



**New York State
Parks, Recreation and
Historic Preservation**

REQUEST FOR PROPOSALS X001489

**REHABILITATION, PRESERVATION, AND OPERATION OF
SCHOELLKOPF HALL AT
DEVEAUX WOODS STATE PARK
NIAGARA FALLS, NEW YORK**



**RFP Released: July 22, 2026
Proposals Due: October 14, 2026 by 3:00 p.m.**

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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 to rehabilitate, activate, and enhance Schoellkopf Hall, hereinafter referred to as the “Concession,” located at DeVeaux Woods State Park (“the Park”) directly adjacent to Niagara Falls State Park. Schoellkopf Hall is in need of preservation, sensitive restoration, and comprehensive capital rehabilitation to return it to productive use. Those needs and goal are hereinafter collectively referred to as “the Project”. The scope of this opportunity includes a private partner’s operation and maintenance of Schoellkopf Hall and management of an appropriate, compatible, and sustainable program. Proposals must comply with the requirements of this RFP and demonstrate a respondent’s relevant experience, expertise, program alignment, and the financial resources necessary to fund the design, preservation, rehabilitation, and construction, and to successfully operate the Project in collaboration with State Parks.

This RFP has mandatory minimum financial requirements for rent, capital obligation, RR&M obligation, utility fees, and other required payments that are outlined in Section X.

This RFP will result in the award of a new concession lease agreement (“Lease”) to the successful party (“Lessee”). The specific premises comprising the fixed concession facilities are identified in Section VI and referred to collectively as the “Premises.”

The Lease 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 Lease” (including Appendix A - Standard Clauses for New York State Contracts) is provided in Exhibit “G” and substantially reflects the mandatory legal and operating requirements that will comprise the Lease to be granted. Questions of State Parks relating to the Sample Lease should be submitted in accordance with RFP Section IV prior to submission of a proposal.

II. LEASE TERM

Forty (40) Year Contract Legislation: Section 3.09 (2-d) of the Parks, Recreation and Historic Preservation Law (“PRHPL”) allows a maximum contract term of up to forty (40) years for Schoellkopf Hall and other buildings and structures in the Park to facilitate the necessary preservation and substantial capital improvements contemplated by this RFP. A respondent must propose capital investment to fully complete the Project (not less than \$1,000,000) and a contract term of no more than 40 years, provided also that the proposed contract term shall bear a direct relationship to the period required to amortize the proposed capital investment: To satisfy the legal requirements of the PRHPL a respondent must present a sound financial projection and justification in the proposal. The term shall commence on a date determined by State Parks upon the satisfaction of any contingencies relating to legal, financial, and regulatory reviews and approval of the Project, and of Lessee’s financing for proposed capital investment. State Parks anticipates: 1) issuing a short term (90-day) Letter of Intent with the successful respondent to accommodate the aforesaid contingencies and develop the Lease and; 2) commencement

of the contract term in 2027.

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 New York State Contract Reporter website (<https://www.nyscr.ny.gov/>) to confirm the issuance of addenda relating to the RFP schedule.

RFP Released: Wednesday, July 22, 2026
Proposals Due: 3:00 P.M., Wednesday, October 14, 2026
Oral Presentations: November 2026

Original hard copy proposals must be RECEIVED by State Parks on or before the prescribed date and time at:

NYS Office of Parks, Recreation & Historic Preservation
Attn: X001489 Rehab, Preservation & Operation of Schoellkopf Hall Concession Proposal
Concessions Management Bureau
625 Broadway, 3rd 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 unopened. Refer to Section XII Proposal Submission Instructions of the RFP for detailed information.

IV. CONTACT INFORMATION

A. DESIGNATED CONTACTS

Important guidelines regarding communications during this procurement are included in this RFP (Exhibit F: 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.

Savannah Warner, Contract Management Specialist 1
Rosaria DiSanto, Contract Management Specialist 2
Kathleen 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, 3rd 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. MANDATORY SITE TOUR

A formal site tour of the Premises is required prior to the proposal submission deadline. Respondents may contact Travis Saturley, Park Manager (Email: Travis.Saturley@parks.ny.gov or Phone: 716-299-0837) to schedule a site tour. 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 the 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 AND SCHOELLKOPF HALL**

DeVeaux Woods State Park consists of approximately fifty-one acres located within the City of Niagara Falls, New York. The Park is currently home to the State Parks Niagara Region administrative offices. It also contains a baseball diamond for the Niagara Rapids Little League, a signature destination adaptive playground, picnic facilities, a dog park, and hiking trails. The Park lies adjacent to the Niagara Scenic Parkway, overlooking the Niagara Gorge. A path leads across the Niagara Scenic Parkway to the adjacent Whirlpool zone of Niagara Falls State Park. In early 2026, Niagara Falls State Park expanded roughly 150 acres to include Whirlpool State Park and Devil's Hole State Park, in order to create a contiguous uninterrupted connection of greenspace and pathways to this natural wonder.

The history of DeVeaux Woods stretches back over 100 years. On April 15, 1853 a charter was issued for the establishment of the "DeVeaux College for Orphans and Destitute Children" under the auspices of the Episcopal Church. The first student was admitted to the college in May of 1857. In 1950, the board of trustees opted to continue operations as a "secondary private Episcopal school for boys." In 1969 school policy was amended to allow admission of female students. The school ceased operation in 1972.

From 1973-1976 Niagara County operated a school for troubled youth on the property and in 1974, Niagara County BOCES opened "Project 62", a supplemental education program designed to serve students at Niagara Falls High School.

In 1975, the property was transferred to Niagara University which retained ownership until the campus was purchased by the State of New York. The last known use of Schoellkopf Hall was as a Niagara University dormitory.

B. RECENT PREMISES IMPROVEMENTS

In 2018, State Parks began an asbestos and lead abatement project on Schoellkopf Hall. As of 2024, State Parks has substantially completed the abatement of hazardous material. There remain incidental regulated building materials which may become exposed during demolition or other further construction activities. Copies of the Hazardous Materials Removal Plan, which occurred as part of a larger project at Schoellkopf Hall, is available as a supplement upon request. Respondents are advised that any remaining hazardous materials that require removal shall be the responsibility of the future operator.

Additionally, State Parks has invested two million dollars into to the temporary structural stabilization of Schoellkopf Hall.

C. REPORTED PARK ATTENDANCE

Reported Park Attendance	2020	2021	2022	2023	2024	2025	Annual Average
DeVeaux Woods State Park	50,307	75,326	79,450	105,482	86,115	107,619	84,050
Niagara Falls State Park	5,973,329	9,029,114	9,383,839	9,483,974	9,515,959	8,905,883	8,715,350
Devil's Hole Zone	111,084	122,242	299,152	352,404	357,807	306,168	258,143
Whirlpool Zone	242,852	301,296	388,574	445,620	453,643	436,060	378,008

VI. PREMISES & STATUS

An annotated map of DeVeaux Woods State Park identifying the location of the Premises, as well as Schoellkopf building floorplans, are annexed as Exhibits “B” and “C” of this RFP, respectively.

Schoellkopf Hall building gross square footage is approximately 36,000 SF. Adjacent outdoor space, as designated by State Parks and outlined in Exhibit B, is included in the Premises. No additional structures within the Park are included as part of this opportunity.

Parking is currently limited at the Premises. State Parks will work with the selected operator to develop a parking plan of up to 50 spaces to accommodate the needs of the new use while respecting the needs of other users of the property and protecting the character and resources of the Park.

Currently, electricity is the only utility installed at the Premises. At its sole discretion, State Parks may endeavor to identify funding of up to two million dollars towards discrete construction projects to directly benefit Schoellkopf Hall (e.g. installation of necessary utilities and designated parking).

Additional information on such potential investments is included as Exhibit “E”: Restoration Site Work-New York State Parks, and is subject to the future budget environment.

VII. SCOPE OF CONCESSION

This RFP invites proposals that align with the evolving culture and needs of the Niagara Falls area and complement offerings already available, while improving our visitor experience and providing an offering that encourages extended stays in the Niagara region. State Parks is open to considering creative ideas to utilize, preserve and re-use the historic Schoellkopf Hall. Ideally, proposals will align with State and Niagara County initiatives, and the goals and mission of State Parks, including without limitation, cultural, educational, recreational, entertainment, and/or fitness/well-being. State Parks is also interested in ideas incorporating innovative programming that contribute positively to the culture and/or history of Schoellkopf Hall and DeVeaux Woods State Park. The goal of rehabilitating, activating, and enhancing Schoellkopf Hall may be completed in phases, subject to a capital/historic preservation plan and schedule approved by State Parks.

The Lessee must establish and operate the Concession under a sustainable business plan and philosophy that encourages, attracts, accommodates, and facilitates excellence in historic preservation, visitor experiences, and customer service executed in harmony with existing Park operations. Any food or retail operations at the Premises should align with the principles and incorporate the core aspects of New York’s Taste NY initiative. Any alternative commercial uses of the Premises, including any ancillary concessions, must be compatible and balanced with the public benefit goals and requirements of this RFP, including public access to services offered, event tickets, etc.

Lessee shall have no contractual or other preferential right to exclusively occupy or use any other space, roads, parking lots, or structures in the Park. However, Lessee will be afforded the option to secure one or more Park permits for the necessary use of Park areas outside the Premises (e.g., park roads and parking lots, etc.) to facilitate construction and/ or accommodate pedestrian and vehicular traffic for events, programming, etc. The terms and conditions and coordination of Park permitting for use of roads and parking lots (including any restricted dates) shall be established by Park management.

VIII. HISTORIC PRESERVATION AND HISTORIC PRESERVATION TAX CREDITS

Schoellkopf Hall is listed on the National Register of Historic Places (the “NR”). Buildings listed on the NR are nationally significant historic places designated by the Secretary of the Interior because they possess exceptional value or quality in illustrating or interpreting the heritage of the United States. This distinctive historic status makes available financial incentives for rehabilitation and reuse.

The historic rehabilitation tax credit programs offer substantial federal and state tax incentives (a potential return of 40% of rehabilitation expenses, with 20% available as federal income tax credits and 20% as state income tax credits). A long-term lease of at least 39 years, from project completion, is required for commercial, non-residential properties. Additional information on these tax credit programs can be found here:

- <https://www.nps.gov/subjects/taxincentives/before-apply.htm>

- <https://www.irs.gov/businesses/small-businesses-self-employed/rehabilitation-credit#re-capture>
- <https://parks.ny.gov/preservation/programs/tax-credit/income-producing>
- <https://parks.ny.gov/shpo/preservation-assistance/>

Rehabilitation work on all existing building square footage can be credited if it is a Qualifying Rehabilitation Expense under the Secretary of the Interior's Standards for Rehabilitation (the "**Rehabilitation Standard**"). Any rehabilitation and reuse must meet the Rehabilitation Standard. (<https://www.nps.gov/subjects/taxincentives/secretarys-standards-rehabilitation.htm>). The Rehabilitation Standard is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. The Rehabilitation Standard, which is regulatory for the tax credit, acknowledges the need to alter or add to a historic building to meet continuing or new uses while retaining a building's overall historic character.

Each rehabilitation is evaluated on a case-by-case basis according to the specific facts and circumstances of the building and planned rehabilitation. Preservation standards do not necessarily preclude changes to any one specific historic character defining feature, but cumulative impacts are considered as part of a whole project. While a comprehensive list of all possible historic character defining features is not in the scope of this RFP, the following is a general list of high priority features that would be the primary focus for evaluating a preservation project:

- The building's overall form and fenestration should be maintained as presently constituted, with a particular emphasis on the principal east-facing elevation. Additions can be made to sustain new programmatic functions, provided they are designed and sited in such a way that they do not impair the character of the building, particularly as viewed from the expanse of lawn to the immediate east.
- Windows and doors that can be reasonably repaired should be retained and restored. If replacement is necessary, all windows and doors must follow existing historic precedents.
- The building's main points of entry, assembly, social spaces, corridors, and staircases should be maintained as they exist to the extent feasible.
- The existing floor plans should be maintained where they currently reside. Where the material has been lost due to deterioration and damage, compatible material will be allowed. The existing double loaded corridor, including the widths, must be maintained. All fireplaces should be retained to the extent possible.

