

REQUEST FOR PROPOSAL

FOR THE DEVELOPMENT OF MARINA FACILITIES

AT

LAKE CASCADE STATE PARK



Idaho Department of Parks and Recreation
Lake Cascade State Park
Marina Operation Concession

Issue Date: **August 24, 2021**



Idaho Department of Parks and Recreation
Lake Cascade State Park
Marina Facilities

REQUEST FOR PROPOSAL

INTRODUCTION

The Idaho Department of Parks and Recreation (IDPR) desires to pursue a public/private agreement for the development of a marina facility, located on Lake Cascade State Park in Central Idaho. IDPR seeks proposals from private entities interested in entering a business relationship for the development, maintenance and operation of a marina facility providing a retail store, long and short-term slip rental, marine fuel sales and powered and non-powered watercraft rentals. A variety of options regarding the rental and operation will be considered as proposed by the respondents to this Request for Proposal (RFP).

NOTE: This Request for Proposal is not intended to be an offer to enter into a contract and is not governed by the State of Idaho purchasing statutes, Idaho Code §§ 67-9201 through 67-9234, nor the Rules of the Division of Purchasing, IDAPA 38.05.01. Upon selection of a suitable proposal, IDPR shall enter into negotiations with the selected Respondent to determine the terms and conditions for a possible concession contract based on, but not limited to, the attached Large Concession Agreement, the special terms and conditions identified herein, the Respondent's proposal, and such other terms and conditions that IDPR, in its discretion, deems necessary. If IDPR and the selected Respondent are unable to reach agreement on terms and conditions, nothing herein shall be deemed to obligate IDPR to enter into agreement with the selected Respondent or to award the concession contract to any other Respondent. The only right granted to selected Respondent is the right to enter into negotiations with IDPR for possible award of the anticipated concession contract described herein. The concession is located on lands leased from the United States Bureau of Reclamation (Bureau). The concessionaire is subject to the Bureau's approval, and the concessionaire is responsible for ensuring compliance with all applicable federal statutes, regulations, and executive orders.

IDPR OBJECTIVES

IDPR hopes to provide an identified and desired service for the recreationists of Lake Cascade and Lake Cascade State Park, by seeking a willing and capable private partner.

In responding to this RFP, the Respondent must address all proposal requirements identified in the RFP. The Proposal Format/Requirements Section provides a format to fully describe the opportunities and amenities to be developed and provided, the respective roles of IDPR and the selected Respondents in accomplishing such development, compensation to be made to IDPR, and the qualifications of the Respondent(s) for the project.

Received proposals will be evaluated by IDPR and if, in the opinion of IDPR, an acceptable proposal is received, IDPR may then choose to negotiate a lease agreement with the selected Respondent for the operation and development of the area.

ABOUT THE PARK

The operation of Lake Cascade State Park provides a year-round, exciting variety of day use and overnight experiences. This Park is popular with many visitors, of somewhat diverse recreational interests. The activities that are frequently pursued include: fishing, sailing, water-skiing, sport boating, swimming, snowmobiling, cross country skiing, hiking, mountain biking, picnicking, and camping.

Significant operational challenges are inherent in the management of the park's multiple, dispersed units. Multiple campgrounds, entrances, and facilities require more staff time to patrol, collect, and maintain compared to other traditional park settings. A total of 26 park entrances, 12 Campgrounds comprised of 280 campsites, two group areas, and several day use areas prove to be a challenge, yet the park maintains a high level of customer satisfaction and repeat customer use.

Park Attributes

Acreage

500

Facilities

Campgrounds, Dump Stations, Flush Toilets, Showers, Day Use areas, Boat Ramps, Handling Docks, Group Yurts

Activities

Fishing, Boating, Waterskiing, Camping, Cross-Country Skiing, Ice Fishing, Educational Programs, Hiking, Swimming, Water Sport Rental Equipment, Biking

Season

Primary Use Season: May through October

Winter Season: December through March

Marketing focus

Campers, Anglers, Water Sports Enthusiasts, Birdwatchers

Staffing

(6) Full-time Personnel

Services

Number of Park Entrances	26	Visitor Center	Yes
Total Campgrounds	12	Equestrian Camping	No
Total Sites	266	Horses Available	No
Basic	194	Day Use	12
Basic-Companion	15	Type of Water Resource	Lake
Electric	15	Swim Area	2
Electric-Companion	5	Marina/Boat Docks	0
Full Hookups	37	Slips at Marina/Boat Docks	0
		In-Park Boat Rentals	Yes
		Boat Ramp in or near Campground	6
		Limit on Size/Type of Boats/Motors	None
		Commonly Caught Fish	Trout, Perch,

			Bass
		Type of Trails	Easy, along lakeshore, dirt
		Paved Trails	1.5
		Sports Equipment	Water sports (SUP, Kayaks) Horseshoes
Number of First Come/First Served	40	Firewood	Yes
Land Acres	500	In-Park Ice	No
Max Pad Length	60	Public Phones	0
Group Shelters	2	Nearest Gas Station	Cascade/Donnelly
Cabins	0	Nearest Food Store	Cascade/Donnelly
Yurts	3	Nearest Laundry	Cascade/Donnelly
Houses	0	Nearest ATM	Cascade/Donnelly
Cottages	0		

