

## **BID SPECIFICATIONS**

### **SEGWAY TOURS (WITHOUT FACILITY) CONCESSION**

Liberty State Park (“Area”), Jersey City, New Jersey

#### **SCOPE OF CONCESSION**

A. The Concessionaire shall be granted the exclusive right to conduct guided Segway tours of the Area, from a mobile unit, (hereinafter referred to as the “Concession Operation”). The Concession Operation shall be limited to the area(s) now provided by the Department of Environmental Protection (“Department”) for concession purposes in the areas specifically designated by the Department (hereinafter referred to as the “Concession Premises”). **No storage whatsoever will be available or provided and the mobile unit must be moved out of the Area on a daily basis, unless otherwise approved, in writing, by the Department.**

B. All patrons operating and/or riding a Segway must be 16 years of age or over and under 260 pounds in weight to operate and/or ride a Segway.

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

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

#### **TERM OF AGREEMENT**

The “Initial Term” of the Concession Agreement (“Agreement”) shall be from the Effective Date of the Agreements Initial Term ending on September 30, 2013. Upon expiration of the Initial Term the Concessionaire may request and the Department may at its discretion, based upon an evaluation of the Concessionaire’s performance with the terms and conditions of the Agreement, grant not more than five (5) subsequent annual one (1) year renewal Terms. The Department reserves the right to terminate the Agreement for material breach in accordance with the terms and conditions set forth in Paragraph 4. Furthermore, failure on the part of the Concessionaire to submit Monthly Concession Reports or the Annual Report when due constitutes a material breach of the Agreement subject to Termination in accordance with the terms and conditions set forth in Paragraph 4.

#### **EFFECTIVE DATE**

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

- (i) The Agreement or any renewal agreement is signed on behalf of Concessionaire and Department; and
- (ii) Department dates the Agreement or any renewal agreement and forwards a copy to Concessionaire; and
- (iii) The Certificate of Insurance required under the Agreement is approved by Department; and
- (iv) Corporate resolution has been received by Department; and
- (v) Department has approved the proposed prices for bicycle rentals.

### **SEGWAY RENTAL AREA**

Concessionaire will be permitted to rent Segways from a self-contained mobile unit, within a pre-determined portion of the parking lot (See Attachment A). This will include, but not be limited to the payment, reservation, and scheduling of Segway rentals.

### **TERMINATION**

A. Concessionaire shall exercise direct and personal supervision of the operation of the Concession Premises described in this Agreement. Failure to exercise such supervision and/or the existence of any condition at the facility or in the operation of the concession which Department determines to be in violation of the terms and conditions of this Agreement shall be considered to be a material breach in which event Department may terminate this Agreement by written notice. Upon receipt of written notice of termination for violation, Concessionaire shall have such period of time as provided therein to cure such violation. If such violation is not cured within the period designated in said notice, termination shall, in the discretion of Department, be effective at the conclusion of the designated period.

B. Without limiting the scope of subparagraph A of this Paragraph, this Agreement shall terminate in the event of Concessionaire's failure to pay on the first (1<sup>st</sup>) of each month, when due, any compensation or other sums to be paid by Concessionaire under this Agreement and the continuation of such failure to pay for a period of five (5) days after Concessionaire's receipt of written notice thereof from Department.

C. Concessionaire may terminate this Agreement by ninety (90) days written notice to Department sent by certified mail return receipt requested. Such termination shall, at the discretion of Department become effective either ninety (90) days after receipt of the notice of termination or upon selection by Department of a new concessionaire, whichever occurs sooner. In the meantime, Concessionaire shall continue to operate the concession in accordance with the terms and conditions of this Agreement. Department shall commence the process of selecting a new concessionaire immediately upon receipt of the notice of termination.

D. If at any time during the term of this Agreement, Concessionaire shall make any assignment for the benefit of creditors or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for Concessionaire, then Department may terminate this Agreement by notice served upon the assignee, receiver, trustee or other person in charge, but such termination shall not release or discharge any payment or obligation then owed by Concessionaire to Department hereunder.

E. Termination of this Agreement by either party as herein provided shall not release or discharge any payment obligation or liability owed to the other party under the terms and conditions of this Agreement as of the date of such termination.