RFP REQUIREMENTS

IX. BUSINESS CONSIDERATIONS

- A. **Due Diligence:** A respondent must undertake and rely on independent research and investigation for all matters relating to development of a proposal for the Project and response to the RFP, including without limitation, existing building conditions, business case, market projections, revenue and cost assessments, construction plans, facility improvements, etc. The Premises shall be made available to Lessee in "as is, where is" condition, without warranty of any kind at commencement

of the term. State Parks makes no representation that the Premises or this RFP present an opportunity to establish a sustainable business, investment, or earn a profit.

- B. Historic Preservation: As outlined in Section VIII of this RFP, any future work on structures listed on the NR must be reviewed by the State Parks Division for Historic Preservation under the provisions of the New York State Parks, Recreation, and Historic Preservation Act of 1980, Section 14.09 and must comply with the Secretary of the Interior's Standards for Rehabilitation (<https://www.nps.gov/tps/standards/four-treatments/treatment-rehabilitation.htm>).
- C. Alternative Funding/ Potential Financial Incentives: Under certain circumstances, NR designated historic buildings may be eligible for federal historic tax credit programs and/or state grant funding. More information about these programs can be found in Section VIII above.
- D. Environmental & Design Review; Approvals: An old growth forest is located directly behind the Premises. Preservation of local flora shall be considered during vision development. Any requests regarding removal of trees are subject to environmental review and must be submitted to and approved by State Parks. The Project is expressly subject to State Parks' approvals as to design, site work and all required environmental review, including without limitation under the State Environmental Quality Review Act ("SEQRA") and consistency with State Parks' mission.
- E. Sample Lease & Contract Approval: A Sample Lease is annexed to this RFP as Exhibit "G" and represents the contract template and substantially all material terms and conditions of the Lease to be awarded to the successful respondent. The Lease will be tailored to the successful proposal to the extent there is no substantial conflict with the RFP and Sample Lease. The Lease is a state contract subject to the independent review and approval of the New York Office of the Attorney General and Office of the New York State Comptroller. Accordingly, a respondent should review the sample lease carefully when preparing a proposal as there are limited opportunities to negotiate language or change the material terms and conditions set forth therein.
- F. Respondents must have demonstrated ability to implement and adapt to restrictive government guidance and protocols in response to pandemic conditions.
- G. Capital Improvements, Repairs and Maintenance: Proposals must contemplate that all preservation, restoration, improvements, construction, repairs, and maintenance relating to the Premises are the sole responsibility of the Lessee. An estimate of potential development costs for the Premises is annexed to this RFP as Exhibit "D"- Restoration Estimated Cost. These estimates include general structural restoration and do not include potential costs that may be associated with a Respondents' project vision including full build-out of the interior. Any construction project undertaken at the Premises may be a "public work" under the New York Labor Law and will require the payment of prevailing wages. The New York State Fire and Building Code and all other Federal and State laws, rules, codes and regulations applies to all construction, including without limitation those pertaining to the Americans with Disabilities Act and NYS Green Buildings initiatives.

- H. Concession Service, Offerings, & Pricing: The operating schedules for the Concession are subject to approval by State Parks. Respondents shall submit sample concession offering lists with proposed pricing. Offerings and prices are subject to a reserved right of approval by State Parks and must reflect high-quality and a variety of options, appealing to a diverse clientele. Reasonable market-based prices and customary fees and charges should be incorporated into Lessee's business plan.
- I. Taste NY & New York State Products: If the concession operations plan includes food and beverage service, Lessee 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 seasonal availability of fresh foods. Lessee 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.
- J. Environmental Policies: Lessee is expected to comply with State Parks' policies addressing the environmental impacts of its operations including, and without limitation, the Single Use Plastics Reduction policy. Respondents should note in the Sample Lease State Parks' policy which includes the prohibition of polystyrene products (including Styrofoam) and most single use plastics, including those used for food service operations.
- K. Diversity, Equity, Inclusion and Access (DEIA): State Parks welcomes, creates, and encourages inclusive spaces for everyone to experience its facilities, regardless of gender, race, culture, sexual orientation, age, socio-economic status, family status, spirituality, citizenship, national origin, physical ability, intellectual perspective, political party, veteran status, or justice system involvement. Lessee is expected to deliver excellent customer service to people of all abilities, languages, and cultures. State Parks encourages proposals that integrate the principles of diversity, equity, inclusion, and access into their business plan.
- L. Point of Sale, Reporting, & Data Access: Lessee shall provide, utilize, and afford State Parks with meaningful access to a modern Payment Card Industry Data Security Standard ("PCI DSS" or "PCI") compliant point of sale ("POS") system for generating daily, weekly and monthly reports that clearly detail Gross Receipts, taxes, Rent, 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 revenue and attendance tracking, and similar tools in a modern point of sales system. Lessee is responsible for all fees and costs associated with sales transactions and operation of the system.
- M. Internet, Website, Data, and Cyber Security Insurance (if applicable): Insurance coverage requirements and thresholds are assessed by the manner and form of data collection and who retains the information. Factors include but are not limited to; the architecture of the system, the types of identifying data collected, ownership of the data, and how, where and for how long the data is stored. These considerations apply to websites, POS Systems, and other systems that collect and store personal and identifying data.

- N. Ownership & Taxes: Capital improvements and repairs funded by Lessee become the property of the State upon completion of the work and acceptance by State Parks. There are no real estate property taxes for the Lessee associated with the Premises. Lessee is responsible for payment/compliance with all applicable state and local tax requirements, including sales tax.
- O. 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.

X. MINIMUM FINANCIAL REQUIREMENTS

Proposals must meet the following minimum financial requirements:

- A. Bid Security Deposit: There is no bid security deposit required to respond to this RFP. A reasonable security deposit may be required of the selected respondent as a condition precedent to a Letter of Intent to advance the Project through consultation and contingencies, to contracting.
- B. Minimum Rent: A *minimum* rent of at least 2% of Gross Receipts, as defined in the Sample Lease, and shall include an escalation model. To accommodate proposed significant upfront capital investment, State Parks will consider proposals that include an alternative Rent payment schedule, provided the minimum Rent fee meets or exceeds the minimum percentages outlined above, and must be recorded on the bid form. Payment of Rent must commence no later than seven (7) years after completion of a substantial capital investment project duly approved by State Parks.

If a respondent does not offer at least the required minimum Rent, the proposal will be disqualified and returned. Respondents must provide an escalating or enhanced rent above the required minimum fee and be set forth in the financial proposal form, or it will not be considered in the evaluation of the financial return to State.

- C. Required Minimum Capital Investment: A proposal must make a *minimum* capital investment commitment in the Premises of \$5,000,000, provided however the Lessee must commit to all (100%) of the funds necessary to realize the proposal, complete the enhancements, and operate the Premises for the 40-year term. Within five (5) years of the approval of the Lease by the Office of the New York State Comptroller, the Lessee must expend sufficient capital to complete all renovations necessary to commence operations. The proposed Minimum Capital Investment shall be phased over the Lease term, with the full Minimum Capital Investment expended by year thirty-five (35) of the contract term. Respondents shall allocate a reasonable portion of their Minimum Capital Investment for future capital improvements, repairs, and/or other approved capital projects anticipated to be undertaken during the latter portion of the Lease term. Such capital improvement plans must be projected in detail in a respondent's proposal and adequately secured by a reasonable financing or business plan, subject to State Parks' approval. The capital commitment must be expended on capital projects formally approved by State Parks.
- D. Repair, Refurbishment & Maintenance (RR&M) Obligation: Lessee is completely responsible for all routine repair, refurbishment, and maintenance of the Premises and the Concession. Notwithstanding the foregoing, Lessee shall document and certify for State Parks approval on a

periodic, but not less than annual, basis the expenditure of not less than two percent (2%) of Gross Receipts for bona fide maintenance, repairs, refurbishment, and replacement of State-owned property, fixtures, and equipment at the Premises, to begin year 10 of the Lease.

- E. Utilities & Trash Removal: State Parks shall provide electricity to the Premises, for which Lessee shall pay State Parks 100% of the actual costs as measured by sub-meter and invoiced by State Parks. For all other utility services necessary for the Use, Lessee shall establish all necessary accounts with utility providers at its own cost. Lessee is responsible for 100% of costs of trash removal, and recycling used in connection with this Lease and shall be paid directly to the provider(s). Lessee is solely responsible for all other necessary grease or specialty waste services.
- F. Insurance Coverage: Lessee shall procure and maintain at its sole expense commercial liability and other insurance as set forth in the Sample Lease, Sections 19, 20, and Attachment E.
- G. Bonds: Lessee will be required to procure and maintain a financial payment Bond, 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 Rent, RR&M obligation, utility payments, and any other financial obligation of Lessee, for the first full operating 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 Lease, Attachment C.

XI. 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; and the operation and maintenance of the Premises and the Concession as an inviting, high-quality concession service for Park visitors. Evidence of respondent's experience and capacity to respond effectively to and successfully operate under pandemic guidance, including adaptation to changing government guidance, requirements, and protocols. The narrative should address the proposed program for the Concession including, without limitation, concept plans, renderings, plans for integration of DEIA principles, 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 term with anticipated cash flows, and details of revenues and expenses, including proposed capital investment, 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 Concession, including without limitation the projected revenues, or expenditures should be clearly disclosed.
 - b. Inclusive of all financial requirements of this RFP, including, without limitation, the proposed Rent, RR&M obligation, and utility fees, etc.
 - 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) Capital Investment: Details of proposed capital projects, concepts/designs with budget, estimates and projected critical path timelines and phases. Identify any conditions or contingencies that may impede the proposed projects and how they may impact financial projections.
- 3) Operations & Maintenance plans: Description of a comprehensive plan to successfully develop, operate, manage and maintain the Premises and Concession including, without limitation, operating budget, and schedules, staffing and training programs, the provision of excellent customer service to people of all abilities, languages, and cultures, proposed offerings and pricing, marketing and promotion strategies, improvements to community health and wellness, emergency action plans, etc. Description of respondent's approach to safety, quality control and compliance, inspection and maintaining applicable code and industry certifications, and the maintenance, upkeep, and periodic refurbishment of the Premises.
- C. Resumes and/or professional histories demonstrating background, education, and experience in park and analogous visitor services, including development of services similar to the proposed Concession, of the principal members of the respondent's organization, project team, and 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, in a highly seasonal weather-dependent operating environment, related concessions and services of comparable scope and scale to the Concession; including examples of similar projects completed, business enterprises developed, owned, or operated by respondent. Evidence of successfully sustaining and operating a business throughout the pandemic, including the ability to recruit and retain qualified staff.
- E. A minimum of three (3) current business references relevant to the scope of this RFP. Preferred references include a financial institution that has extended credit to the respondent, industry entities with which relevant business has been transacted, and/or a commercial landlord or government

entity from which the respondent has leased or licensed property or 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 Lease, including the capacity to procure bonds or other recognized forms of financial security, and insurance.

XII. 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 Lease. 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.

Respondents are to submit: (i) three printed copies of the complete proposal, including all attachments, enclosures, and required forms. Original signatures are required on at least one copy of all required forms. The proposal must be fastened 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*; and (ii) one flash drive with the complete proposal in Adobe PDF format and all pro forma as an Excel spreadsheet document. Electronic submission of proposals will not be accepted.

