

BID SPECIFICATIONS

COIN-OPERATED BINOCULAR MACHINES CONCESSION

Barnegat Lighthouse State Park
Cape May Point State Park
Fort Mott State Park
High Point State Park
Liberty State Park

SCOPE OF CONCESSION

A. The Concessionaire shall be granted the exclusive right to operate and maintain coin-operated binocular machines (hereinafter referred to as the “Concession Operation”). The Concession Operation shall be limited to the structure(s) or area(s) now provided by the Department of Environmental Protection (“Department”) for concession purposes in the areas specifically designated by the Department (hereinafter referred to as the “Concession Premises”).

Coin-Operated Binocular Machines at:

Barnegat Lighthouse State Park – not to exceed 5 machines
Cape May Point State Park – not to exceed 2 machines
Fort Mott State Park – not to exceed 2 machines
High Point State Park – not to exceed 6 machines
Liberty State Park – not to exceed 18 machines

The stationing of the Coin-Operated Binocular Machines shall be from specified locations at each State Park Service location designated by the Department.

B. Concessionaire shall use the Concession Premises solely for the purpose set forth above and is prohibited from selling or permitting the sale of any alcoholic beverages thereon.

C. Concessionaire’s status will be that of a licensee. Concessionaire will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Concession Premises.

TERM OF AGREEMENT

The “Initial Term” of the Concession Agreement (“Agreement”) shall be from the Effective Date of the Agreement’s Initial Term to December 31, 2012, and may include no more than two (2) subsequent one-year opportunities to renew at the Department’s discretion, based upon an evaluation of the Concessionaire’s performance and compliance with the terms and conditions of the Agreement. At the end of the Initial Term and prior to the start of any “Second Term,” a compensation analysis will be completed. The Department, in its sole discretion, may extend the Agreement with Concessionaire to a “Second Term.” A Second Term would run from the Effective Date of the Agreement’s Second Term to December 31, 2015, and may include no more than two (2) subsequent one-year opportunities to renew at the Department’s discretion, based upon an evaluation of the Concessionaire’s performance and compliance with the terms and conditions of the Agreement.

EFFECTIVE DATE

For the purposes of the Agreement, the Effective Date for the commencement of the Initial Term or any renewal term shall be the date on which the last of the following has occurred:

- (i) The Agreement or any renewal agreement is signed on behalf of Concessionaire and Department; and
- (ii) Department dates the Agreement or any renewal agreement and forwards a copy to Concessionaire; and

- (iii) The Certificate of Insurance required under the Agreement is approved by Department; and
- (iv) Corporate resolution has been received by Department; and
- (v) Department has approved the proposed prices for the optical viewers.

COMPENSATION ANALYSIS

After the expiration of the third (3rd) year under the Initial Term of the Agreement, a compensation analysis will be performed to determine if the compensation amount will be increased, decreased, or remain the same for the Second Term. Based on the reported Total Gross Revenue and/or performance of the concession, the Department may choose to increase, decrease, or maintain the compensation amount. The total amount of annual compensation will be analyzed and may be adjusted to correspond with the Department's existing rental rates for similarly performing operations.

REVENUE PAYMENTS AND ANNUAL INCREASE

A. The total amount of annual compensation to be paid by Concessionaire to Department as consideration for the license and privileges granted to Concessionaire under the Agreement shall be paid in four (4) equal installments of the total amount of annual compensation on the first day of June, July, August, and September for each contract period.

B. All payments shall be made at the area office, by check made payable to "Treasurer - State of New Jersey." If Concessionaire fails to pay said compensation at such time and in such manner as specified herein, such failure shall constitute grounds for termination of the Agreement.

C. All past due payments shall be assessed a monthly penalty of one and one-half (1.5%) percent of the total amount due calculated on the tenth day of each month.

D. In the event any check for payment is returned to Department, all future compensation payments must be made by certified or cashier check only.

E. The total amount of annual compensation shall be increased by three (3%) percent each contract period.

RECORDS AND AUDIT

Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to each Concession Operation covered by this Agreement that will allow Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire shall make such records available to any authorized representative of Department upon request, as often as it is deemed necessary by Department, to determine the effectiveness of the financial management system and internal procedures that have been established by Concessionaire to ensure compliance with the terms and conditions of the Agreement and that the financial statements, cash register receipts, and reports present fairly the results of Concessionaire's operations pursuant to the Agreement. Said records shall be maintained and made available to Department for a period of six (6) years after the termination or expiration of the Agreement.