Park Office Hours: 8:00-4:30 pm, (as staffing permits)

Entrance Station Hours: 8:00-4:30 pm, (as staffing permits)

Water Shut-Off Date: October, sooner if weather requires

Preferred Sites: 47, Ridgeview and Poison Creek

Designated ADA Sites: Sage Bluff #207, Big Bluff #223, #227, Ridgeview #176, #198, #200, Crown Point #7, #8, Sugarloaf #34, #49, Huckleberry #75, Buttercup #123, #128, Poison Creek #235, #236

Topography: Relatively flat valley, park units surrounding Lake Cascade, at base of N. Fork Mountain

Historic Features of Park: Created by the construction of a dam in 1948 by the Bureau of Reclamation, Lake Cascade became a state park by agreement between the Bureau of Reclamation and IDPR in 1994.

Additional Notes: Lake Cascade State Park is located adjacent to Highway 55, a major North/South travel route in Idaho and a heavily used roadway by Idaho recreationist from the Treasure Valley to Central Idaho.

DESCRIPTION OF CONCESSION AREA

Suitability of the proposed marina concession area will be determined by considering existing use patterns, currently available facility, and expressed public desire. It is the responsibility of the proposal respondent to be knowledgeable of the advantages and disadvantages of any proposed site.

MINIMUM SERVICES REQUIRED

Respondents must be prepared to provide, at the Respondent's sole expense, the following minimum levels of service/operation:

- A temporary building/structure suitable for the business need of the proposed operation. Type, size, and final location to be negotiated and approved by IDPR;
- A resale/merchandise program which provides park visitors recreational gear, personal items and other items required or desired by outdoor recreationists;
- A fuel sales station to serve local boaters and recreationists;
- Long and short-term slip rentals for boaters of Lake Cascade;
- Marine pump out facilities for boaters of Lake Cascade; and
- A parking plan, designed to accommodate the anticipated additional users to the park to prevent

over-use of existing parking facilities.

Respondents may propose recreational services that exceed the minimums listed above. The furnishing of additional services will be a consideration in the evaluation of proposals.

A Respondent may submit more than one proposal, each with differing opportunities and options.

MINIMUM QUALIFICATIONS

All parties submitting proposals must demonstrate the following minimum qualifications for their proposal to be considered:

1. A verifiable work history of no less than five (5) years in business activities that involve providing products or services to the public.
2. A verifiable work history of no less than two (2) years in overseeing or directing, at the general manager or owner level, a business which provides products or services to the public.
3. A verifiable work history of no less than five (5) years of providing outdoor recreation associated services.

TERMS AND CONDITIONS OF CONTRACT

Please reference the attached State of Idaho, Department of Parks and Recreation Large Concession Agreement, which contains the standard terms and conditions of the agreement.

Respondents may form partnerships and offer joint proposals, but the concession contract must be with one entity that takes overall responsibility for the venture. All partnerships and cooperative agreements must be identified as such in the proposal. Additionally, if the partnership or cooperative agreement intends to create a new business entity with overall responsibility for the venture, the proposal must designate the “primary” partnership entity to be evaluated for meeting the minimum qualifications, and for providing the financial and credit reporting requested on page 10.

In addition to the standard terms and conditions, the following terms will also be incorporated into the IDPR Large Concession Agreement. Any proposed deviations from the standard terms and conditions or the terms listed below must be stated in the proposal and may require additional review and approval.

- All buildings, facilities, lands, utilities, equipment provided to the concessionaire are provided in “as is” condition.
- Concessionaire must assume all utility and day-to-day maintenance costs including solid waste (garbage) removal associated with operation of the concession area.
- The Respondent must also propose a system of financial compensation to IDPR that includes, a percentage of Respondent’s gross revenue from retail and fuel sales, a percentage of Respondent’s gross revenue from all recreation equipment rentals, and any other compensation deemed appropriate. It is the responsibility of the Respondent to make this proposal. The Respondent may, at his/her discretion, suggest that a portion of this compensation take the form of major maintenance work, new development, or services to the Park/Department to offset Park/Department budget costs. Proposals which do not include a realistic plan for compensation to IDPR will not be considered. A plan increasing compensation to IDPR as gross revenue increases will be ranked higher.
- If the Respondent proposes to sell alcohol on the premises this must be stated in the proposal – types of alcohol and manner of sale, i.e. with food, or retail sale.
- Industrial and manufacturing enterprises are prohibited. Storage of solid waste, toxic or hazardous materials is prohibited on the premises except as needed for the operation of the facilities.

IDPR reserves the right to amend the standard terms and conditions, or to require additional special terms and conditions, as necessary to address needs identified in negotiation of the concession agreement with the selected Respondent.

ADDITIONAL TERMS OF CONTRACT

IDPR Board policy requires the following: “***Comprehensive Insurance Coverage and Hold-Harmless Clause*** – Each concession lease shall contain provisions requiring the concessionaire to acquire and maintain throughout the lease term comprehensive general liability insurance in amounts recommended by the Office of Risk Management. The policy shall name the Department as an additional insured. Each concession lease shall contain a provision that the concessionaire will indemnify, hold harmless and defend the Department against all claims, demand, damages, costs, expenses, or liability costs arising out of the operation or maintenance of the concession premises.”