XIII. 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.

XIV. 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 attend 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 Rent 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 Rent over the term of the Lease, plus the dollar value of the capital investment offered. For scoring purposes, the Rent projections are based on a fixed model using a pre-determined annual Gross Receipts figure that will be applied uniformly to all proposals (not the pro forma projections submitted by any respondent). 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 Lease. If State Parks cannot achieve an executed Lease 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 - 30 Points**

- A. Demonstrated capacity to undertake and complete the proposed Project, including managing design and construction in a historic building and establishing and promoting a high-quality facility or similar programming in a public park or similar setting: **10 Points**
 - 1) Examples of successful public and/or private historic preservation projects and partnerships comparable in size, scale, and complexity to the Project. Experience establishing and operating a successful and financially viable relevant enterprise.
 - 2) Successful and sustainable operational experience in current and previous projects providing top quality visitor experiences in similar programming.
- B. Personnel qualifications and experience: **10 Points**
 - a) Managerial capacity and organizational structure; depth of management personnel and tenure and success of similar projects.
 - b) Qualifications of key staff and team members, including design, historic preservation, construction managers, facility managers, consultants, marketing and sales personnel and operations and program personnel. Recruitment and retention of experienced and qualified staff, as demonstrated by current/past performance, references, and resumes.
- C. Financial Plan and capacity to execute the Project: **10 Points**
 - a) Available assets and credit, organizational strength, personnel resources, and expertise demonstrated by the respondent. Capacity to fund and support the Project; record of achieving successful historic preservation work and sustainable programming.
 - b) Access to external financial resources for the rehabilitation budget including philanthropy, credit, equity, bonding and/or other operational and capital support in consideration of other business commitments.

Category B: Response to the RFP - 60 Points

- A. Strength of respondent's vision, philosophy, budget and commitment to the sensitive historic preservation, rehabilitation, and interpretation of Schoellkopf Hall; and its future operation and programming for delivery of sustainable, efficient, quality, and consistent customer experiences: **20 points**
 - a) Detailed description for proposed operations including budget, management, staffing structure, schedules, strategies, and resources to support the rehabilitation of Schoellkopf Hall . Overall quality of proposed approach to meet the opportunity presented by the RFP including the considerations and requirements outlined in Sections IX and X.
 - b) Approach and plan for high quality programming, and events, including strength of commitment to public benefit and community access and wellness.
 - c) Operation of the Premises, including facility management, parking, staffing and schedules and standards, pricing implementation of concession offerings, and proposed improvements to community health and wellness.
 - d) Plans for underwriting and accomplishing building services, maintenance, repairs, and replacement of equipment/ furnishings of the Premises over the long term.

- e) 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.

B. Capital & Historic Preservation Plan: 30 Points

- a) Assessment of the Premises and concept/ approach to preservation and use (or adaptive reuse) of Schoellkopf Hall; including key elements of the construction that meet historic preservation standards, and goals for sustainability, energy efficiency, and consistency and RFP requirements. Budget and financial plan and practical feasibility of construction including challenges and limitations of existing conditions, any phasing of improvements.
- b) Preliminary plans and specifications for design and execution of work at the Premises, including concept renderings, drawings, or other demonstrative materials relating to the interior and exterior treatment of Schoellkopf Hall and surrounding grounds; and any anticipated material or substantial ground disturbance, new construction, structural changes, or additions to the Premises, and/or substantial modification that may have adverse impacts on historic resources or the Park.

C. Business Development, Public Image, Marketing and Promotion: 10 Points

- a) Appropriateness of proposal to the Park's setting and the evolving culture and needs of the Niagara Falls area including complementing offerings already available and programming alignment with the agency mission.
- b) Marketing and promotion strategies, branding, outreach channels and social media.
- c) Customer service standards, programs, and goals. Capacity to monitor and respond positively to customer demand and new trends.

Category C: Return to State- RTS (Maximum 30 Points Available)

As described in subsection XIV A (2) above.

C) BID PROTEST PROCEDURES

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 their 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.

XV. 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 X001489 Rehab, Preservation & Operation of Schoellkopf Hall 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.

XVI. PROCUREMENT REQUIREMENTS

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

- 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

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 3rd Floor, Albany, NY 12207

**Re: RFP X001489 Rehabilitation, Preservation & Operation of Schoellkopf Hall at
DeVeaux Woods State Park, Niagara 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 22
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, § 139-m, and Executive Order #177 Certification	
Attachment #6: Executive Order #16 Certification	
B) PARK MAP DEPICTING PREMISES.....	Page 38
C) PREMISES FLOORPLANS.....	Page 39
D) RESTORATION ESTIMATED COST.....	Page 42
E) RESTORATION SITE WORK-NEW YORK STATE PARKS.....	Page 43
F) PROCUREMENT REQUIREMENTS (PR)	Page 44
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	
G) SAMPLE LEASE	

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EXHIBIT A – REQUIRED FORMS

**PROPOSAL COMPLETION CHECKLIST
REHABILITATION, PRESERVATION & OPERATION OF SCHOELLKOPF HALL**

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

Submit THREE (3) 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, §139-m, and Executive Order #177 Certification
- _____ 7) Executive Order #16 Certification

PROPOSAL NARRATIVE

- _____ 8) Business plans, *pro forma* revenue and expense projections for the term in Excel format.
- _____ 9) Operations and maintenance plans
- _____ 10) Strategy for marketing and promotion
- _____ 11) Capital investment projects and schedule
- _____ 12) Resumes and/or professional histories for key personnel
- _____ 13) Evidence of skill, experience, and capacity to execute the proposal
- _____ 14) Three (3) current business references
- _____ 15) Proof of financial security/bonding capacity for performance and capital obligations

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 X001489
REHABILITATION, PRESERVATION & OPERATION OF SCHOELLKOPF HALL
DEVEAUX WOODS 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 Lease documents and the proposal submitted, the undersigned hereby offers to pay State Parks as follows:

- A) **Rent:** The undersigned shall pay to State Parks Rent equal to a percentage of Gross Receipts as defined in the Lease as follows:

_____ % _____ Percent
(Numerals) (Words)
(Minimum: 2% of Gross Receipts with escalation detailed below)

Set forth any additional, enhanced, escalating Rent fee, or alternative Rent payment schedule offer below, attach additional sheets if necessary.

B) Capital Investment:

\$ _____ Dollars
(Numerals) (Words)
(Minimum: \$5,000,000)

- C) Lessee shall abide by and meet all other financial and operational obligations required by the Lease, including without limitation undertaking:

1. Lessee must set aside and shall expend for repairs, refurbishment, and maintenance of the Premises and Equipment at least 2% percent of its annual Gross Receipts beginning year 10 of the License.
2. Lessee is responsible for all utilities as stated in Section X. E. of this RFP.
3. Provision of specified insurance coverage.



4. Bonds or other approved financial security required by the RFP and Lease, including financial payment, capital, and performance.

II. The term of the Lease will be for a period of no more than forty (40) years commencing on or about January 1, 2027 subject to approval of the Lease by New York State 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, §139-m, and Executive Order #177 Certification
- F) Executive Order #16 Certification

IV. The undersigned has carefully examined the RFP and Lease documents and has carefully prepared its proposal; the undersigned agrees to perform pursuant to the Lease 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 descendent 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)New York State
Parks, Recreation and
Historic Preservation

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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 Lease 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 Lease. Provide relevant dates, locations, company names, etc.
- B) Describe the design, management, and implementation plan for performing the services called for in this Lease.
- C) Provide other appropriate information, reflecting Respondent's capacity and reliability to perform under the Lease.
- D) Provide a current certified or verified financial statement and/or other commercially reliable written evidence of Respondent's credit, financial standing.

All Respondents must answer questions 6 and 7. If a new business entity is formed to respond to this RFP or to execute the Lease, 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 Lease 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 Lease 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 Lease 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 Lease 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-l, § 139-m, and EXECUTIVE ORDER # 177 Certification**N.Y. State Finance Law § 139-l**

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.

N.Y. State Finance Law § 139-m

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 gender-based violence and the workplace and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive 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:

ATTACHMENT #6: EXECUTIVE ORDER #16 Certification**Executive Order No. 16 Certification**

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found at www.governor.ny.gov/executiveorders.

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are never the less encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

- ☐ 1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- ☐ 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- ☐ 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
- ☐ 3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: _____

(legal entity)

By: _____

(signature)

Name: _____

Title: _____

Date: _____

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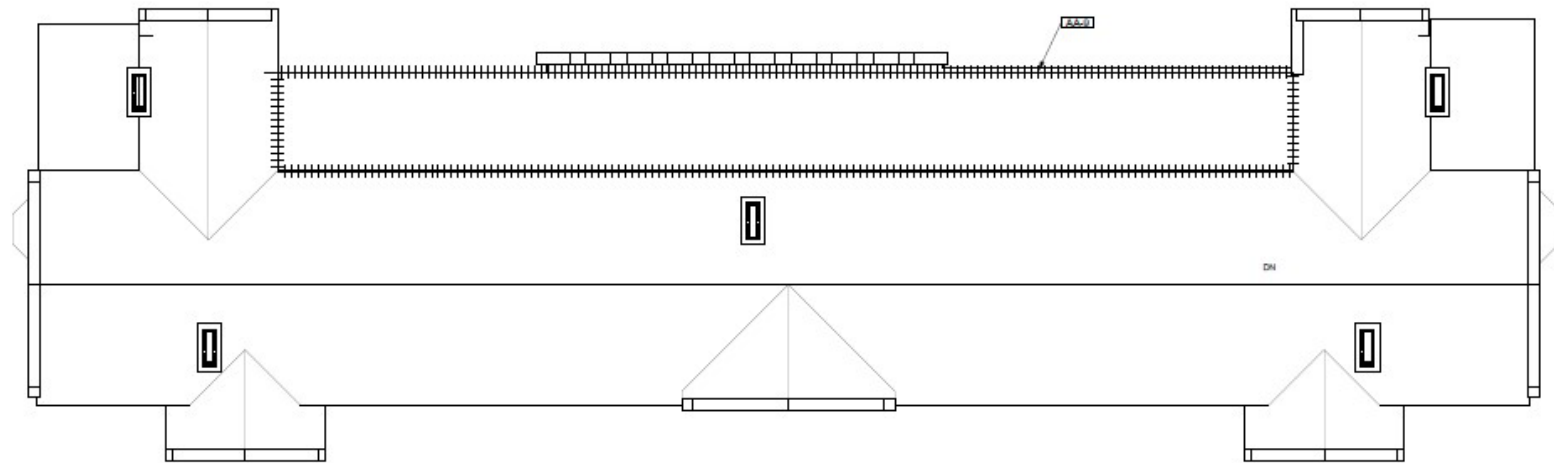
EXHIBIT B – PARK MAP DEPICTING PREMISES