MONTHLY REPORT

On or before the fifteenth (15th) of each month during operation, Concessionaire shall provide Department with the following: (1) a "Monthly Concession Report" containing a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Concessionaire from operation of the Concession and any other Concession-related operation approved by Department during the previous month. If Concessionaire fails to submit said report at such time and in such manner as specified herein, such failure shall constitute grounds for termination of the Agreement.

ANNUAL REPORT

Concessionaire shall submit to Department, no later than January 31st of each term the Agreement is in effect, a notarized Annual Financial Statement including the Total Gross Revenue from the operation of this concession. If Concessionaire fails to submit said report at such time and in such manner as specified herein, such failure shall constitute grounds for termination of the Agreement.

HOURS OF OPERATION

Concessionaire shall make available, year-round and during the operating hours of each State Park Service location, coin-operated binocular machines in good operating order.

PRICES

Prices for all coin-operated binocular machines shall be submitted to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted and approved at least thirty (30) days prior to initial opening of the Concession and on a yearly basis thereafter for the duration of the Agreement. All prices shall be properly displayed in prominent places at all times. Price signage must be professional in appearance, neat, and made of weather-proof materials.

MAINTENANCE OF CONCESSION PREMISES

A. Concessionaire shall preserve and maintain in good and clean condition, reasonable wear and tear excepted, the Concession Premises. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises and all coin-operated binocular machines.

B. Upon expiration or termination of the Agreement, Concessionaire shall deliver up peaceable possession of the Concession Premises to Department in as good and clean condition as the Concession Premises was made available at the commencement of the Agreement, reasonable wear and tear excepted. In the event that Concessionaire does not deliver up possession as herein provided, Department may restore the Concession Premises to such condition, and the cost thereof shall be paid by Concessionaire to Department within fifteen (15) days of Department's demand for payment.

UTILITIES

Concessionaire is responsible for the payment of any and all utility charges related to the Concession Operation for the duration of the Agreement, except to the extent that said charges are attributable to the Department's use of the Concession Premises.

TAXES

All taxes and assessments, if any, arising out of the use and occupancy of the Concession Premises and the operation of the Concession shall be paid by Concessionaire. If any tax or assessment may be legally paid in installments, Concessionaire shall have the option to pay such tax or assessment in installments, except that each installment thereof and all interest thereon must be paid by the final date fixed for the payment thereof, and in the event that the whole amount thereof is not paid prior to the expiration of the Agreement, payment shall remain a continuing obligation of Concessionaire after the expiration or termination of the Agreement. Concessionaire shall furnish to Department, within ten (10) days of demand therefor, proof of the payment of any such tax or assessment.

RULES AND REGULATIONS

Concessionaire shall comply with all rules and regulations promulgated by the Department and all applicable rules and regulations promulgated by the New Jersey State Department of Health and Senior Services.

ADVERTISEMENT AND PROMOTION

A. Concessionaire shall not advertise in any manner or form on or about the Concession Premises or any other part of each State Park Service location, except by means of such signs or forms of advertising as first shall be approved by the Department.

B. Concessionaire shall, in all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, provide that the Concession Premises is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, as part of each applicable State Park Service location.

C. Prior to the implementation of any and all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, Concessionaire shall submit, and obtain Department's written approval of, all plans for promotion and advertisement of the Concession Premises. Such approval shall not be unreasonably withheld. In the event that Department does not approve or disapprove an advertisement or promotion plan within fifteen (15) days of receipt thereof, said advertisement and promotion plan shall be deemed as approved.

CONSTRUCTION OR IMPROVEMENTS

Concessionaire shall not erect structures, buildings or additions to the facilities comprising part of the Concession Premises without first obtaining the written approval of the Department.

INDEPENDENT PRINCIPAL

Concessionaire's status shall be that of an independent principal and not as an agent or employee of the Department.

INDEMNIFICATION

A. Concessionaire shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the Concession and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from the following:

(i) any injury to, or the death of, any person in or on or any damage to property which occurs in, on, or about the Concession Premises or upon any sidewalk, walkway, or patio within the Concession Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Concession Premises or the construction or repair of any improvements of the Concession Premises;

(ii) any act, error, or omission of Concessionaire, its agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of the Agreement; and

(iii) violation of any agreement or condition of the Agreement by Concessionaire, its agents, employees, contractors, invitees, and anyone claiming through Concessionaire of any contracts and agreements of record concerning the Concession Premises and restrictions of record or any law, ordinance, or regulation affecting the Concession Premises or any part thereof or the ownership, occupancy, or use thereof.