See the attached Standard Concession Agreement, § 12, for specific insurance requirements. In addition to the insurance requirements in the Standard Concession Contract, the concessionaire will be required to name the United States Bureau of Reclamation as an additional insured on its insurance policy.

PRE-PROPOSAL CONFERENCE AND TOUR OF FACILITIES

A non-mandatory pre-proposal conference will be held at Lake Cascade State Park on September 1, 2021, at 10:00 am (MT). This will be your opportunity to ask questions of IDPR staff. All parties interested are invited to participate by attending the conference. Those choosing to participate must pre-register by contacting either by phone or email the RFP Lead. Parties interested are asked to register by August 30, 2021, at 3:00 pm (MT). Any oral answers given by IDPR during the pre-proposal conference are unofficial and will not be binding on the IDPR. Conference attendance is at the participant’s own expense.

PROPOSAL FORMAT/REQUIREMENTS

These instructions describe the format to be used when submitting a proposal. The format is designed to ensure a complete submission of information necessary to analyze and evaluate submitted proposals. All the information requested must be provided for a proposal to be considered. There is no intent to limit the content of proposals. Respondents may provide additional information if they wish.

Cover Letter

The proposal must include a cover letter on official letterhead of the Respondent; with the Respondent’s name, mailing address, telephone number, facsimile number, e-mail address, and name of Respondent’s authorized signer. The cover letter must identify the RFP Title, and must be signed by an individual authorized to commit the Respondent to the work proposed. In addition, the cover letter must include:

Identification of the Respondent’s corporate or other legal entity status. Respondents must include their tax identification number. The Respondent must be a legal entity authorized to do business within the state of Idaho with the legal right to contract.

A statement indicating the Respondent’s acceptance of and willingness to comply with the requirements of the RFP and attachments thereof, including but not limited to the IDPR Large Concession Agreement terms and conditions. Idaho State Park and Recreation Board Policy specifies a standard term of no more than ten years for concession agreements. Please provide any comments you have about the term of this

agreement under your proposal, including whether it is acceptable and, if required, what the shortest contract term you will accept is.

A statement of the Respondent's compliance with affirmative action and equal employment regulations.

A statement that Respondent has not employed any company or person other than a bona fide employee working solely for the Respondent or a company regularly employed as its marketing agent, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor or a company regularly employed by the Contractor as its marketing agent, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the Contract. The Respondent must affirm its understanding and agreement that for breach or violation of this term, the State has the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price the amount of any such fee, commission, percentage, brokerage fee, gifts or contingencies.

A statement naming the firms and/or staff responsible for writing the Proposal.

A statement affirming the Proposal will be firm and binding for ninety (90) calendar days from the Proposal opening date.

A statement that the Respondent warrants that it does not knowingly and willfully employ persons who cannot legally work in this country; it takes steps to verify that it does not hire persons who have entered our nation illegally or cannot legally work in the United States; and that any misrepresentation in this regard or any employment of persons who have entered our nation illegally or cannot legally work in the United States constitutes a material breach and will be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and/or termination of its contract.

Executive Summary

Include an executive summary in the Proposal providing a condensed overview of the contents of the Proposal demonstrating an understanding of the services to be performed.

Experience

Describe in detail your knowledge and experience in providing services like those required in this RFP. List employment/business information for at least five (5) years, beginning with present employment/business providing name and address of the employer/business; telephone number; exact title of position or indicate if self-employed; dates of employment/operation; description of duties, responsibilities, nature of business, and so on; and number of people supervised/employed.

References

List three persons who are not related to you and have definite knowledge of your qualifications and fitness for the concession opportunity for which you are applying. Please provide name, address, phone number, and business/occupation.

Financials

Respondents are required to provide a D&B Comprehensive Insight Plus credit report or Experian Profile Plus report (Credit Report), indicating the Respondent's current credit score, with the Proposal submission. The Respondent should stamp or write "Trade Secret" or "Confidential" on each page of the Credit Report information that it does not want released. The information will be held in confidence to the extent that law allows. Credit Report must be current and have been established within thirty (30) calendar days of the Proposal closing date.

Credit Reports must be for the exact organization submitting the Proposal as identified on the cover letter. The Credit Report cannot be combined or consolidated with the information from any entity other than the company submitting the Proposal. If the Respondent's name on the Proposal does not match the name on the Credit Report, it will not be accepted, and the Respondent will be found non-responsive.

The (M) Mandatory elements of this section are two-fold: The Respondent must provide a credit score on one of the named reports AND the report provided in response to the RFP must demonstrate a CSC (credit score class) rating of 1 – 3 or a CRS (credit ranking score) rating of 26 – 100.

Failure to provide one of the named reports (or failure to provide one of the designated credit scores) will result in a finding that the Respondent is non-responsive.

In addition, A company receiving a CSC rating of High risk (5) or High Medium risk (4) of experiencing financial stress and delinquent payments will not be considered for Contract award.

CSC of 1 = Low Risk
CSC of 2 = Low Medium Risk
CSC of 3 = Medium Risk
CSC of 4 = High Medium Risk
CSC of 5 = High Risk

A company receiving a rating of High risk (0-10) or High Medium risk (11-25) of experiencing financial stress and delinquent payments will not be considered for Contract award.