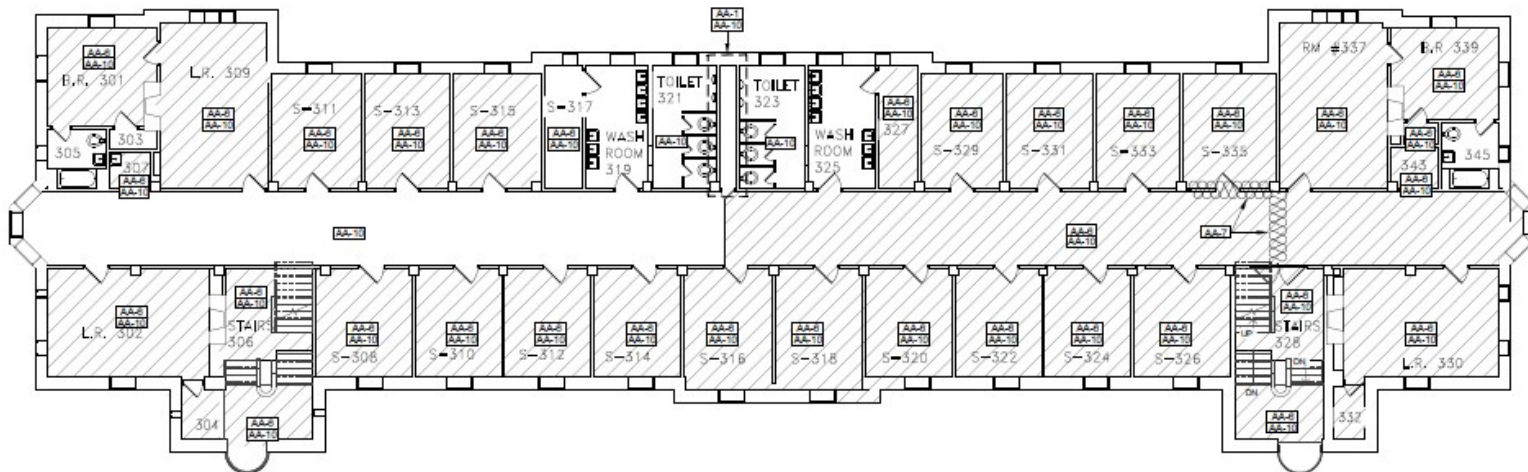


SCHOELLKOPF HALL SITE LIMITS
DeVeaux Woods State Park



Roof:



Second Floor:**Third Floor:**

Basement:

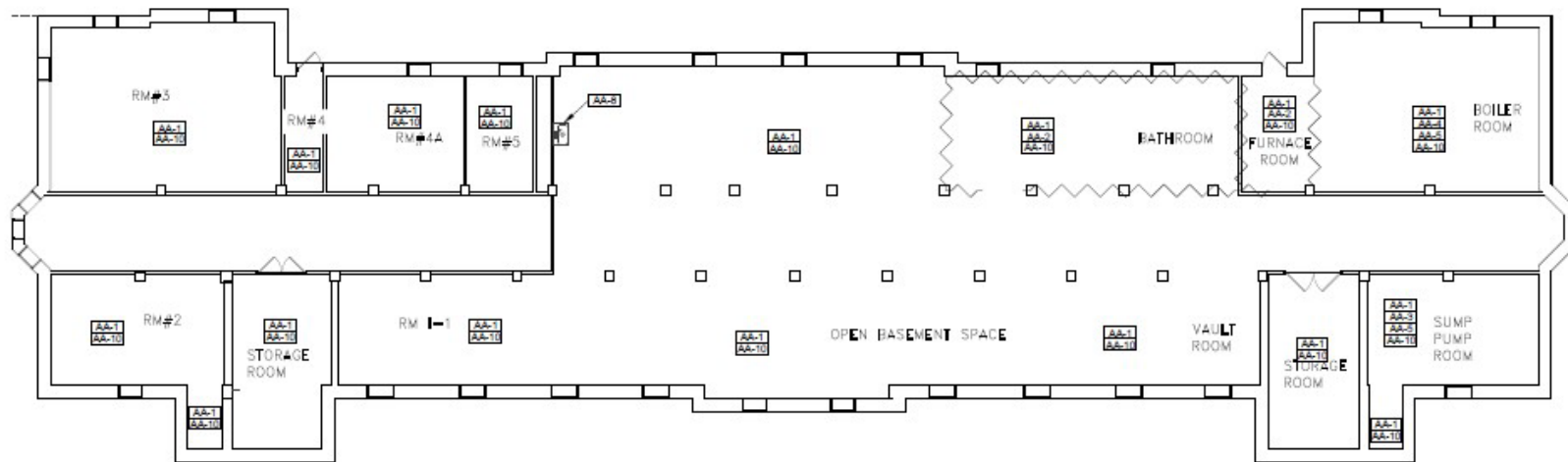


EXHIBIT D – RESTORATION ESTIMATED COST

The estimates below provide an analysis of potential development costs for the structure. *These estimates include general structural restoration and do not include potential costs that may be associated with a Respondents' project vision including full interior build-out.* These estimates should not be taken as authoritative or promissory.

ITEM	NOTES	ESTIMATED COST
New Exterior Windows	157 windows. Retain original window profile.	\$700,000
New Exterior Doors	2 double leaf ornate doors, 3 HM single leaf doors.	\$100,000
New Roof	Remove existing slate roofing and accessories up to roof deck. Investigation of existing condition of roof deck. Furnish and install new slate roof with complete accessories and underlayment.	\$1,200,000
Structural Improvements	Removal and disposal of existing shoring and installation of permanent support.	\$800,000
Add Elevator	2 machine room-less elevators.	\$1,200,000
Masonry Repair and Chimney Stabilization	Clean, repair and repoint existing façade including broken and missing concrete moldings and trims. Investigation of chimney flues and repointing.	\$600,000
HVAC	Provision for basic HVAC system for building.	\$1,700,000
Fire Protection	Provision for basic fire protection system.	\$400,000
SUB-TOTAL		\$6,700,000
30% CONTINGENCY		\$2,010,000
TOTAL COST ESTIMATE		\$8,710,000

EXHIBIT E- RESTORATION SITE WORK-NEW YORK STATE PARKS

State Parks currently has no capital improvement projects underway at Schoellkopf Hall but may endeavor to identify funding not exceeding \$2,000,000 dollars towards discrete construction projects to directly benefit Schoellkopf Hall. A complete list of possible projects and estimated costs can be found below but State Parks' capital commitment is subject to the future budget environment and will be based on total value and not a guaranteed completion of all elements listed.

ITEM	NOTES	ESTIMATED COST
Electric Improvements	Provision for basic electric system including transformer.	\$400,000
Parking lot improvements	Expand and reconfigure parking.	\$200,000
Repave back road, drop off, service lot		\$190,000
Sidewalks, Trees, Landscaping		\$150,000
Site Lighting		\$200,000
Sewer site work	Provision for sewer system.	\$195,000
Water site work	Provision for basic domestic and fire flow water systems.	\$200,000
SUB-TOTAL		\$1,535,000
30% CONTINGENCY		\$460,500
TOTAL COST ESTIMATE		\$1,995,500

EXHIBIT F – 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.
-

SAMPLE LEASE FOLLOWS

CONCESSION LEASE X001489

**Rehabilitation, Preservation, and Operation of Schoellkopf Hall
at DeVeaux Woods State Park
Niagara Falls, New York**



**New York State
Parks, Recreation and
Historic Preservation**

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SAMPLE

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CONCESSION LEASE X001489

**REHABILITATION, PRESERVATION, AND OPERATION OF SCHOELLKOPF HALL AT
DEVEAUX WOODS 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 [LESSEE LEGAL NAME] (“**Lessee**”), a [New York corporation].

WITNESSETH:

WHEREAS, Section 3.09(2-d) of the Parks, Recreation and Historic Preservation Law, authorizes State Parks to lease structures in DeVeaux Woods State Park, including Schoellkopf Hall for a term of up to 40 years upon a finding by the Commissioner of State Parks that such lease will encourage private investment in maintaining this historic property and is compatible with public enjoyment and participation in adjacent park facilities, and the Commissioner of State Parks hereby finds the same; and

WHEREAS, State Parks formally issued a request for proposals (“**RFP**”) for the improvement, historic preservation, and operation of Schoellkopf Hall at DeVeaux Woods State Park (the “**Park**”) ; and

WHEREAS, State Parks has received and evaluated proposals submitted in response to the RFP and determined that Lessee is a responsible vendor, and its proposal demonstrates relevant expertise, complies with the RFP, and offers best value to the State; and

WHEREAS, Lessee has agreed to assume the obligations set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, State Parks and Lessee 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 Lease X001489
 - (ii) RFP X001489 and any addenda thereto (the “**RFP**”)
 - (iii) Lessee’s Proposal and Proposal Form (collectively the “**RFP Response**”)
 - (iv) Attachment A – Description of the Premises
 - (v) Attachment B – Inventory of Equipment (“**Intentionally Omitted**”)
 - (vi) Attachment C – Requirements for Capital Construction Projects
 - (vii) Attachment D – Capital Investment Work Plan
 - (viii) Attachment E – Insurance Requirements
 - (ix) Attachment F – Website and Social Media Accounts
 - (x) 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 Lease X001489, including all attachments (3) the RFP, (4) the RFP response.

Section 2. Term

The initial term of this agreement begins on January 1, 2027 (the “**Effective Date**”) subject to the approval of the Office of the New York State Comptroller and concludes forty (40) years thereafter.

Section 3. Grant of Lease

- (a) State Parks hereby grants to Lessee the right to use and occupy Schoellkopf Hall at DeVeaux Woods State Park, including its structures, facilities, and associated property, as shown in Attachment A (the “**Premises**”) for the exclusive purpose of rehabilitating, activating, enhancing, and operating Schoellkopf Hall, and other uses as described in the RFP and proposed in the RFP Response as may be agreed upon by State Parks and Lessee (the “**Use**”).
- (b) State Parks does hereby covenant that Lessee, upon paying Rent and performing the covenants, terms, and conditions provided for in this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the term provided herein.
- (c) Lessee acknowledges that the Premises are public, non-residential spaces within a State Park and that for all purposes hereunder State Parks leases the Premises “as is/where is” and without warranty. Lessee 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.
- (d) 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, Lessee 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. Lessee shall not use any portion of the Premises that is in a condition unsafe or improper for the conduct of the Use.
- (e) Lessee 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 State Parks.
- (f) Lessee represents and warrants that its RFP Response identified and accounted for all anticipated revenue sources and business opportunities sought to be captured by Lessee. Lessee shall not commercially exploit the Premises except through the Use. Notwithstanding the foregoing, State Parks may authorize in writing, new or additional revenue sources identified by Lessee during the term of this agreement and in such instance, Lessee shall pay State Parks an equitable portion of such additional revenue, as determined by good faith negotiations between the parties.
- (g) 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.

- (h) 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 Lessee and Lessee's prior or conflicting bookings.