B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Concessionaire, along with full and complete particulars of the claim. If suit is brought against Department or any of its agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Concessionaire every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.

C. It is expressly agreed and understood that any approval by Department of Concessionaire's operation of Concession Premises shall not operate to limit the obligations of Concessionaire assumed pursuant to the Agreement.

D. Concessionaire's liability pursuant to this Paragraph shall continue after the termination or expiration of the Agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to such termination or expiration.

E. Concessionaire's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in the Agreement.

INSURANCE

A. Concessionaire shall, for each Concession Operation described in the Agreement, secure and maintain, in full force and effect on or before the date that Concessionaire is required to commence annual operation of each concession facility under the Agreement and throughout the term of Concessionaire's annual occupancy thereof, the following types and amounts of insurance coverage:

1. Public liability as broad as the standard coverage forms currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall be endorsed to include the following:

- (a) Broad Form Comprehensive General Liability;
- (b) Premises/Operations;
- (c) Products/Completed Operations;
- (d) Protection and Indemnity; and
- (e) Concessionaire owned, operated, or non-owned motor vehicles.

The limits of liability for Bodily Injury and Property Damage shall not be less than One Million Dollars (\$1,000,000.00) per occurrence combined single limits for each location covered by the Agreement.

2. Worker's Compensation insurance applicable to the laws of the State of New Jersey and Employers' Liability insurance with the limits of not less than:

- (a) \$100,000.00 Bodily Injury Each Occurrence
- (b) \$100,000.00 Disease Each Employee
- (c) \$500,000.00 Disease Aggregate Limit

3. Property insurance to cover loss or damage on an "All Risk" of physical loss form of coverage against fire, loss, theft, and damage on the contents of the Concession Premises owned by Concessionaire. Said insurance shall be in an amount not less than the appraised value of those contents. Concessionaire shall obtain and provide, at its own expense, an appraisal of the contents owned by Concessionaire for the purpose of obtaining and maintaining the aforementioned insurance.

4. Such other insurance, and in such amounts as may from time to time be reasonably required by Department in consultation with Concessionaire against other insurable hazards which at the time are commonly insured against in the case of concession operations similarly situated with due regard to the type of building, its construction, and the type of concession operation.

5. The limits of liability described in (1) through (4) above shall be increased from time to time to meet changed circumstances, including by not limited to changes in the purchasing power of the dollar, as measured by changes in the United States Consumer Price Index and changes indicated by plaintiffs' verdicts in personal injury actions.

B. All insurance policies providing the coverage required under the Agreement shall be obtained from an insurance company authorized to do business in the State of New Jersey and shall, except for Worker's Compensation Insurance under the Agreement, name the State of New Jersey, Department of Environmental Protection as an "Additional Insured." Prior to the date that Concessionaire is required to commence annual operation of the Concession Premises,

Concessionaire shall provide Department with a current certificate of insurance, in form and substance satisfactory to the Department, showing that Concessionaire has obtained the insurance coverages required in the Agreement for the Concession Operation. The certificate shall provide that the insurance coverages shall not be canceled for any reason, except after thirty (30) days' written notice to:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY
OFFICE OF CONCESSIONS
MC: 501-04, P.O. BOX 420
TRENTON, NEW JERSEY 08625-0420

The certificate of insurance shall also provide for thirty (30) days' notice, in writing, to Department prior to any expiration or non-renewal during the term the insurance is required to be maintained in accordance with the Agreement. Concessionaire shall further be required to provide Department with valid certificates of renewal of the insurance upon expiration of the policies, except where otherwise provided in this Paragraph. Concessionaire also shall, upon request, provide Department with copies of each policy required under the Agreement certificate by the agency or underwriter to be true copies of the policies provided to Concessionaire.

C. In the event that Concessionaire fails or refuses to renew any of its insurance policies to the extent required by the Agreement, or if any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of the Agreement, Department may immediately suspend all of Concessionaire's operations on the Concession Premises until Concessionaire obtains insurance coverage in satisfactory form and in compliance with the Agreement or may proceed to default Concessionaire and terminate the Agreement.