F. Upon the expiration or any termination of this Agreement, Department may at once re-enter and remove any and all persons occupying the Concession Premises. If Concessionaire fails to remove any property lawfully belonging to and removable by Concessionaire upon any notice of termination hereof, or before the stated expiration of this Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Concessionaire. In the event that Concessionaire removes any personal property, Concessionaire hereby covenants to pay any and all damages which may be caused to the property of Department by this removal.

**COMPENSATION ANALYSIS**

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

**6. REVENUE PAYMENTS AND ANNUAL INCREASE**

A. For the Initial Term of this Agreement, Concessionaire shall pay to the Department the following sum as consideration for the concession, license and privilege granted herein:

TOTAL TERM COMPENSATION: \$ \_\_\_\_\_

Said compensation shall be paid according to the following payment schedule:

TERM PAYMENT SCHEDULE:	May 1	\$ _____
	June 1	\$ _____
	July 1	\$ _____
	August 1	\$ _____

B. All payments shall be submitted by check made payable to **“Treasurer - State of New Jersey”** and be **received** on or before scheduled payment date to:

Department of Environmental Protection  
Office of Concessions, Natural & Historic Resources  
Mail Code: 501-04C, PO Box 420  
Trenton, New Jersey 08625-0420

If Concessionaire fails to pay said compensation at such time and in such manner as specified herein, such failure shall constitute grounds for termination of the Agreement.

C. The Department may at its discretion, require new Concessionaires with limited or no prior experience to make all payments for the Initial Term of the Agreement by certified or cashier's check only.

D. All past due payments shall be assessed a monthly penalty of one and one-half (1.5%) percent of the total amount due calculated on the first (1<sup>st</sup>) day of each month.

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

F. The total amount of annual compensation shall be increased by three (3%) percent each contract period. Total annual compensation will be calculated by the Department and rounded up to the closest dollar.

## **EQUIPMENT**

A. Concessionaire shall provide a minimum of six (6) Segways, to meet public demand. However, Department reserves the right at any time to limit the number of Segways offered for public rental. Concessionaire shall provide helmets that meet the standards of the American National Standards Institute (ANSI Z 90.4 bicycle helmet standard), the Snell Memorial Foundation's Standard for Protective Headgear for Use in Bicycling, or the American Society for Testing Materials (ASTM F-1447 standard).

B. Any helmet rented or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in Subparagraph A, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards.

C. Concessionaire shall not rent or offer for sale for use by an operator of a Segway any safety helmet which is not of a type meeting the requirements established by this Paragraph.

D. All equipment to be rented or provided by the Concessionaire must be approved by Department prior to usage. All rental Segways must be marked and clearly identifiable.

E. Concessionaire must provide the necessary personnel and equipment to be able to respond to situations involving rented Segways, disabled rented Segways, and retrieval of rented Segways, etc. during all hours of rental operation.

## **RECORDS AND AUDIT**

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

B. All sales shall be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall, in all cases, have locked-in sales totals and transaction counters that constantly accumulate and that cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash registers, Concessionaire shall record all transactions by hand and issue a sequentially pre-numbered customer's receipt in like manner.

Each cash register must have the following:

- Dual Tape/Readable tape (customer must be offered a receipt)
- Customer Display
- Continuous grand total
- Cumulative "Z" counter
- Current printed date on detail tape

## **DAILY RECEIPTS AND BANK ACCOUNT**

A. Under the Agreement, Concessionaire is required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire also shall maintain daily "Z" reports that provide a breakdown and accounting of all sales activity for each day.

B. All cash received by Concessionaire shall be deposited into a single bank account, maintained at a bank located within the State of New Jersey and maintained solely for subject Concession Operation, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

## **MONTHLY REPORT**

On or before the tenth (10<sup>th</sup>) of each month during operation, Concessionaire shall provide Department with the following: (1) a "Monthly Concession Report" containing a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Concessionaire from operation of the Concession and any other Concession-related operation approved by Department during the previous month; (2) the daily "Z" tapes for that month showing each day's sales activity; and (3) the number of bicycles rented on a daily and monthly basis.