CRS of 76-100 = Low Risk
CRS of 51-75 = Low Medium Risk
CRS of 26-50 = Medium Risk
CRS of 11-25 = High Medium Risk
CRS of 0-10 = High Risk

Proposed Concession Operation Plan

The proposed Operation Plan must address all the following minimum service requirements. Keep in mind, the evaluators will be scoring your Proposal based on the methodologies proposed and the completeness of the response to each item listed below:

1. Purchase, placement and utilization of the building as an outdoor recreation-based business benefitting both park and area recreationists.
2. Operation of the retail store providing personal and food items, souvenirs, appropriate rental equipment, and so on that may be needed or utilized by park visitors or area recreationists.
3. Rentals of powered and non-powered watercraft, if proposed.
4. Purchase, placement, and utilization of docks.
5. Purchase and operation of a fuel sales station to serve local boaters and recreationists.
6. Compatibility of overall operations with park operations.
7. Operating plan which addresses all aspects of the proposed program; including staffing levels, hours of operation, marketing strategy to achieve desired usage levels, measures to be taken to ensure customer satisfaction, actions to achieve Americans with Disabilities Act compliance and a projected budget which includes anticipated costs and revenue for the first five (5) years of operation.

Provide a statement that gives a comprehensive description of your proposed concession operation.

Describe in detail how you would operate the concession. Be as complete as possible, listing intended schedule of operations and safety inspections, any changes that would be made to the facility over time and anything else that is pertinent to the operation.

How will your proposal meet the following objectives?

1. Stimulate the local tourism economy and make the Cascade, Idaho area a more attractive destination for travelers?
2. Enhance Lake Cascade State Park for visitors to the park?

The concession operator will be responsible for all utility costs and the costs of day-to-day maintenance in the concession area. Do you accept this responsibility?

Does your concession proposal include the sale of alcohol? Would this include the retail sale of beer or wine or would it be limited to sale of alcohol with food? If applicable, please explain how alcohol would be sold under your proposal.

Operating Information

1. Length of Seasons (months) _____
2. Approximate dates of operation by season as applicable _____ through _____
3. Hours of operation by season: _____
4. Do you (signer of offer) plan to personally supervise the operation?
Yes ___ No ___
5. Will there be a person serving as manager?
Yes ___ No ___
6. If "Yes" to #5, please indicate the manager's areas of responsibilities and extent of authority.
7. Indicate the number of employees (indicate the number that you project to be seasonal, permanent, or full-time) estimated to be hired and project wage schedule.

What amounts of insurance coverage for public and employee liability, fire, and other risks will you provide? Include the proposed insurance carrier for each,

Safety and Sanitation: Please provide a statement regarding safety and sanitation programs, inspections, including any plans for training in these areas, both formal and on-the-job.

All applicants must attach a detailed outline of a maintenance program to be developed to provide proper maintenance of all equipment, furnishings, buildings, fixtures, and grounds of the concession area.

Key Personnel and Qualifications

Provide a list of key development, construction, management, customer service and other personnel to be used in the fulfillment of this Concession, to include all pertinent contact information if known.

Subcontractors

If you intend to utilize subcontractors, describe the extent to which they will be used to comply with Concession requirements. Include each position providing service and provide a detailed description of how the subcontractors are anticipated to be involved under the Concession. Include a description of how the Respondent will ensure that all subcontractors and their employees will meet all Scope of Work requirements.

Proposed Financial Arrangements

Provide projected income and cash flow statements for five (5) years, including accompanying schedules of sales (by category), cost of sales (by category), general selling, and administrative expenses. The assumptions on which the projections are based must be explained.

What is your estimate of the cost of financing the proposed operation?

Existing buildings and structures	\$
Construction or rehabilitation costs	\$
Equipment	\$
Inventory	\$
Working Capital (other than inventory)	\$
TOTAL COST	\$

Proposed Financial Compensation

Provide a proposed system of financial compensation to IDPR that includes, a percentage of gross revenue from retail and gas sales, a percentage of gross revenue from recreation equipment rentals, and any other compensation deemed appropriate. It is the responsibility of the Respondent to make this proposal. The Respondent may, at his/her discretion, suggest that a portion of this compensation take the form of major maintenance work, new development, or services to the Park/Department to offset Park/Department budget costs.

Please describe in detail what payments in cash and/or in-kind services you propose to make to the State of Idaho, IDPR.

PROPOSAL EVALUATION PROCESS

A panel assembled by IDPR will review all submitted proposals. IDPR's evaluation of proposals is informal, non-binding, and the score given to a response does not confer any rights upon the Respondent. Points will be awarded based on the following criteria.

1. Does the proposal meet the minimum qualifications listed above? Pass/Fail no points
2. Innovativeness and thoroughness of proposal to meet or exceed IDPR objectives (maximum 40 points)
3. Compensation to IDPR (maximum 25 points)
4. Evaluation of Financial Proposals (maximum 10 points)
5. Technical Qualifications and Experience of the firm (maximum 25 points)

IDPR reserves the right to reject any/all proposals if, in the opinion of IDPR, the proposals do not provide the intended services in a manner acceptable to IDPR. IDPR reserves the right to enter discussions and negotiations with any/all submitters if, in the opinion of IDPR, a proposal has merit but requires further clarification, discussion, or negotiations.