Section 4. Fees and Other Payments; Payment Bond

- (a) During the term of this agreement and for one month thereafter, Lessee shall, by check or wire transfer and by the 15th day of the month, pay the Rent owed for the previous calendar month.
 - (i) In this agreement "**Rent**" means [##] percent of Gross Receipts.
 - (ii) In this agreement "**Gross Receipts**" means the total amount received by or accruing to Lessee 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 and retail sales, catering, catalog, Internet, and telephone sales), including from Lessee'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 Lessee;
 - (b) Refunds, discounts, items sold at cost, or other discounts per State Parks' request, rebate, or allowances received by Lessee 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 Rent and any other financial obligation due State Parks, State Parks may in its sole discretion, require Lessee to provide an annual, renewable bond or letter of credit from a surety company or an accredited financial institution in the principal amount of [US\$###.00], or other security satisfactory to State Parks (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 Rent, projected utility charges, annualized estimate of the Minimum RR&M Obligation for the upcoming year, and annualized estimate of any other financial obligations due to State Parks in the upcoming year.
 - (ii) Lessee 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 Lessee of the Rent and other fees due, (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, and (iv) be provided in original copy to State Parks. 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 Rent payment is due.
- (c) Lessee 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) Lessee 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, Lessee shall expend no less than [US\$####.00] on new capital construction and other 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) The Minimum Capital Investment shall be fully expended in accordance with the budget and work plan contained in Attachment D (the “Capital Plan”). All capital purchases and work undertaken by the Lessee shall be in accordance with the procurement requirements of this Agreement and any required approvals by State Parks shall not be unreasonably withheld or delayed. State Parks reserves the right to require reasonable modification of Lessee’s Capital Plan prior to granting final approval. If a Code Compliance Certificate for the Premises has been issued by State Parks, nothing in this section shall prohibit Lessee from operating prior to or during the completion of capital work.
- (c) Unless an approved change to the Capital Plan provides otherwise, Lessee shall expend sufficient capital to complete all renovations necessary to commence operations within five (5) years of the approval of this Agreement by the Office of the New York State Comptroller. Lessee shall expend the remaining portion of the Minimum Capital Investment by year thirty-five (35) of the contract term.
- (d) If Lessee has not met its Minimum Capital Investment by the expiration of this agreement, Lessee shall pay State Parks the unexpended portion of the Minimum Capital Investment in one lump sum, due on December 31, [202X]. Upon completion of the investment for the initial buildout, to secure performance of the Capital Plan and payment of the Minimum Capital Investment, Lessee shall provide State Parks an annual renewable bond or letter of credit from a surety company or an accredited financial institution, or other security satisfactory to State Parks (a “**Capital Bond**”) in the principal amount of the unexpended portion of the Minimum Capital Investment. Lessee acknowledges and shall comply with NYS law requiring the posting of Labor and Materials Payment Bonds for construction activities comprising public works.
- (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 Lessee of the Minimum Capital Investment, (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, and (iv) be provided in 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) Lessee shall not terminate or reduce any Capital Bond provided under this section without the prior written approval of State Parks.
- (e) Lessee 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) No State Equipment is provided for the Use.
- (b) Lessee shall not remove any State Equipment from the Premises except for disposal or repair approved in advance by State Parks in writing. Upon written notice to and written approval from State Parks, Lessee may dispose of any State Equipment that in Lessee's reasonable judgment has become obsolete or unfit for use or which is no longer useful, necessary, or economical in Lessee's Use of the Premises. Lessee must promptly replace or substitute any State Equipment disposed of under this subsection at its sole cost with other equipment of the same character and of equal quality as the State Equipment removed for disposal. Lessee shall purchase such equipment new; State Parks shall not accept used equipment as replacement for any item of State Equipment.
- (c) Title to any equipment purchased by Lessee, whether purchased as part of a Capital Project, with funds credited against the Minimum RR&M Obligation, or to replace any existing State Equipment will vest in State Parks upon installation at the Premises and such equipment will be deemed State Equipment unless otherwise agreed to by State Parks in writing prior to the purchase. However, for the sole purpose of achieving depreciation over the term of this agreement in accordance with general accepted account principles, Lessee may retain legal title to replacement State Equipment that are long-term assets for the duration of this agreement, title to vest in State Parks upon termination or expiration of this agreement. Lessee 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.
- (d) Equipment purchases and replacements shall, to the extent possible, adhere to NYS Executive Order No. 22 (EO22) which directs State agencies to adopt a sustainability and decarbonization program and facilitate the transition from fossil fuel powered equipment. Equipment purchases and replacements made by the Lessee shall be electric unless site-specific exceptions exist as determined by State Parks.

Section 7. General Operating Requirements

- (a) *Obligation to Operate.* Lessee shall undertake the Use.
- (b) *General Operating Standards.* Lessee 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. Lessee shall conduct all its operations in an orderly manner and so as not to annoy, disturb, or be offensive to other Lessees or patrons of the Park. Lessee 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 Lessee is inconsistent with the image, policies, or reputation of the State of New York or State Parks

or otherwise unsuitable, at State Parks request Lessee shall cease offering such good or service immediately.

- (c) *Housekeeping and Sanitation.* Lessee shall at all times keep the Premises in a clean and sanitary condition.
 - (i) Lessee shall keep all interior spaces within the Premises free from ants, flies, roaches, rodents, and all other insects and vermin at its own cost and expense. Lessee shall keep use of rodenticide and other chemical pesticides to a minimum, consistent with State Parks' Pesticide Reduction Policy.
 - (ii) Lessee 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 or 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 Lessee in writing. Immediately upon receipt by Lessee's on-site management of any notice, inspection report, and/or citation issued by any State or county health agency, Lessee shall forward a copy of the same to State Parks' Regional Headquarters and Counsel's Office. If Lessee 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 Lessee shall pay the actual cost thereof, including any expense for labor and materials.
 - (iii) Lessee shall leave the Premises in broom clean condition at the end of each operating season.
- (d) *Fire Safety Standards.* Lessee 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 Lessee's Use in the Premises.
- (e) *Operating Licenses.* Lessee 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. Lessee shall comply with all current and future governmental laws, regulations, codes, or orders applicable to the Lessee's conduct of the Use at or its occupancy of the Premises ("**Licensing Requirements**"). If any current or future Licensing Requirement requires Lessee to undertake a Capital Project, such undertaking shall be subject to the requirements of Section 23, including without limitation, the need for the Lessee to obtain from State Parks its written approval and any permits. 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 or the consent of State Parks to any construction work or other capital improvement of the Premises.
- (f) *Method of Sales Transactions.* Unless otherwise approved by State Parks, Lessee 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.* Lessee is solely responsible for and shall pay in a timely manner all applicable taxes.
- (h) *Identifying Signage.* Lessee shall post 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 Lessee under a lease from State Parks and lists Lessee's corporate name and contact information.
- (i) *Hours of Operation.* Lessee shall conduct the Use only between 07:00am and 08:00pm ("**Normal Business Hours**"). If Lessee 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 Lessee's reimbursement of such costs.
- (j) *Fireworks.* Lessee 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.* Lessee shall schedule and coordinate deliveries to the Premises by commercial vehicle with the Park's manager to avoid conflict with Park 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 Lessee's use of the Premises, State Parks may, with two weeks' notice to Lessee, require Lessee to temporarily close in order for State Parks to make repairs, alternations, changes, or improvements to the Premises or the Park. Lessee 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 Lessee shall close until the Park or affected portion of the Park are re-opened and State Parks will have no liability to Lessee for such closures.
- (m) *Prohibition on Vape, Nicotine, and Tobacco Products.* Lessee 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.* Lessee 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.
- (o) *Information Security; State Technology Policies.* Lessee shall comply with the provisions of the New York State Information Security Breach and Notification Act, General Business Law Section 899-aa. Lessee shall be liable for the costs associated with such breach if caused by Lessee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Lessee's agents, officers, employees or subcontractors. Lessee 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.* Lessee shall comply with all applicable State Parks regulations and Park rules, except that if with respect to Lessee's use of the Premises such regulations and rules conflict with the provisions of this agreement, the provisions of this Lease 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. Lessee 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.* Lessee 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. Lessee 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. Lessee shall not operate motor vehicles on any public use pedestrian/bicycle paths without written approval from State Parks.
- (s) *Security.* Lessee shall be responsible for providing all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrence attributable to Lessee's operation of the Premises, including without limitation the use of armored car or courier service for 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 defibrillators at locations within the Premises of its choosing. Lessee may, along with any other person, use these automated external defibrillators and Lessee 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) *Operating Schedule.* Lessee shall undertake the Use not later than the first day of {*outline the seasonal concession operations start date/circumstance*} ("**Commencement Date**"). State Parks will provide this date in writing to Lessee prior to the start of, but not less than 30 days before, each operating season. {*describe/include operating schedule for the concession(s)*}
- (b) *Offerings; Pricing.* Lessee acknowledges that its concession pricing and offerings are subject to review and approval by State Parks. Lessee 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 Lessee. State Parks may require Lessee's pricing be consistent with similar venues in the general area.
- (c) *Alcohol Service and Sales.* Lessee may sell alcoholic beverages at the Premises if it obtains and holds the applicable New York State Liquor Authority license and obtains and maintains the liquor liability insurance specified under this agreement. Lessee must comply with the terms of its liquor license in all serving or sale of alcoholic beverages. Lessee shall obtain the prior approval of State Parks for all alcohol-related signs, media messaging, advertisements, and sales promotions.
- (d) *Cross promotion.* If approved or required by State Parks, Lessee shall advertise, promote and sell from the Premises, tickets, coupons, and passes for current and future Park amenities, events and attractions offered by State Parks, approved vendors and concessionaires. Lessee's POS system shall support itemized sales reporting of these items and account for any commission-based or other payment, if any, due to Lessee.

- (e) *Website; Social Media Accounts.* Lessee may establish and maintain an online presence, including website and social media accounts, for promotion of the Park, the Premises, and the Concession, subject to the provisions of Attachment F – Website and Social Media Accounts.
- (f) *Emergency Management and Notifications.* Lessee shall develop, and periodically update as necessary, a comprehensive emergency first response plan identifying roles and responsibilities in case of emergencies requiring a response at the Premises, such plan to be consistent with State Parks' Emergency Management Deployment Protocol and Emergency Notification Protocol for Significant Incidents, as the same are periodically updated.

Section 9. Maintenance and Repairs

- (a) Lessee shall maintain the Premises in safe, operable, and inviting condition at all times and keep the Premises in good and acceptable repair as determined by State Parks. Except as otherwise specifically set forth in this agreement, Lessee shall perform all capital and 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) Lessee 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 Lessee, its customers, or other persons who are at the Premises at Lessee's invitation. Lessee 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) Lessee shall maintain and keep the State Equipment in good and acceptable condition. Lessee 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 pursuant to Section 6.
- (d) Lessee shall maintain in a commercially reasonable manner all maintenance and repair records, that at a minimum, document the performance of all service, repair and maintenance activities and the dates, times, method/manner, and provider of such activities. Lessee shall make such records available to State Parks upon request. Where applicable, Lessee shall follow the manufacturer's written recommendations on inspection procedures, types of cleaning agent and methods of cleaning, the schedule for routine cleaning and maintenance and repair instructions.
- (e) Lessee is completely responsible for all repair, refurbishment and maintenance of the Premises and the Concession. Notwithstanding the foregoing, Lessee shall document and certify for State Parks approval on a periodic but not less than annual basis, the expenditure of not less than 2% percent of Gross Receipts (the "**Minimum RR&M Obligation**") for bona fide maintenance, repairs, refurbishment and replacement of State-owned property, fixtures, and equipment at the Premises, beginning year 10 of the Lease. Lessee must document and certify all expenditures towards the Minimum RR&M Obligation to State Parks' satisfaction. If Lessee has not fully expended the Minimum RR&M Obligation by the end of this agreement, Lessee shall pay to State Parks the unexpended portion of the Minimum RR&M Obligation at the same time as it makes its final Rent payment.

Section 10. Advertising

- (a) Lessee shall use commercially reasonable efforts to promote its Use.
- (b) State Parks reserves the right to require Lessee 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 Lessee that, in the sole judgement of State Parks, impairs the aesthetics of the Park or that restricts the movement of patrons in the area.
- (c) Lessee 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) Lessee 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. Lessee 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) Lessee'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) Lessee is solely responsible for the recruitment and screening of personnel and verification of credentials.
 - (i) Lessee shall check each prospective personnel against United States Department of Justice's national sex offender registry.
 - (ii) Lessee 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, has a criminal conviction record that 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.
- (d) Lessee 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. Lessee shall additionally train its managerial employees in quality and cost controls; marketing and advertising; supervision; and accounting and cash control procedures.