## **ANNUAL REPORT**

Concessionaire shall submit to Department no later than November 15<sup>th</sup> of each term the Agreement is in effect, an Annual Financial Statement including the following: Total Gross Revenue; Cost of Sales; Operating Expenses; and Net Profit from State Park Concession Operations.

## **HOURS OF OPERATION AND LIMITATIONS**

The Concession shall be open for business Sunday through Saturday from May 18, 2013 to September 2, 2013. The Concession shall operate daily between the Core Business Hours of 11:00 am through 3:00 pm. Failure on the part of the Concessionaire to open for business during the Core Business Hours will be a material breach of the Agreement in which event the Department may terminate this Agreement. The area Superintendent shall be the sole authority to determine whether or not an area will be closed due to inclement weather. The Department is not responsible to Concessionaire for any loss or damage caused by such determination.

## **ALTERNATE HOURS OF OPERATION**

The Concessionaire may request authorization to extend the hours of operation, by opening before 11:00 am or closing after 3:00 pm. All requests to extend hours of operation must be made in writing to the area Superintendent ten (10) days in advance of the proposed effective date. The Concessionaire shall not implement the alternate hours of operation without written authorization from the area Superintendent.

## **EXTENSION OF THE SEASON**

The Concessionaire may request to extend the period of operation either before May 1<sup>st</sup> or after September 30<sup>th</sup>. All requests shall be submitted to the Area Superintendent and Office of Concessions in writing sixty (60) days in advance of implementation. Approval of this request shall be within the Department's sole discretion. The Concessionaire shall be deemed not have permission to extend the period of operation without written approval from the Area Superintendent. The Concessionaire shall compensate the Department in advance of the date of implementation. Compensation to the Department shall be calculated on a monthly basis or prorated by day and submitted by check made payable to "**Treasurer – State of New Jersey**".

## **PRICES**

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

## **STAFF**

A. Concessionaire shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of each bicycle rental facility covered by the Agreement, to provide security for the staff, and to meet the needs of the public unless an alternative staffing plan is approved by the superintendent in writing. Said approved alternative staffing plan shall be attached to and made a part of the Agreement. If Department determines that Concessionaire has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of the Concession Premises,, Concessionaire shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Concessionaire immediately upon receipt of written notification, Department reserves the right to do the following: (1) suspend Concessionaire's operation of the Concession Premises, pending correction of the deficiencies; (2) obtain the service of reliable, competent, and qualified staff of legal age to operate said concession facility for Concessionaire for the remainder of the then current operating season; or (3) terminate the Agreement. Concessionaire shall compensate any staff obtained by Department for the remainder of the then current operating season and shall reimburse Department for all cost incurred by Department in obtaining appropriate staff. Concessionaire shall not be entitled to any abatement of revenue payment due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Concessionaire, or any party claiming through Concessionaire, for any claim, liability, or damages resulting from said action by Department.

B. Concession employees are to wear apparel and name tags to identify and distinguish them as concession employees. The type of apparel and identification shall be pre-approved by Department.

## **COMPLIANCE AND PERFORMANCE EVALUATION**

Mandatory concessionaire evaluation and compliance review meetings shall be conducted annually during three (3) specified periods. The meetings shall review all aspects of the operation insuring that quality public services are being provided on a continuing basis in accordance with the bid specifications and the Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with appropriate State Park Service staff, the on-site concession manager, and a management/supervisory representative of the concession firm. An evaluation form shall be utilized to document the evaluation meeting, which will identify any deficiencies and the corrective

action required. A copy of the completed evaluation form shall be provided to the on-site concession manager or the management/supervisory representative of the concession firm and shall be attached to and made a part of the Agreement. The mandatory meetings shall be conducted annually during the following periods:

- Meeting #1 - During the month of May, prior to Memorial Day weekend.
- Meeting #2 - During the first two (2) weeks of July.
- Meeting #3 - During the two (2) weeks immediately after Labor Day.

### **MAINTENANCE OF CONCESSION PREMISES**

A. Concessionaire shall preserve and maintain in good and clean condition, reasonable wear and tear expected, the Concession Premises. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises.