SCHEDULE OF EVENTS

1. Request for Proposal is released.....August 24, 2021
2. Pre-Proposal Conference Registration..... August 30, 2021
2. Pre-Proposal Conference..... September 1, 2021
3. Deadline for submitting proposal..... September 20, 2021

4. Review of Proposals by Evaluation Committee..... September 21, 2021
5. Potential submission to IDPR Board for approval.....November 2021

It is the intention of IDPR to enter into an agreement for the operation of the concession area beginning with the 2022 summer use season. The actual timing may depend upon required approvals, the desires and needs of the private operator, the nature of the proposal accepted, the time frame required to construct the facility, and the time frame necessary for final approval by the United States Bureau of Reclamation. Approval by the Bureau of Reclamation will require compliance with the requirements of the National Environmental Policy Act (NEPA). Concessionaire will be responsible for all costs associated with preparation of an environmental assessment or, if needed, an environmental impact statement.

INCLUDED DOCUMENTS

The following additional documents are included in the RFP package provided to prospective Respondents.

1. Lake Cascade State Park Map
2. Lake Cascade State Park CY15-CY2020 Visitation, and FY17-FY2021 Revenue
3. State of Idaho, Department of Parks and Recreation Large Concession Agreement

SUBMISSION INFORMATION

Proposals may be submitted manually or electronically. The Proposals must be addressed to the RFP Lead and clearly marked "LAKE CASCADE STATE PARK MARINA FACILITY CONCESSION PROPOSAL." All responses to this RFP are to be received no later than 3:00 p.m. (MT) on September 20, 2021. Please direct questions and responses to this RFP to the following RFP Lead:

Blake Packer, Park Manager
Lake Cascade State Park
100 Kelly's Parkway
PO Box 709
Cascade, ID 83611
Phone: 208-382-6544

Idaho Department of Parks and Recreation							
Lake Cascade State Park Revenue by Classification							
FY 2019 through FY 2021							
Revenue Classification	2017	2018	2019	2020	2021		% Change 2021 vs. 2017
01-CAMPING	\$ 347,767	\$ 358,257	\$ 336,809	\$ 338,138	\$ 539,857		55%
05-RESERVATION FEE	40,528	44,651	50,165	50,095	70,767		75%
06-CANCELLATION FEE	8,409	9,482	12,247	11,870	16,576		97%
07-MODIFICATION FEE	1,850	1,919	2,730	2,190	1,539		-17%
09-MVEF-ANNUAL	1,404	1,889	2,093	1,968	75		-95%
10-MVEF-DAILY	79,368	88,561	75,879	82,668	133,898		69%
38-CABINS AND YURTS RENTALS	15,158	11,368	11,375	7,000	7,025		-54%
02-RESALE ITEMS	-	-	684	3,798	5,930		
04-FIREWOOD PRODUCTS	10,363	11,034	9,439	10,474	12,994		25%
2735 - CONCESSION LEASES	6,004	7,907	9,166	10,670	17,912		198%
01-PARK DONATIONS	1,677	2,499	2,128	2,910	3,251		94%
	\$ 512,529	\$ 537,568	\$ 512,716	\$ 521,781	\$ 809,824		58%

Lake Cascade State Park
CY2015 - CY 2020 VISITATION

5yr Average Increase

Day Use: 23%
Camping: 14%
Combined Usage: 21%
Occupancy: 16%

Day use counters malfunctioned in 2019, 2018 reported

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Resident Day Use	223,331	317,486	562,205	611,027	611,027	530,085
Non-Resident Day Use	14,255	20,265	35,885	39,002	39,002	33,835
Total Day Use	237,586	337,751	598,090	650,029	650,029	563,920
Resident Camping	46,811	62,602	55,961	73,712	58,951	72,791
Non-Resident Camping	3,738	6,379	8,866	8,361	7,550	13,323
Total Camping	50,549	68,981	64,827	82,073	66,501	86,114
Total Nights Stayed	16,532	17,801	18,022	18,659	17,502	20,090
Combined Resident Usage	270,142	380,088	618,166	684,739	669,978	602,876
Combined Non-Resident Usage	17,993	26,644	44,751	47,363	46,552	47,158
Overall Combined Usage	288,135	406,732	662,917	732,102	716,530	650,034

Occupancy Rate

293 Campsites, 1 Group Camp,
1 Yurt Group

<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
20.66%	23.78%	24.05%	28.17%	28.13%	41.92%



LARGE CONCESSION AGREEMENT

No. _____

IDPR Name and Address: Division of Operations
Idaho Department of Parks and Recreation
PO Box 83720
Boise ID 83720-0065

Concessionaire Name and Address: Lessee Name
Address 1
Address 2
City, State, Zip

Term: Commencement: January 1, _____
Expiration: December 31, _____

Concession Location: **Lake Cascade State Park. For specific location of Concession Premises see Attachment B.**

Required Dates of Operation: _____ to _____, annually.

