base station, desk mic, and antenna	N/A	N/A	1	SS-01896-98
	Digital camera with picture card	Fuji 9MP, 2 gb XD card	N/A	1	SS-01899-900
	PA system	Fender	Passport PDA-150	1	SS-01901
	TV	Sharp	N/A	1	SS-02293
	Processor for phone system	N/A	N/A	1	SS-04907-08
	Internet upgrade equipment	N/A	N/A	1	SS-04921
	Security cameras	N/A	N/A	8	SS-03268-75
	Sound system	N/A	N/A	1	SS-03276
	5lb fire extinguishers	American Safety Products	N/A	6	SS-00396-401
	10lb fire extinguisher	American Safety Products	N/A	1	SS-00402

Pro Shop	lightning warning siren	N/A	N/A	1	SS-03265
	4'x4' porcelain whiteboard, outdoor	N/A	N/A	1	SS-01430
	Office desk and hutch	N/A	N/A	1	SS-02541-43
	desk and chair	N/A	N/A	1	SS-03266-67
	FCC license	N/A	N/A	1	SS-03263
	Podium for cart attendants	EasyCare	N/A	1	SS-01403
	Starter's podium with 2 umbrellas	N/A	N/A	1	SS-01905-07
	Golf shop fixture - men's muscular shirt form	N/A	N/A	12	SS-01468-79
	Golf shop fixture - classic blouse form	N/A	N/A	6	SS-01480-85
	Golf shop fixture - barclay mahogany base	N/A	N/A	6	SS-01486-91
	Golf shop fixture - men's mahogany neckblock	N/A	N/A	12	SS-01492-503
	Golf shop fixture - ladies' mahogany neckblock	N/A	N/A	6	SS-01504-09
	Golf shop fixture - men's form metal neck	N/A	N/A	2	SS-01510-11
	Golf shop fixture - ladies' form metal neck	N/A	N/A	2	SS-01512-13
	Collapsible rack	N/A	N/A	4	SS-01514-17
	Hangers	N/A	N/A	>200	SS-04109
Business Office	Desktop computer and software	Dell	Inspiron	1	SS-03664
	Desktop computer	HP	500-a60	1	SS-03669
	Scanner	HP	scanjet pro 3000	1	SS-03670
Maintenance	10lb fire extinguisher	American Safety Products	N/A	3	SS-01027-29
	Desktop computer and monitor	Dell	Optiplex Microtower, E153FP	1	SS-01066-67
Training Center	Freestanding reversable whiteboard	N/A	N/A	1	SS-01428
	Backless bench in locker room	N/A	N/A	2	SS-01529-30
	Air conditioner	N/A	N/A	1	SS-03264
Executive Clubhouse	4'x4' porcelain whiteboard, indoor	N/A	N/A	1	SS-01429
	50 gal water heater	N/A	N/A	1	SS-01522
	Wall heaters	N/A	N/A	3	SS-02288-90
	Wall heater	N/A	N/A	1	SS-03526
	Ceiling fan	N/A	N/A	1	SS-03527
	Credit card machine	Ingenico	iCT220	1	SS-04905
	Air conditioner	N/A	12,000 unit	1	SS-04953
	Camera, microphone, and speakers	N/A	N/A	1	SS-04954

Restaurant Inventory:

Location	Description	Make	Model	Quantity	Control #
Restaurant	Range cover, hood and base	N/A	N/A	1	2018
	Range cover, hood and base	N/A	N/A	1	2019
	Kitchen Hood	N/A	N/A	1	N/A
	Ansul System	N/A	N/A	1	N/A
	36" Range	N/A	N/A	1	N/A
	Walk-In Cooler	Amerikooler	N/A	1	SS10674
	Walk-In Cooler	Amerikooler	N/A	1	N/A
	Walk-In Cooler	N/A	N/A	1	N/A
	Door strips for walk-in cooler	Curton	43900	1	N/A
	Walk-in Freezer	N/A	N/A	1	N/A
	4 door freezer	Traulsen	N/A	1	SS10666
	Chest Cooler	N/A	N/A	1	N/A
	Stainless Steel cooler	N/A	N/A	1	N/A
	3 draw refrigerator with door	N/A	62J506	1	N/A
	Convection Oven	N/A	N/A	1	N/A
	Fryer	N/A	N/A	1	N/A
	Fryer	N/A	N/A	1	N/A
	Fryolator	Wells	OM1495	1	N/A
	Griddle	N/A	N/A	1	N/A
	Charbroiler	N/A	N/A	1	N/A
	Deluxe 3-burner gas grill (22x32)	Rankin	N/A	1	N/A
	6-Burner chef stove, black	Universal	N/A	1	SS106
	3-Bay sink	N/A	N/A	1	N/A
	Prep Sink	N/A	N/A	1	N/A
	Mop Sink	N/A	N/A	1	N/A
	Deep Sink, Stainless steal	N/A	N/A	1	SS10669
	Stainless steel bar sink- 2 sections	N/A	N/A	1	N/A
	Grease trap	N/A	N/A	1	N/A
	Meat Slicer	Global Slicing Machine Co.	N/A	1	N/A
	Food Slicer	Globe	407981	1	N/A
	Heat Lamp	Hatco Corp.	GRAH-48	1	N/A
	Toaster	Waring Commercial	WCT704	1	N/A
	Toaster	Sunbeam-Oster	TSSTTRJB30	1	N/A
	4-slice toaster	Savory	N/A	1	SS10580
	4-slice toaster	Savory	N/A	1	SS10279