- (e) Lessee 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 program approved by State Parks. Line staff must be certified through a food handler module, and management-level employees must be certified through a manager training module. Lessee shall provide such certifications to State Parks upon request. Lessee shall arrange for all employees serving alcohol to receive industry-standard alcohol service training.
- (f) Lessee 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) Lessee 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, Lessee 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 Lessee 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. Lessee Responsibilities

- (a) Lessee 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 Lessee shall maintain policies on sexual harassment prevention, workplace violence prevention, and non-discrimination and shall train its employees on such policies.
- (c) The provision of any goods or services must comply with all non-discrimination, access, and disability laws, including, without limitation, the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008, the New York State Human Rights law, and similar laws regarding accessibility to government programs and services. Lessee is not required to make any changes to the physical configuration of the Premises (e.g., lighting, ramping, etc.) in order to comply with this subsection, but must make reasonable accommodations to provide program access where the physical environment is inaccessible.
- (d) Lessee 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 materials, the purchase of "green" products, and the conservation of energy. Consistent with such policies, at a minimum Lessee:
 - (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;

- (iii) shall not provide or distribute polystyrene (including Styrofoam) products or single-use plastic products, including bags, condiment packets, drink stirrers, and straws (except in accordance with policy exceptions for reasonable accommodations);
 - (iv) shall not provide or distribute single-use plastic splash sticks, utensils, food service products, to-go containers, balloons, and utensils (except in accordance with policy exceptions for reasonable accommodations); and
 - (v) shall not offer for sale or otherwise provide customers with single use plastic water bottles or other beverages in single-use plastic containers, beginning January 1, 2028. Preference must be given to beverages with non-plastic containers, such as aluminum, cardboard boxes, or other eco-friendly alternatives, over those offered only in single-use plastic containers, when available.
- (e) Lessee 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**”). Lessee shall make reasonable efforts to participate in the New York State Department of Agriculture and Markets’ Taste NY program.
- (f) Lessee 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. Lessee 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.
- (g) Lessee 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 Lessee 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. Lessee shall connect all electrical appliances directly to an electrical outlet or fused power strip.
- (h) Lessee 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.
- (i) Lessee shall not discharge any acids, vapors, or other harmful materials into the water lines, vents, or flues of the Premises. Lessee 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. Lessee 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.
- (j) Lessee 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. Lessee shall properly handle, store, and use all fuel, including propane tanks, Sterno, or other portable warming fuel and apparatus.

- (k) Lessee 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. Lessee 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

Lessee 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 Lessee. Sponsorship of the Premises or the Use is subject to the approval of State Parks as to form, content, and manner of presentation, and Lessee 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) Lessee may, by written permit issued in advance by State Parks' Niagara 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. Lessee shall use best efforts to make all Special Event requests at least three weeks prior to the proposed date.
- (b) Lessee 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) State Parks shall provide electricity to the Premises, for which Lessee shall reimburse State Parks 100% of the actual costs as sub-metered as invoiced by State Parks. For all other utility services necessary for the Use Lessee shall establish all necessary accounts with utility providers at its own cost.
- (b) State Parks may, upon 24 hours' notice to Lessee 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, Lessee 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, Lessee 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) Lessee shall provide for trash removal and recycling service at the Premises at its own cost. Lessee shall collect all trash and debris in sanitary and adequate closed containers reasonably protected from public view until transferred to dumpsters. Lessee is solely responsible at its own cost for any grease or other specialty waste disposal services.

Section 16. Inspection

- (a) *General Inspection.* Lessee 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, elevator maintenance, fire suppression systems. Lessee 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 Lessee shall arrange with the local fire department for periodic fire prevention inspections.
- (c) *State Inspection.* State Parks may enter the Premises at any time, upon 24 hours' notice, to make an inspection. If, as a result of such inspection, State Parks determines that deficiencies exist in the condition of the Premises, State Parks shall inform Lessee of said deficiencies in writing and Lessee shall correct said deficiencies within ten calendar days of such notice, after which period State Parks may conduct a follow-up inspection and correct itself or contract to correct any outstanding deficiencies at Lessee's expense. For any deficiencies corrected by State Parks, or its agents or contractors, State Parks shall invoice Lessee for the cost thereof, including any labor and materials used.

Section 17. Financial Records

- (a) Lessee 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. Lessee shall keep its Financial Records for the term of this agreement 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 Lessee's Financial Records 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 Lessee's Financial Records.
- (b) Lessee shall immediately and properly record all sales associated with the Use 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 and that meets the Payment Card Industry Data Security Standards published by the PCI Security Standards Council. Lessee shall record sales from remote, portable, or mobile operations transacted outside the Premises as soon as commercially reasonable and shall use only a process pre-approved by State Parks for such sales.
 - (i) If Lessee uses cash registers, Lessee 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. Lessee shall not reset cumulative cash register readings and shall turn over all keys for cash register reset purposes to State Parks.

- (ii) If Lessee uses an automated point of sale system, Lessee 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, Lessee 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, Lessee 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 Lessee 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, Lessee 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; and
 - (ii) Monthly, for the month immediately preceding the report date, and cumulative account of Minimum RR&M Obligation set-asides and expenditures.
- (b) *Annual Reporting.* During the term of this agreement and for one year thereafter, Lessee shall provide State Parks with:
 - (i) On or before January 15th of each year, a list of Lessee'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
 - (ii) On or before April 15th of each year, a verified financial statement in a format approved by State Parks covering Lessee's Use for the preceding calendar year.
- (c) At State Parks request, Lessee 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 Effective Date, Lessee 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**"). Lessee 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, including both the types of insurance and the minimum liability limits, if the scope of Lessee'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 Lessee 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 Effective Date, Lessee 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 Lessee 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 Lessee holds the Required Insurance and does not discharge Lessee's obligations under this subsection.

(c) During the term of this agreement, Lessee shall maintain in force the Required Insurance. At least 30 days before the expiration of any policy of Required Insurance, Lessee 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 Lessee does not hold the Required Insurance, State Parks may prohibit Lessee from using and occupying the Premises until Lessee holds the Required Insurance and provides acceptable evidence of insurance.
- (e) Lessee 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 Lessee's receipt of notice of the accident or claim.
- (f) Lessee shall require any of its contractors retained in relation to this agreement to hold 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, Lessee 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

- (a) Lessee acknowledges that pursuant to Workers' Compensation Law Section 57 and 220(8), State Parks cannot enter into this agreement without receiving proof of Lessee's compliance with or exemption from the coverage requirements of the Workers' Compensation, including without limitation, the Disability Benefits 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, SI-12, or CE-200; for disability benefits, the DB-120.1, DB-155, or CE-200. State Parks may at any time during the term of this agreement request proof of Lessee's compliance with or exemption from the coverage requirements for Workers' Compensation and Disability Benefits Insurance.
- (b) Lessee must maintain full New York State Workers' Compensation coverage and Disability Benefits during the term of this agreement for the benefit of such employees as are required to be covered by the New York State Worker's Compensation Law.

Section 21. Indemnity and Claims

- (a) Lessee 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 Lessee or Lessee's contractors, vendors, employees, agents, and invitees and that arise out of or relate to Lessee's conduct or Lessee's performance of this agreement; provided, however, that Lessee'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 Lessee or to Lessee'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 Lessee 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 Lessee or to Lessee'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 Lessee 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, Lessee shall not use any State Parks or State of New York trademarks, service marks, logos, and other brand identification and indicia ("**State Marks**"). Lessee acknowledges that it does not acquire any right, title, or interest in or to any State Marks by virtue of this agreement, and Lessee hereby disclaims any other such right, title, or interest. Lessee 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 or the State of New York in the future 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 Lessee in any State Marks will vest in the State of New York and any goodwill from the use of the State Marks by Lessee will inure solely to the benefit of State Parks.

Section 23. Capital Projects

- (a) Lessee shall not erect any structures; make any modifications, alterations, additions, improvements, extraordinary, structural, or unforeseen repairs, or replacements; install, upgrade or maintain any utility infrastructure, 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. Lessee shall remove or modify any Capital Project undertaken without State Parks' consent if State Parks so directs. No review, approval of, or consent to 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, or alter the programming needs of the Parks, upon financial terms that directly address any new cost to State Parks associated therewith.
- (b) Any Capital Project undertaken by Lessee must be in accordance with the provisions of Attachment C and comport with the master plan for the Park, if one has been adopted.
- (c) Capital Projects undertaken by Lessee, 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 in writing. Lessee 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, Lessee shall require all its Capital Project consultants and contractors to indemnify the Indemnitees as set forth in Section 21.
- (e) All of Lessee'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 of New York 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 Lessee.
- (f) If a code compliance certificate for the Premises has been issued by State Parks, nothing in this section is intended to prohibit Lessee from operating prior to or during the completion of a Capital Project.

Section 24. Liens

- (a) Lessee 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 Lessee by law or by a provision of this agreement) caused or created by Lessee is filed against the Premises, or if any public improvement lien created or caused to be created by Lessee is filed against any assets of or funds appropriated by State Parks, then Lessee 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) Lessee will not, however, be required to discharge any such lien if Lessee has: (i) furnished State Parks with, at Lessee'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 Lessee's efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies Lessee, Lessee shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by Lessee in order to discharge the lien.

Section 25. Coordination with State Parks

Lessee shall cooperate with State Parks and comply with all reasonable requests made with respect to the Lessee's Use of the Premises. Lessee 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:
Travis Saturley, Park Manager
Email: travis.saturley@parks.ny.gov
Telephone: 716-299-0837

For Lessee:
[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' Niagara Regional Office unless the provision permitting or requiring such consent expressly provides otherwise. State Parks shall not unreasonably withhold or delay any consent or approval requested by Lessee.

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:
OPRHP – Niagara Region
DeVeaux Woods State Park
3160 DeVeaux Woods Drive
Niagara Falls, NY 14305
Attn: Regional Director
Email: Mark.Mistretta@parks.ny.gov, with
copies to VincentT.Iacovitti@parks.ny.gov and
Concessionswestern@parks.ny.gov

and

NYS OPRHP
625 Broadway
Albany, NY 12238
Attn: Director, Concessions Management Bureau
Telephone Number: 518-486-2932
Email: concessions@parks.ny.gov, with a copy to
counsel@parks.ny.gov

If to Lessee:
[Lessee]
[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) Lessee may, with the prior written approval of State Parks and, if required by law, the Office of the New York 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) Lessee 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 Lessee sublicenses or subcontracts as provided for in this section, State Parks may in its sole discretion require additional financial security from the Lessee or the sublicensee or the subcontractor.
- (d) Lessee 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 Lessee's performance under this Agreement.
- (e) No sublicense or subcontract will relieve Lessee of any duty, obligation, or responsibility owed to State Parks under this agreement.

Section 29. Surrender

- (a) Lessee shall yield and deliver peaceably to State Parks possession of the Premises on the date of expiration or termination of this agreement. Lessee 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, Lessee 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 interiors and exteriors of the Premises and from any other location within 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) If Lessee fails to repair any and all damage caused by the removals required under subsection b above, then State Parks shall inform Lessee of said failure to repair such damage in writing and Lessee shall repair such damage within 10 calendar days of such notice, after which period State Parks may itself correct or contract to correct any needed repairs at Lessee's expense. For any repairs performed by State Parks, or its agents or contractors, Lessee shall pay State Parks the cost thereof, including any labor and materials used. This subsection shall survive any expiration or termination of this Lease.
- (d) 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 as acceptable 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 Lessee 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 Lessee 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 Lessee 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, Lessee shall notify State Parks as soon as practicable.
- (b) If the loss or damage from casualty does not substantially interrupt or impede Lessee's Use, Lessee shall proceed with performance of this agreement, including Lessee's affirmative responsibility for all capital repair and replacement of any and all elements of the Premises. In such event, State Parks and Lessee shall negotiate an equitable abatement of the Rent to the extent reasonably feasible and proportionate to the extent that Lessee's operations are impeded or interrupted by such loss or damage.
- (c) If the loss or damage from casualty is to the extent that Lessee's Use is substantially interrupted or impeded, State Parks shall consult with Lessee 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 Lessee of such determination and set a date on which the agreement will terminate. In such event, Lessee shall pay State Parks the unamortized amount of Lessee's Minimum Capital Investment out of its share of any insurance proceeds. For purposes of this paragraph, Lessee'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, Lessee may, within thirty days of State Parks' determination and by written notice to State Parks, elect to restore the Premises at Lessee's sole cost and expense, in which case this agreement shall continue in force. Lessee 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 Lessee does not wish to undertake its own restoration of the Premises, Lessee 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 Lessee 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 Lessee from its obligation to carry the insurance required by Section 19 and Attachment E.

Section 32. Force Majeure

- (a) If either State Parks or Lessee 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 Lessee from the prompt payment of any and all fees and other financial obligations due and owing to State Parks prior to the act constituting force majeure.
- (b) Lessee 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 Lessee 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

Lessee acknowledges that State Parks is subject to the requirements of the Freedom of Information Law and that any information or records submitted by Lessee 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 Lessee 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 Lessee to determine the extent to which such information or records might properly be exempted from disclosure.