Rent: Initial rent is _____ % of annual gross receipts.
See section 7 of Attachment A.
Rent is due on or before _____ of each year of this Agreement.

Agreement: **IDPR, in consideration of the rent paid and the covenants, conditions and restrictions hereinafter set forth in this Agreement (including all Attachments), does hereby grants to Concessionaire and Concessionaire accepts from IDPR, the privilege to use and occupy the designated Premises for the purpose of providing the required and optional concession services and facilities as set forth in this Agreement and in Attachment C, *Special Terms and Conditions*.**

Liability Insurance: See Section 12, Attachment A.

Index: DATA PAGE
SIGNATURE PAGE

ATTACHMENT A – GENERAL TERMS AND CONDITIONS
ATTACHMENT B – CONCESSION PREMISES
ATTACHMENT C – SPECIAL TERMS AND CONDITIONS
ATTACHMENT D – GROSS RECEIPTS REPORTING FORM

This Agreement, including the Data Page, Signature Page and all Attachments (which are incorporated herein in their entirety) is made and entered into by and between IDPR and Concessionaire.

IDPR SIGNATURE

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

SIGNED: IDAHO DEPARTMENT OF PARKS AND RECREATION

BY: Susan Buxton, its Director

State of Idaho)
 :s
County of Ada)

On this _____ day of _____, in the year _____, before me, a Notary Public in and for said State, personally appeared Susan Buxton, known to me to be the director of the Idaho Department of Parks and Recreation, that executed the within instrument, and acknowledged to me that the Idaho Department of Parks and Recreation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public for IDPR of Idaho
Commission expires:

CONCESSIONAIRE SIGNATURES

By signing, Concessionaire/s verify receipt, review, and acceptance of all attachments and terms and conditions.

x _____

x _____

(Concessionaire)

(Concessionaire)

STATE OF _____)

:s

COUNTY OF _____)

On this _____ day of _____, in the year _____, before me, a Notary Public in and for said State, personally appeared _____

_____ known to me to be the person(s) who executed the instrument as Lessee, and
acknowledged to me that such person(s) executed the same.

**IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above
written.**

Notary Public
Commission expires:

Attachment A

General Terms and Conditions

1. Definitions.

1.1 Agreement. This written agreement, including the Agreement Data Page, the Signature Page, Attachment A, *General Terms and Conditions*, Attachment B, *Concession Premises*, Attachment C, *Special Terms and Conditions*, and Attachment D, *Gross Receipts Reporting Form*.

1.1.1 Incorporation of Plans and Agreements. The term "Agreement" incorporates by reference any concession plan, park master plan, lease with the United States or other Park landowner, and/or management agreement for the Park, as each is amended from time to time, and each of which is incorporated by reference into this Agreement.

1.2 Concession. The grant of the right by IDPR to use the Premises to undertake and profit by a specified activity, and any and all business activities and commercial transactions undertaken by Concessionaire on the Premises..

1.3 Concessionaire. The person or entity to which concession rights are granted by this Agreement.

1.4 Improvements. Buildings, structures, fixtures, appliances, sidewalks, landscaping, docks, pilings, or other additions to the Premises, whether permanent, semi-permanent, or short-term. For the purposes of this Agreement, fixtures shall include all windows, doors, awnings and all apparatus, equipment, or articles used to supply heat, gas, air conditioning, water, light, power, refrigeration, cooking, and ventilation that are physically attached to buildings, structures, or improvements existing upon the Premises.

1.5 IDPR. The Idaho Department of Parks and Recreation, an executive department of the State of Idaho, overseen and administered by the Idaho Park and Recreation Board.

1.6 Premises. The real property described in Attachment "B" upon which the rights granted by this Agreement may be exercised.

1.7 Park. The State Park or other IDPR-managed property upon which the Premises is located.

1.8 Park Manager. The person, as designated by the Director of IDPR, responsible for administering and supervising the state park or IDPR-managed land where the Premises is located. IDAPA 26.01.20.010.26.

2. **Authority.** IDPR is authorized by Idaho Code §§ 67-4204, 67-4210, and 67-4223(7) to grant concessions to proper and desirable parties to provide places of refreshment or to provide recreational facilities within state parks. IDAPA 26.01.20.650 provides that no “person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the department without written permission or permit from the [Idaho Park and Recreation Board].”
3. **Operations.** Concessionaire shall provide the required facilities and services each year of the Agreement during the dates specified on the data page.
 - 3.1 Concessionaire is encouraged to be open for service before and after the required dates to better serve Park visitors, provided, that concession operations occurring outside the dates specified on the data page require approval of the Park Manager. IDPR reserves the right to require changes in the dates and times of required and optional services to ensure adequate service to the public and avoid conflict with other authorized uses occurring within the Park. Concessionaire shall provide IDPR with an operation schedule indicating times of operation.
 - 3.2 The Park Manager may require the temporary cessation or other changes in Concessionaire’s operations when, in the Park Manager’s discretion, such changes are necessary to protect Park resources, to protect the health, safety, and welfare of Park visitors, to avoid conflict with other authorized uses occurring with the Park, or in the event of adverse weather conditions.
 - 3.3 Concessionaire, its employees and representatives shall conduct themselves in such a manner as to promote a positive image for the concession business, the Park, and IDPR.
 - 3.4 Concessionaire shall keep the Premises in a clean and sanitary condition at all times.
4. **Premises.** Concessionaire’s operations shall be limited to the Premises identified in Attachment B. Within the designated Premises Concessionaire shall have the exclusive privilege of providing the specified concession services and facilities.
 - 4.1 **Concessions Outside Premises.** Nothing herein shall be construed as granting to Concessionaire the privilege of providing concession services and facilities on any state park lands outside the Premises, and IDPR reserves the right to grant concession privileges to other persons on those portions of the Park that are outside the Premises; whether or not those concession services and facilities are similar to those operated by Concessionaire, provided, that in the event IDPR determines to grant concession privileges in those portions of the Park that are outside the Premises and similar to those required services and facilities identified in Attachment C, *Special Terms and Conditions*, then Concessionaire shall have the right of first refusal for any such concession agreement offered by IDPR under such terms and conditions as IDPR may then prescribe.