Restaurant	Panini Grill	Waring Commercial	WPG250	1	N/A
	Coffee Maker	N/A	N/A	1	N/A
	Ice Maker	N/A	N/A	1	N/A
	Ice cube Machine	Scotsman	N/A	1	SS10745
	800 Watt Microwave	Amana	N/A	1	N/A
	Dishwasher	N/A	N/A	1	N/A
	Chrome Rack tray	N/A	N/A	1	N/A
	19" Television	Sharp	N/A	1	N/A
	19" Television	Sharp	N/A	1	SS10692
	Speaker	N/A	N/A	1	N/A
	Strike First fire extinguisher, 10lb	N/A	N/A	1	N/A
	Chemetron (StrikeFirst)	N/A	N/A	1	N/A
	Kitchen Fire Extinguisher	Kidde Sentinel	N/A	1	N/A
	Chemetron (StrikeFirst)- Office	N/A	N/A	1	N/A
	10" ceiling fan (exhaust fan)	N/A	4C528	1	N/A
	52" ceiling fan with 3' extensions	Hunter	N/A	1	N/A
	Electric protable refreshment center	Club Car Carryal	F93423568	1	N/A
	2-Drawer Stainless Sandwich Table	N/A	N/A	1	N/A
	Stainless Steel service table w/2 drawers	N/A	N/A	1	2005
	Display Cabinet	N/A	N/A	1	N/A
	Captain chairs	N/A	N/A	16	N/A
	Wooden Tables	N/A	N/A	8	N/A
	Light Fixtures	N/A	N/A	4	N/A
	Safe	Shaw-Walker	N/A	1	S50608
	Bar Glass Washer	N/A	N/A	1	N/A
	PA System	Perma Power	N/A	1	N/A
	Classic Spike Proof Carpeting	Kraus Heritage	N/A	1	N/A
	Water Heater	AO Smith	BT251A	1	N/A
	Compressor and Condensing units	Traulsen	AJ2416	1	N/A
	Compressor for each freezer	N/A	N/A	1	N/A
	Canopy for front entrance	N/A	N/A	1	N/A
	Aluminum Frame Tent	N/A	N/A	1	N/A
	Umbrellas	N/A	N/A	9	N/A
	Acrylic Tables- Front porch	N/A	N/A	4	N/A
	Table Umbrellas- Front Porch	N/A	N/A	4	N/A
	Umbrella bases	N/A	N/A	1	N/A
	White Plastic Chairs	N/A	N/A	21	N/A
	Curtain Rod	N/A	N/A	6	N/A
	Curtains	N/A	N/A	6	N/A

Restaurant	Acrylic tables- 4 w/umbrellas	N/A	N/A	6	N/A
	Mirror	N/A	N/A	1	N/A
	Portable ice crème bike	Westrock	N/A	1	SS10712
	Gas Grill on wheels	N/A	N/A	1	N/A
	Hot dog roller	Star	45(6-95)	1	N/A
	Patio Chairs	N/A	N/A	12	N/A
	Square formica tabletop	N/A	N/A	1	N/A

Snack Shack Inventory

Location	Item	Make	Model	Quantity	Serial #
Snack Shack	Electric Griddle 30"	ADCRAFT	GRID-30	1	10140120073
	Coffee Maker 2 Pot	Bunn	VPS, BLK-LTDSW	1	UPS0159512
	Hot Plate/1 Burner	Courant	CEB-1100K	1	EB11119A1 0476
	Air Conditioner	Frigidaire	FRA052XT7	1	KK25040212
	Water Heater	American Water Heating Co.	E61-06U-017SV	1	1630J003805
	SS Sink 3 bay	Eagle	2136-3-16/4	1	602241492
	POS System	Touch Dynamics	LK-T210	1	SW12099131
	POS System	Touch Dynamics	3LEP35500090	1	992800028