D. Concessionaire expressly understands and agrees that any insurance protection required by the Agreement shall in no way limit Concessionaire's obligations under the Agreement and shall not be construed to relieve Concessionaire from liability in excess of such coverage, nor shall it preclude Department from taking such other actions as are available to it under any provisions of the Agreement or otherwise in law or equity.

COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

A. For the duration of the Agreement, Concessionaire shall obtain, pay for, maintain, and comply with all licenses, permits, authorizations, or any other documents required by any applicable government agency having jurisdiction over the Concession Premises or the conduct of Concessionaire's operations thereon. Concessionaire shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained no later than ten (10) days prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation as shall be required by the Agreement.

B. Concessionaire shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State laws, rules, ordinances, and orders affecting the conduct of the Concession Operation described in the Agreement.

C. Concessionaire shall comply with the requirements of all insurance policies required by the Agreement.

D. If Concessionaire:

(i) receives a notice of failure to comply with the insurance required by the Agreement;

(ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the Concession in accordance with the provisions of the Agreement; or

(iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental laws, rules, ordinances, or orders affecting the Concession Operation or any part thereof,

Concessionaire shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Concessionaire shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of the Agreement, and Department, in addition to declaring a default of the Agreement by Concessionaire, may suspend Concessionaire's operation of all or the affected portion of the Concession Premises.

E. Concessionaire shall indemnify Department against all liability, claim, loss, or payment of any kind arising from Concessionaire's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State law, rule, ordinance, or order.

PUBLIC USE

Concessionaire shall not be construed as to affect the privileges accorded to the public's use of the area or to restrain or prevent individual persons or groups of persons from bringing their own binocular or viewing equipment into the areas.

NO DISCRIMINATION

A. Concessionaire shall comply, in the performance of the Agreement, with all applicable State, federal, and local statutes, rules, and regulations relating to discrimination and affirmative action, including but not limited to N.J.S.A. 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and Title IV of the Civil Rights Act of 1984 (P.L. 88-352).

B. Concessionaire shall not discriminate on the basis of age, national origin, race, creed, color, sexual orientation, or sex in the use of the Concession Premises by the public.

PAYMENT ABATEMENT

A. In the event that Concessionaire is unable to operate the Concession as a direct result of the performance, failure to perform, or negligent performance of the Department, its officers, agents, and employees of any act under the control or responsibility of Department, Concessionaire may be considered for an abatement of revenue payment for the period that the Concession cannot be operated. Circumstances for consideration of abatement shall include but not be limited to disruption caused by construction activities in or around the Concession Premises and interruption of utility service.

B. To be eligible for consideration for payment abatement, Concessionaire must submit to Department a written abatement request signed by the superintendent setting forth specific details and circumstances comprising grounds for abatement and the amount of abatement requested. Said request must be submitted to Department within twenty (20) days of any cause for which abatement is claimed.

C. All abatement awards shall be adjusted, disbursed, or credited after all final reports and payments are received.

REVOCAION CLAUSES

A. Concessionaire covenants that the decision of the Commissioner of the Department, relative to the performance of the terms of the Agreement, shall be final and conclusive.

B. In the event of default of the successful bidder or his refusal to enter into a contract with Department, the Department reserves the right to accept any other qualified bidder.

REJECTION OF PROPOSAL

The Department reserves the right to waive any informality in or to reject any or all bids.

CORPORATION

A. For any Concessionaire that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Concessionaire as a legal corporation.

B. Concessionaire shall adopt a resolution authorizing the execution of the Agreement by Concessionaire. Concessionaire shall submit a copy of said resolution to Department prior to execution of the Agreement by Department.

ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

Concessionaire shall not assign the Agreement or sell controlling interest in the Concession without first obtaining the express written approval of Department.

PAY TO PLAY

A. Bid applications are subject to the provisions of N.J.S.A. 19:44A-20.13 et seq. and N.J.S.A. 19:44A-20.26 et seq. (P.L. 2005 c.51 and P.L. 2005 c.271) (collectively “Pay to Play”). Compliance with these acts shall be a material term and condition of the bid application and will be binding upon the parties thereto upon entering the Agreement. All bidders must complete the following enclosed forms in accordance with their instructions and submit them with their applications: (1) Ownership Disclosure Form; (2) Contractor Certification and Disclosure of Political Contributions Form; and (3) Vendor Certification and Political Contribution Disclosure Form.

B. Bidders are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the contractor receives contracts in excess of Fifty Thousand (\$50,000) dollars from a public entity in a calendar year. It is the contractor’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.