Section 34. Responsibility Determination by State Parks

- (a) Lessee acknowledges that State Parks' execution of this agreement is contingent upon the State Parks' determination that Lessee is responsible. State Parks relies in part upon the Lessee's responses to the Vendor Responsibility Questionnaire developed by the Office of the New York State Comptroller to make its responsibility determination, but may make its determination based on any information available to it.
- (b) Lessee shall remain responsible throughout the term of this agreement. Upon request by State Parks, Lessee 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 Lessee's responsibility, State Parks may suspend any or all activities under this agreement by written notice to Lessee outlining the basis of the suspension and listing activities to be suspended. Upon the issuance of such suspension notice, Lessee shall not engage in or undertake the listed activities unless and until State Parks issues a written notice ending the suspension and Lessee shall comply with all reasonable requests from State Parks to cure the basis for suspension. Notwithstanding anything in this agreement to the contrary, State Parks may terminate this Lease under Section 36(c) if State Parks determines that the Lessee is not a responsible vendor.

Section 35. Conflicts of Interest; Former State Employees

- (a) Consistent with its attestation made in the RFP Response, Lessee states there is no actual or potential conflict of interest that could prevent Lessee's satisfactory and ethical performance of its obligations under this agreement. Lessee shall notify immediately State Parks of any actual or potential conflict of interest that arises after the signing of this agreement.
- (b) Lessee 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, Lessee 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. Lessee shall identify to State Parks all of its employees who are current or former employees of State Parks; State Parks may require Lessee to provide reasonably necessary information to determine whether any such employee's work is consistent with or violates the Ethics Requirements and may require Lessee to seek the opinion of the New York State Joint Commission on Public Ethics or its successor. Lessee 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 Lessee from the Use.

Section 36. Termination

- (a) State Parks may terminate this Lease for cause upon written notice if Lessee is in breach of any term of this Lease and such breach continues for more than thirty (30) days after Lessee's receipt of notice of breach from State Parks (the "**Cure Period**") and Lessee has not undertaken reasonable efforts to cure such breach within the Cure Period ("**Event of Default**"). An Event of Default shall include without limitation:
- (i) Lessee fails to occupy the Premises or commence the Use by the Commencement Date in accordance with Section 8(a);
 - (ii) Lessee's operation significantly departs from the Use;
 - (iii) Lessee fails to pay the Rent in accordance with Section 4(a);
 - (iv) Lessee fails to meet its capital investment obligation in accordance with Section 5;
 - (v) Lessee fails to hold the security required under Section 4(b), Section 5(b);
 - (vi) Lessee fails to meet the minimum RR&M obligation in accordance with Section 9(e);
 - (vii) Lessee fails to pay for utility services in accordance with Section 15 resulting in termination or shut-off of utility service to the Premises;
 - (viii) Lessee fails to file the monthly reports due under Section 18(a);
 - (ix) Lessee fails to hold the Required Insurance in accordance with Section 19 and 20;
 - (x) Lessee 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) State Parks may extend the period to cure a breach under subsection a above an additional ten (10) days, or for such period as State Parks may set in writing, if Lessee is making reasonable efforts to cure the breach as promptly as practical.
- (c) If State Parks or the State of New York determines that Lessee is not a responsible vendor under Section 34, that a conflict of interest exists that could prevent Lessee's satisfactory and ethical performance of its obligations under this agreement, or that Lessee or any of its employees has violated any of the Ethics Requirements, State Parks may terminate this agreement for cause upon notice to Lessee after providing Lessee notice of the basis for the determination and 15 days to challenge the determination and issuing a final written determination that Lessee is not a responsible vendor, a conflict of interest exists, or there has been a violation of the ethics Requirements. Such termination under this subsection b shall be effective upon Lessee's receipt of the final written determination.
- (d) 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 Lessee at least 10 days' notice and without an opportunity to cure:
- (i) Lessee 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, Lessee's reorganization, or the readjustment of Lessee's indebtedness under the federal bankruptcy laws or under any other law or 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, Lessee is adjudged bankrupt or an order is made approving a petition filed by any creditor seeking Lessee's reorganization or the readjustment of Lessee's

indebtedness under the federal bankruptcy laws or under any other law or 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 Lessee and not dismissed within 45 days after the filing thereof;
 - (iv) the interest or estate of Lessee 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 possession or control of all or substantially all of the property of Lessee 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 Lessee or any of its property whereupon possession of the Premises or any portion thereof is taken by someone other than Lessee and such possession or control continues for a period of 20 days;
 - (vii) any lien is filed against the Premises because of any act of omission of Lessee and not removed or bonded as provided for in this agreement;
 - (viii) Lessee ceases to be duly authorized to conduct business in the State of New York.
- (e) State Parks may also terminate this agreement without advance notice to Lessee if any member, partner, director, or officer of the Lessee 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.
- (f) No waiver by State Parks of any default on the part of Lessee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Lessee 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 the 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.
- (g) Lessee 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 Lessee 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. Lessee 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.
- (h) 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 Lessee. The exercise by State Parks of any right of termination will be without prejudice to any other such rights and remedies.
- (i) Lessee 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 Lessee 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

-- SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

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SAMPLE

-- SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

In witness whereof, the parties are signing this agreement on the date(s) stated below.

Lessee

SIGNED: _____

Name (Print):

Title:

Federal EIN:

Date:

Acknowledgement

STATE OF _____)
COUNTY OF _____) SS:

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: _____ Date: _____
Mark Mistretta, Niagara Region

By: _____ Date: _____
Patrick Ryan, Deputy Commissioner for Finance and Administration

Office of the Attorney General

Office of the State Comptroller

Attachments Follow

-- SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

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SAMPLE

--SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

Attachment A-1

DESCRIPTION OF THE PREMISES

The Premises includes Schoellkopf Hall, which is located in DeVeaux Woods State Park, at 3120 DeVeaux Woods Drive Niagara Falls, NY 14305, and the adjacent grounds set forth in Attachment A-2: Map of the Premises.

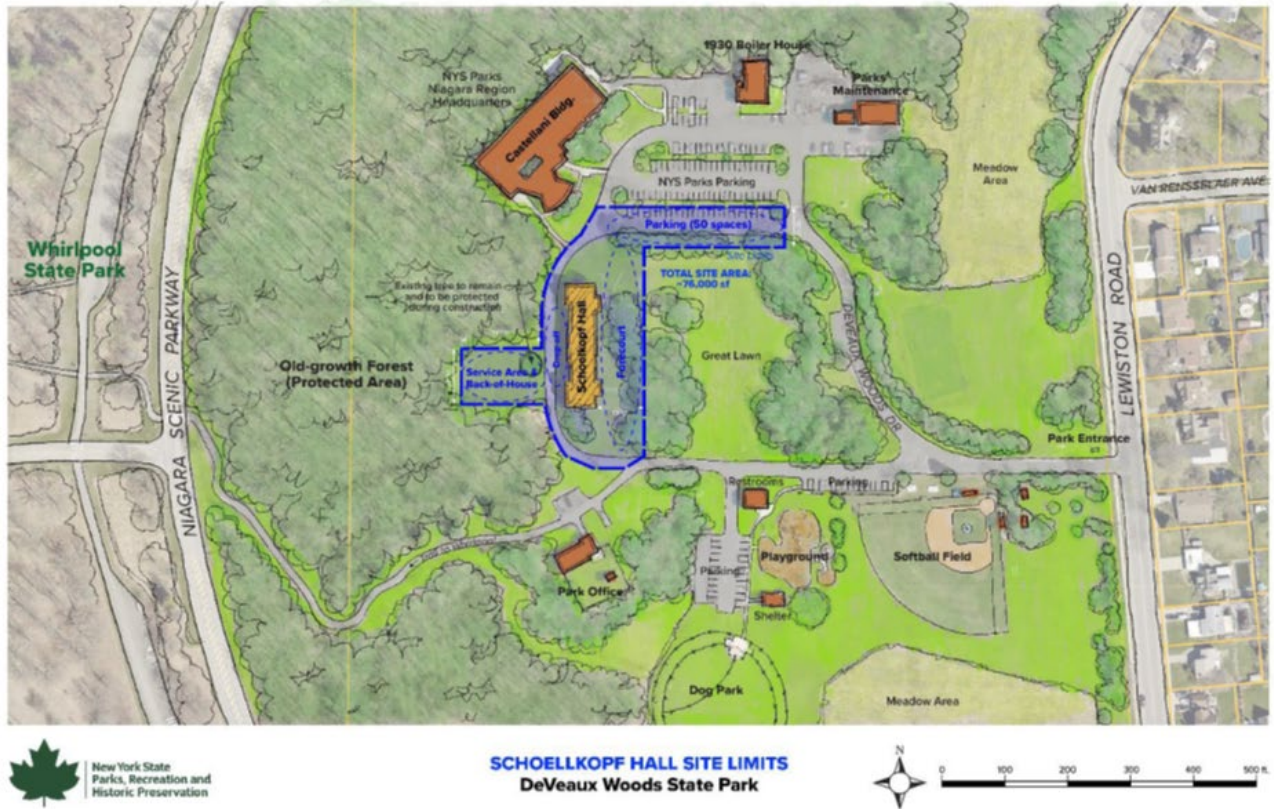
SAMPLE

--SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

Attachment A-2

MAP OF THE PREMISES



Attachment C

REQUIREMENTS FOR CAPITAL PROJECTS

In this attachment “Lessee” refers to any party to this agreement other than the State of New York and its agencies and “Lease” refers to the main body of this agreement. If there are any discrepancies between this attachment and the Lease, the language of the Lease will prevail.

- (1) All Capital Projects to be undertaken by Lessee must be approved in advance by State Parks in accordance with the Lease and this attachment.
 - (a) Designs for all projects proposed by Lessee must be in compliance with (1) the Uniform Fire Prevention and Building Code, (2) the New York State Energy Construction Code, (3) the State Historic Preservation Act, (4) the State Environmental Quality Review Act, (5) the “Decarbonization and Climate Resiliency Design Guide” issued by the Office of General Services and New York State Energy Research Development Authority, and (6) the Americans with Disabilities Act 2010 Standards for Accessible Design, where applicable. Designs must be developed and sealed by a professional engineer or architect licensed to practice in New York State.
 - (b) Prior to soliciting bids for construction, Lessee shall submit the following to State Parks for approval, together the “Project Documents”:
 - (i) Preliminary plans and specifications for the Capital Project;
 - (ii) A schedule and work plan for the development of the Capital Project, including reasonable dates for completion of approved plans and specifications, procurement of construction financing, procurement of permits, and the commencement, substantial completion, and completion of construction; and
 - (iii) A proposed budget, itemized and based on a reasonable estimate of the costs to design and construct the Capital Project
 - (c) State Parks shall grant the approval required under 1(b) or give itemized notice of its objections to the Project Documents, in whole or in part, within 30 days after receipt thereof.
 - (i) If State Parks fails to give notice of such approval or any objections prior to the expiration of such 30-day period, such Project Documents shall be deemed non-approved by State Parks.
 - (ii) If State Parks gives timely notice of specific objections to the Project Documents, in whole or in part, Lessee shall revise the Project Documents and resubmit them to State Parks for its approval. State Parks shall grant such approval or itemize its objections within the time limits and in the manner previously provided for under this section (1)(c) until such time as State Parks approves the Project Documents or Lessee elects to discontinue the Capital Project.
 - (d) Once available, Lessee shall submit final plans and specifications for an approved project to State Parks, on which State Parks will issue its final approval which may take the form of a project permit and/or a construction permit.