Attachment C

REQUIREMENTS FOR CAPITAL CONSTRUCTION PROJECTS

- (a) All capital improvement investment projects to be undertaken by Licensee shall be approved in advance by State Parks in accordance with the License. Upon approval of a capital improvement project by State Parks, the Licensee shall fully implement the approved project and all its individual elements at the direction of State Parks pursuant to the requirements contained herein. The Licensee shall be solely responsible for the full cost of implementing all approved projects, including all costs and expenses of construction that exceed the Licensee's minimum capital investment required by the License.
- (b) Designs for all projects proposed by Licensee shall be in compliance with the NYS Uniform Fire Prevention and Building Code (Building Code). Designs shall be developed and signed by a professional engineer or architect licensed to practice in New York State. All designs for capital improvements shall be subject to the written review and approval of State Parks with respect to aesthetics and compliance with the Building Code, the State Historic Preservation Act, and the State Environmental Quality Review Act, prior to any bidding or award of contracts for such construction, or commencement of construction.
- (c) Copies of all contracts, subcontracts, change orders, progress payment documents and related material shall be provided to State Parks within five business days upon request by State Parks.
- (d) Throughout the construction phase of the project, the Licensee shall conduct regular "job meetings" to assess progress on the project, and produce written records of such meetings, with a copy to State Parks. At the discretion of State Parks, a representative may attend the job meetings at no cost to the Licensee.
- (e) A schedule of construction activity shall be recommended by Licensee and approved by State Parks. Licensee shall not unreasonably interfere with normal park operations. Licensee shall avoid construction on those days when large park attendance can be reasonably anticipated, including major holidays such as Memorial Day, Independence Day (4th of July) and Labor Day.
- (f) All construction and material costs and expenses in excess of original estimates for the approved project shall be the sole responsibility of the Licensee, and State Parks shall have no liability whatsoever for any additional expenses either to the Licensee or the Licensee's contractors, subcontractors, and/or suppliers. The Licensee assumes any and all additional and extra costs, including but not limited to costs and expenses associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen conditions associated with the Premises. State Parks shall have no obligation in law or in fact to expend funds or undertake any capital improvements as a result or consequence of any project undertaken, or condition encountered by the Licensee.
- (g) **Additional Insurance Required for Capital Improvements.** In addition to the insurance required by the License, the Licensee shall require its contractors to carry Contractor's Liability Insurance which names State Parks and the Licensee as additional insured. Licensee shall provide to State Parks a copy of all insurance certificates evidencing coverage in compliance with this section. Such insurance shall include the following coverage:

1. Liability (including contractual liability) and Protective Liability to protect the Licensee and State Parks from any suits, actions, damages and costs of every name and description, with respect to all work performed by the Licensee's contractors and subcontractors; and
2. Owner's Protective Liability to protect State Parks with respect to all operations undertaken by the Licensee's contractors and subcontractors, including omissions and supervisory acts; and
3. Completed Operations/Products Liability covering liability and damages arising between the date of final cessation of construction work and the date of final acceptance of the construction by State Parks; and
4. Builder's Risk Insurance:
 - i. Unless otherwise provided for in the License the Licensee's contractor shall maintain builder's risk insurance for the completed value of the Premises on the All Risk Form.

(h) Labor and Materials Bond.

1. Prior to the commencement of any construction work hereunder, Licensee shall furnish State Parks with evidence that it has procured a labor and materials payment bond from a corporate surety authorized to transact business in the State of New York, in a form satisfactory to State Parks, naming Licensee as principal, in an amount not less than one hundred (100%) percent of the total cost of the construction work to be undertaken by Licensee as approved by State Parks. Such bond shall guarantee payment for all materials, provisions, supplies, and equipment used in, upon, for, or about the performance of said construction work, and/or labor performed thereon of any kind whatsoever, and which unconditionally protects State Parks from any claims, liability, losses, or damages arising therefrom.
2. As evidenced by certification by the engineer or architect of record for the project, State Parks shall authorize the reduction of the face value of the labor and materials bond on a monthly or other periodic basis to an amount equal to the remaining contract costs, including approved change orders.

(i) It is expressly understood that failure of the Licensee to comply with the requirements for capital improvement projects, including maintaining the required insurance and bonds in full force throughout the performance of the approved project, shall be deemed a material breach of the License and may, at the election of State Parks, result in termination of the License without further notice. The Licensee shall notify State Parks immediately of any change in insurance or bonding status including, but not limited to, any change in carrier or surety.

If there are any discrepancies between this Attachment and the License, the language of the License shall prevail.

Attachment D

CAPITAL INVESTMENT WORK PLAN

Attachment E

INSURANCE REQUIREMENTS

The following types of liability insurance coverage with liability limits of at least the levels set forth below are required.

- (a) **Commercial General Liability Insurance** covering claims arising out of ongoing and completed operations under this agreement including damage to or loss at the Premises caused by fire and water damage. Such policy must have a liability limit of at least \$1,000,000 each occurrence and at least \$2,000,000 general aggregate.
- (b) **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance of this agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 each accident.

This coverage is not required if no automobiles or motor vehicles are used in connection with the performance of this agreement.

- (c) **Environmental Liability Insurance** including sudden and accidental pollution coverage with a limit of not less than one million dollars (\$1,000,000) for each occurrence.
- (d) **Liquor Liability Insurance** written on ISO form CG 00 33 or equivalent, covering liability arising out of, but limited to, blanket contractual liability, including tort liability, and defense or indemnification obligations, including obligations assumed under this agreement. Such coverage must have a liability limit of at least \$2,000,000 each occurrence.

The required insurance coverage limits may be met through a combination of primary and excess/umbrella liability policies, however, any excess/umbrella policies must be written on a “following form” basis.

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8

of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they

were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is

for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State

or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health,

and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications,

the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.