4.2 No Right of Exclusion. Concessionaire acknowledges that the Concession Premises are State Park lands open to public use and that IDPR reserves the right to authorize others to use the Concession Premises, excepting facilities owned by, or leased to, the Concessionaire, so long as such uses do not unreasonably interfere with Concessionaire's business operations. All services and facilities provided by Concessionaire must be made available to the public; no private exclusive recreational or residential uses of Concessionaire's facilities is allowed.

4.3 As-Is. Concessionaire accepts the Premises in its present condition with all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, regarding the suitability of the Premises for Concessionaire's use. Concessionaire acknowledges that IDPR shall have no duty to maintain, repair, or improve the Premises or otherwise make them suitable for Concessionaire's use. If any portion of the Premises is destroyed, IDPR shall have no obligation to replace or restore such portion of the Premises.

5. Term. The term of this Agreement shall be specified on the Data Page.

5.1 Renewal. IDPR does not grant Concessionaire the right to renew this Agreement for an additional period of time. However, if IDPR, at the expiration of this Agreement, desires to lease the Premises again, and if IDPR, in its sole discretion, concludes that Concessionaire's performance of this Agreement has been satisfactory, and Concessionaire is not in default or breach as set forth in Section 15 of this Agreement, then IDPR may, but is not required to, grant Concessionaire the first right to accept a new agreement under such terms and conditions as IDPR may then prescribe and under the following conditions.

5.1.1 Concessionaire shall first notify IDPR in writing of its desire to renew this Agreement sixty (60) days prior to its expiration. If IDPR desires to offer Concessionaire a new Agreement, it shall notify the Concessionaire in writing of the terms and conditions that IDPR may then desire to prescribe. Mailing to the last known address of Concessionaire shall complete notification to Concessionaire. Concessionaire shall then have thirty (30) days from the date of that mailing to notify IDPR of its acceptance of the terms and conditions prescribed by IDPR. Acceptance shall be complete only if received by IDPR in writing and within the time prescribed.

5.1.2 Section 5.1 shall not apply in the event IDPR terminates this Agreement for cause or in the event of early termination of this Agreement by Concessionaire.

5.1.3 Section 5.1 shall not apply to any concession agreement offered by IDPR more than twelve (12) months after the expiration of this Agreement.

5.2 Holdover. If Concessionaire holds over after the expiration of the term of this Agreement with the express or implied consent of IDPR, such holding over shall be deemed to be a month- to-month tenancy of the Premises otherwise subject to the terms of this Agreement. During such month-to-month tenancy, Concessionaire shall pay monthly rental in the amount of one-twelfth (1/12) the prior year's annual rental, as calculated pursuant to Section 7 herein, or fifteen percent (15%) of that month's gross receipts, whichever is greater. Payment shall be made on or before the first day of each month in the manner set forth in Section 7.

6. Going Concern. Blue Sky, Business Values of Concession Operations. Concessionaire's rights and privileges are limited to those rights and privileges specifically granted in this Agreement and Concessionaire's business operations upon the Premises shall not, as between IDPR and Concessionaire, accrue any value for going concern, good will, blue sky, business values, trade name, or other intangible property.

7. Rental. Concessionaire shall pay as rent to IDPR for each year in the specified term of this Agreement that percentage (%) of gross receipts as specified on the Data Page. Payment for each year shall be made on or before the date specified on the Data Page—if such date falls after the expiration or termination of this Agreement, the obligation to pay such rent shall survive such termination or expiration. Payment shall be made to the order of the Idaho Department of Parks and Recreation, and mailed to the Operations Divisions, Idaho Department of Parks and Recreation, P.O. Box 83720, Boise, Idaho 83720-0065.

7.1 Late payments. Failure to pay by the above-specified due date will constitute a breach of this Agreement absent a written addendum to this Agreement signed by both parties. Late Payments shall accrue interest at the legal rate of interest as set by the State Treasurer for the accrual of interest on judgments until paid. Interest will begin to accrue the day after payment is due.

7.2 Reporting of Gross Receipts. Gross Receipts shall be reported to IDPR on the attached *IDPR Concessionaire Gross Receipts Reporting Form* (Attachment D). The Form shall be submitted to IDPR at the time of each payment. The Form shall be accompanied by an appropriate certification that all gross receipts during the yearly accounting period have been duly and properly reported to IDPR.