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

### **GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS**

A. Concessionaire shall be responsible for maintaining the cleanliness of the Concession Premises. Concessionaire shall ensure placement of all garbage and trash generated by the Concession Operation in designated containers and that said containers are emptied daily, or as more frequently required by the Department, at a location within Liberty designated by the Department. Disposal costs from this location shall be borne by the Department. Concessionaire shall provide such additional trash containers as may be required to keep the immediate Concession Premises clean at all times. The type of trash containers provided by the Concessionaire shall be approved by the Department prior to installation.

B. Concessionaire shall comply with any and all recycling requirements and regulations promulgated by the Department's Office of Recycling.

C. Any wrappings, containers, bowls, plates, carton, or cups that are not intended for reuse, must be composed of biodegradable material. Biodegradable material is defined as follows: MATERIAL CAPABLE OF BEING BROKEN DOWN FROM A COMPLEX MOLECULAR STRUCTURE INTO SIMPLER GASSES AND ORGANIC COMPOUNDS BY LIVING MICROORGANISMS.

D. No glass containers of any kind shall be used in the dispensing of food and/or beverages.



## **UTILITIES**

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

## **TAXES**

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

## **RULES AND REGULATIONS**

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

## **ADVERTISEMENT AND PROMOTION**

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

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

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

## **INDEPENDENT PRINCIPAL**

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

## **INDEMNIFICATION**

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

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

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

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

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

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

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

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

## INSURANCE

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

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

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

The limits of liability for Bodily Injury and Property Damage shall not be less than One Million Dollars (\$1,000,000.0) per occurrence combined single limits for each location covered by the Agreement.

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

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

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

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

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

B. All insurance policies providing the coverage required under the Agreement shall be obtained from an insurance company authorized to do business in the State of New Jersey and shall, except for Worker's Compensation Insurance under the Agreement, name the State of New Jersey, Department of Environmental Protection as an "Additional Insured." Prior to the date that Concessionaire is required to commence annual operation of the Concession Premises, Concessionaire shall provide Department with a current certificate of insurance, in form and substance satisfactory to the Department, showing that Concessionaire has obtained the insurance coverages required in the Agreement for the Concession Operation. The certificate shall provide that the insurance coverages shall not be canceled for any reason, except after thirty (30) days written notice to:

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY  
OFFICE OF CONCESSIONS  
P.O. BOX 404  
TRENTON, NEW JERSEY 08625-0404

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

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

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

#### **COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES**

A. For the duration of the Agreement, Concessionaire shall obtain, pay for, maintain, and comply with all licenses, permits, authorizations, or any other documents required by any applicable government agency having jurisdiction over the Concession Premises or the conduct of Concessionaire's operations thereon. Concessionaire shall provide Department with written

evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained no later than ten (10) days prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation as shall be required by the Agreement.

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

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

D. If Concessionaire:

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

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

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

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

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

### **PUBLIC USE**

Concessionaire shall not be construed as to affect the privileges accorded to the public's use of the area or to restrain or prevent individual persons or groups of persons from bringing their own food, drink, and recreational equipment into Liberty.

## **NO DISCRIMINATION**

A. Concessionaire shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and the rules and regulations promulgated pursuant thereto.

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

C. Concessionaire shall not discriminate against any employee or applicant for employment because of national origin, race, creed, color, sexual orientation, or sex. This provision shall include but not be limited to the following: employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **PAYMENT ABATEMENT**

A. In the event that Concessionaire is unable to operate the Concession Premises as a direct result of the performance, failure to perform or negligent performance by Department, its officers, agents and employees, of any act under the control or responsibility of Department, Concessionaire may be considered for an abatement of revenue for the period that the Concession Premises cannot be operated. Circumstances for consideration of abatement shall include but not be limited to, disruption caused by construction activities in or around the Concession Premises and interruption of utility service as a result of actions by the Department. Interruption of utility services by the utility service provider shall not be grounds for abatement. Suspension of operations shall not be grounds for abatement. Notwithstanding the circumstances, the decision whether or not to grant an abatement and the amount of any abatement lies completely within the discretion of the Department.

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

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

## **REVOCATION CLAUSES**

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

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

## **REJECTION OF PROPOSAL**

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

## **CORPORATION**

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

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

## **ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS**

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

## **PAY TO PLAY**

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

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