- (2) Upon final approval of a Capital Project by State Parks, Lessee shall fully implement the approved Capital Project and all its individual elements. State Parks is not required to render any professional or construction services, including architectural, engineering, general contracting, or construction management services.
- (a) In this respect, Lessee shall, without limitation:
- (1) Engage, retain, contract with, supervise, coordinate, and discharge all persons reasonably required to design and construct the approved Capital Project, including without limitation architects, engineers, surveyors, general contractors, and construction managers, in accordance with all applicable federal and state laws, rules, and regulations;
 - (2) Require its contractors and subcontractors to comply with the provisions of this Lease and name the State of New York, through State Parks, as an intended third party beneficiary of such contracts and subcontracts, as well as any amendments thereto, provided however that this right does not make State Parks or the State of New York a party to such contracts or subcontracts or create for such contractors or subcontractors any right, claim, or interest in such contracts or subcontracts against State Parks or the State of New York;
 - (3) Procure or cause to be procured all necessary permits required by law for the construction of the Capital Project;
 - (4) Make reasonable efforts to cause the completion of the design and construction of the Capital Project in a reasonable manner;
 - (5) Make reasonable efforts to cause the design and construction of the Capital Project to be performed in a good, workmanlike manner and in accordance with all applicable laws and other governmental requirements;
 - (6) Conduct regular "job meetings" throughout construction to assess progress on the project, which meetings may be attended by a representative of State Parks, and produce written records of such meetings, with a copy to State Parks;
 - (7) Provide, upon request by State Parks, copies of all contracts, subcontracts, change orders, progress payment documents, and related materials to State Parks within five business days.
- (b) Lessee shall conduct its Capital Projects in a manner that does not unreasonably interfere with normal park operations. Lessee shall avoid construction on days when significant park attendance is reasonably expected, including without limitation Memorial Day, Labor Day, and Independence Day (July 4th); such scheduling to be captured on the schedule and work plan provided to State Parks under section 1(b)(2).
- (3) Lessee is solely responsible for payment of all costs associated with the Capital Project. Lessee assumes any and all costs, in excess of original estimates or otherwise, including without limitation costs associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen site conditions. State Parks is not responsible for undertaking or paying for any capital improvements required as a result or consequence of any Capital Project undertaken or condition encountered by Lessee.
- (a) In all contracts for Capital Projects, Lessee shall provide for the payment of at least the prevailing wage rate and prevailing supplements as determined by the New York State Department of Labor in accordance with the Labor Law. If Lessee received a written determination from the New York State Department of Labor that its contracts for a particular Capital Project are not contracts for a

public work covered by Article 8 of the Labor Law, State Parks may, in its sole discretion, waive the contractual requirement to pay prevailing wage contained in this subsection. Such waiver by State Parks is not and will not be deemed to be a determination of whether a particular Capital Project is a public work covered by Article 8 of the Labor Law. Lessee is solely responsible for ensuring compliance with the requirements of Article 8 of the Labor Law, including payment of prevailing wage rates, payroll reporting requirements, and contractor registration requirements.

- (4) Additional Insurance Required for Capital Projects. Lessee acknowledges that in a permit or other approval issued by State Parks for a particular Capital Project, State Parks may impose additional insurance requirements beyond those of the Lessee. In such case, Lessee shall require its contractors to carry the type and amount of insurance identified in such permit or other approval, and name State Parks and Lessee as additional insureds on such policies of insurance. Lessee shall provide State Parks evidence of such coverage in the form of certificates of insurance prior to beginning construction.
- (5) Capital Projects are subject to bonding requirements as follows. State Parks may, in its sole discretion, waive those bonds not required by law if the estimated cost of the Capital Project is less than \$200,000.
- (a) Labor and Materials Bonds. Prior to the commencement of any Capital Project, Lessee, or its contractor(s) or subcontractors furnishing workers, shall provide State Parks with evidence of a labor and materials payment bond from a corporate surety authorized to conduct business in the state of New York, in a form satisfactory to State Parks, and in an amount not less than 100 percent of the cost of the construction work to be undertaken. Such bond must 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 must unconditionally protect State Parks from any claims, liability, losses, or damages arising therefrom.
- (b) Performance Bonds. Prior to the commence of any Capital Project, Lessee or its contractor shall furnish to State Parks evidence that Lessee or its contractor has procured a performance bond from a corporate surety authorized to conduct business in the State of New York, in a form satisfactory to State Parks, naming State Parks as an obligee, and in an amount not less than 100 percent of the cost of the Capital Project or construction contract, as appropriate, to be undertaken. Such bond must guarantee that the Lessee or its contractor will perform the work in accordance with the terms of the construction contract and with the plans and specifications approved by State Parks, will commence and complete the work in accordance with the contract, and will provide against direct or indirect damages that shall be suffered or claimed on account of such construction work during the time thereof, and until the contract for the construction work has been satisfactorily completed and accepted.
- (6) Lessee acknowledges that its failure to comply with the requirements for Capital Projects contained in this attachment, including maintaining required insurance and bonds in full force throughout the performance of the Capital Project, will be deemed a material breach of the Lease and might, in the discretion of State Parks, result in the termination of the Lessee without further notice. Lessee shall notify State Parks immediately of any change in insurance or bonding status including without limitation any change in carrier or surety.

--SUBJECT TO FURTHER REVIEW BY OPRHP--

Sample Lease

Attachment D

CAPITAL INVESTMENT WORK PLAN

All proposed Capital Work Plan projects shall be tentative pending State Parks' approval.

[Plan details will be included in finalized agreement]

SAMPLE

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 as well as 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 must 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) **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 \$1,000,000 each occurrence.

This coverage is not required if alcohol is not served in connection with the performance of this agreement.

- (d) **Commercial Property Insurance** covering damage to or loss of structures, additions, extensions, and physical attachments at the Premises. Such policy shall insure against fire and water damage provide for [COVERAGE LEVEL].

Attachment F

WEBSITE AND SOCIAL MEDIA ACCOUNTS

Section 1. Websites and Domain Names

(a) *Website Domain Name.*

- (i) *Creation.* Lessee shall create and use one or more domain name(s) to host a website for promotion the Premises and the Concession (the “**Website**”), such domain name(s) to be subject to the approval of State Parks.
- (ii) *Maintenance.* Lessee shall maintain such domain(s) through the term of this agreement at its own cost.
- (iii) *Transfer at Termination.* For any domain name relying on or incorporating the name of the Park or Park facility and for which the registration will extend beyond the termination of this agreement, Lessee shall within 30 days of termination of this agreement transfer ownership and control of such domain name(s) to State Parks or to State Parks’ designee (e.g, the incoming concessionaire for such Park or Park facility) as directed by State Parks. Such transfer will be deemed complete when State Parks or its designee is identified in the applicable WHOIS database as the registrant and State Parks or its designee has administrative and technical access to the domain and sole control over where the domain name points.

(b) *Website Content.* Throughout the term of this Agreement, Lessee shall, at its cost, host, operate, maintain, and make accessible to end users content related to the Use, the Premises, and the Concession on the Website (the “**Website Content**”). The Website Content must complement State Parks’ own website, although the Lessee shall avoid any Website Content design or aesthetic which would create confusion between the Website and any State Parks or State of New York website.

- (i) State Parks may request, based on reasonable objections, the removal of, or editorial revisions to, any of the Website Content that is published on the Website, and Lessee shall take appropriate remedial action with respect to any such request within 72 hours of receipt of such request.
- (ii) The Website Content must include (i) terms of use and (ii) a privacy policy easily accessible to end users.
- (iii) The Website must be consistent with current and future Americans with Disabilities Act accessibility guidelines and any other applicable state and federal accessibility requirements.
- (iv) Lessee warrants to State Parks that the Website Content: (i) does not infringe any third party's intellectual property rights, other proprietary rights or rights of privacy; (ii) does not violate any law, statute, ordinance or regulation (including the laws and regulations governing export control); (iii) is not defamatory, libelous, unlawfully threatening or unlawfully harassing; (iv) is not obscene, pornographic, or liable to incite racial hatred or

acts of terrorism; (v) does not violate any laws regarding unfair competition, anti-discrimination or false advertising; and (vi) does not, to the best of the Lessee's knowledge, contain any viruses or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

(c) *Website Security.* Lessee shall notify State Parks immediately if Lessee becomes aware of any security incident affecting its network and information systems and that could potentially affect the end users of the Website, and respond without delay to all queries and requests for information from the Website end users about any security incident, in particular bearing in mind the extent of the Lessee's reporting obligations under applicable network and information security legislation and that the Lessee may be required to comply with statutory or other regulatory timelines.

(d) *Visitor Data.* Lessee will include a consent to receive marketing communications from State Parks in any website or electronic mailing list registration, and shall provide State Parks with a list of registered email addresses upon request.

(e) *Intellectual Property.* Except as otherwise provided in this agreement, Lessee (or its licensors) retains all intellectual property rights in the Website Content that is developed or created by Lessee (or its licensors). Notwithstanding the foregoing, upon the expiration or termination of this Agreement, in an event that State Parks (or its designee) desires to obtain ownership or control of all or part of the Website Content, Lessee and State Parks shall cooperate with each other in good faith to negotiate the terms of a transfer or transition of such Website Content from Lessee to State Parks (or its designee).

(f) State Parks may describe and link to the Website from its own website or advertising materials.

Section 2. Social Media Accounts

(a) *Licensed Social Media Account Ownership and Authorization.* Any and all social media and other online accounts and profiles created or used by Lessee on primarily on behalf of the Premises or the Concession or otherwise primarily for promotion and marketing of the Use or containing the name of the Park or a Park facility (the "**Licensed Social Media Accounts**"), belong solely to State Parks, regardless of the individual or entity which opens, uses, manages or accesses the such account. Each Licensed Social Media Account includes any and all log-in information, data, passwords, trademarks, and content related to the profile or account, including all followers, subscribers, and contacts.

- (i) Social media accounts and other online accounts and profiles created or used by Lessee primarily in connection with its business or other operations other than the Concession are not Licensed Social Media Accounts subject to the obligations and restrictions of this agreement.
- (ii) Lessee agrees not to create, develop, or maintain any Licensed Social Media Account without the express prior authorization of State Parks.
- (iii) After registration, the log-in and password information for each Licensed Social Media Account shall promptly be reported to State Parks and may not be changed thereafter without prior express authorization from State Parks. Where possible, Lessee shall grant State Parks administrative access to the Licensed Social Media Accounts (for example by

appointing a State Parks designee as an administrator of a Facebook page or Instagram account).

(b) *Use; Content.* The use of Licensed Social Media Accounts by Lessee shall comply in all material respects with (i) all terms and conditions, terms of use, terms of service or other contracts applicable to such Licensed Social Media Accounts; (ii) State Parks' Social Media Policy, (iii) third party intellectual property and privacy rights; and (iv) all applicable laws. Lessee shall monitor content on the Licensed Social Media Accounts to ensure adherence to the State Parks Social Media Policy. Inappropriate content as set forth in the State Parks Social Media Policy shall be removed by Lessee as soon as possible and without prior notice. State Parks may further request, based on reasonable objections, the removal of, or editorial revisions to, any of the content that is published on the Licensed Social Media Accounts, and Lessee shall take appropriate remedial action with respect to any such request within 72 hours of receipt of such request.

(c) *Transfer at Termination.* Upon the termination of this agreement, Lessee shall cease accessing, using, updating, and modifying the Licensed Social Media Accounts and shall, as directed by State Parks, delete such account or turn-over access to such accounts to State Parks or State Parks' designee (e.g, the incoming concessionaire for such Park or Park facility). Lessee agrees to assist State Parks, both prior to and after termination of this agreement (as may be necessary), with the smooth transition and maintenance of each Licensed Social Media Account created or used by Lessee during the term of this agreement, including providing all information that may be necessary to ensure that State Parks is able to access and control the Licensed Social Media Accounts.

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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, citizenship or immigration status, 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

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/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.