7.3 Definition of Gross Receipts. Gross receipts, as used in this Agreement, shall include all monies and anything else of value received by Concessionaire from the sale, rental, or provision of goods, services, or facilities, or from any other business whatsoever conducted by Concessionaire on the Premises, whether such goods, services and activities are required by this Agreement or optional, excepting an allowance of deductions for sales or excise taxes imposed by any governmental entity and collected by Concessionaire.

- 8. Record-Keeping.** Concessionaire shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession in a manner acceptable to IDPR. IDPR shall have the right to examine daily sales records kept on the Premises. IDPR shall have the right to examine all other books and records, including but not limited to inventory records and certified State of Idaho Sales Tax Return Records, provided that IDPR shall treat such records as confidential and not divulge them to third parties except in the event of litigation. IDPR shall examine books and records only upon reasonable notice and only at such times as will not unreasonably interfere with Concessionaire's operation of the concession. IDPR further shall have the right to examine all such books and records at any time within two (2) years of termination or expiration of this Agreement, or until such time that a final audit is concluded as to Concessionaire's business under this Agreement, whichever event occurs first.
- 8.1** Concessionaire shall install and maintain inventory, bookkeeping, and accounting methods, and methods of collection of monies, which shall permit IDPR to accurately compute the gross revenue of Concessionaire.
- 8.2** Concessionaire shall install and maintain such cash register equipment as will provide a continuous registering tape and show sales breakdown as to major categories of items sold. Concessionaire shall also maintain at its own expense a sales journal, cash disbursement journal, and general ledger.
- 9. Quality of Goods and Services.** Concessionaire shall engage in best business practices and strive to provide high-quality goods and services. All food items and food service, if any, provided by Concessionaire shall comply with the Rules of the Idaho Department of Health and Welfare governing Food Safety and Sanitation Standards for Food Establishments as enforced by the applicable municipal government or District Health Department. Copies of all permits, licenses and inspection reports issued by a municipal government or District Health Department shall be made available to the Park Manager. IDPR shall have the right to prohibit the sale of any item or to order the improvement of any service or equipment not satisfying the above requirements.
- 9.1** The Concessionaire shall serve the public courteously and efficiently. All services should serve to enhance IDPR's mission of improving the quality of life through outdoor recreation and resource stewardship. The Concessionaire shall cooperate with Park staff in providing interpretative service to the public and in promoting the Park and its programs. The Concessionaire shall present a positive image of the Park and provide accurate information of the Park and its programs. These requirements also apply to any employee, agent, or representative of the Concessionaire.
- 9.2** The Concessionaire shall not employ or retain in its services, or permit to remain upon the Concession Premises, any person declared by IDPR to be unfit for such employment or

otherwise objectionable. The Concessionaire and its employees are expected to maintain high standards of grooming and cleanliness, to the satisfaction of IDPR.

9.3 All employees of Concessionaire must wear a shirt or t-shirt with a logo clearly identifying them as employees of the Concessionaire and of a color and design distinguishing them from employees of the Department.

10. Control of Rates and Charges. Concessionaire agrees that any fees and all rates and prices charged by Concessionaire for goods, beverages, food, and services furnished or sold to the public may be subject to review and approval by IDPR. Concessionaire shall, by May 1 of each year, submit to IDPR for approval a list of the fees, rates, and prices proposed for the following operating season. Such submission shall also include all information necessary to determine the quality and quantity of goods, beverages, food, and services furnished or sold to the public. Prices charged by Concessionaire shall be reasonably related to the quality and quantity of the items sold, and consistent with prices charged by private businesses in similar situations for comparable facilities, services, and merchandise. If IDPR determines that any price is not so related, IDPR may order that the price be modified. IDPR may not require a modification in price that would prevent Concessionaire from realizing a reasonable profit on items sold. Concessionaire shall keep a schedule for such fees, rates, or prices posted at all times in a conspicuous place on the Premises.

11, Improvements. Concessionaire is granted the right to use those improvements, if any, included with the Premises as identified in Attachment B, *Description of Premises*. IDPR makes no warranty as to the suitability of such improvements for Concessionaire's use; all such improvements are leased to Concessionaire "as is." Concessionaire shall, at its own expense, maintain the Premises and all improvements thereon in clean, healthful, and safe condition, in accordance with applicable state, federal, and local government laws and regulations, including historic preservation laws and building code requirements, and in a condition harmonious in form, line, color and texture with the surrounding landscape and comparable to other improvements within the Park. If, after reasonable notice, Concessionaire fails to undertake repairs necessary to maintain such conditions, IDPR shall have the right to perform such maintenance or repairs and Concessionaire shall promptly reimburse IDPR for the cost thereof, provided that IDPR shall first give Concessionaire fifteen (15) days written notice of its intention to perform such maintenance or repairs to enable Concessionaire to perform such maintenance or repairs at its own expense.

11.1 Construction and Modification of Improvements. If the Concessionaire should undertake at its own expense any construction, alterations, or modification of the Premises, the Concessionaire shall submit, for the review and prior written approval of IDPR, all plans, drawings, and specifications. IDPR shall approve, reject, or require modifications of such plans within forty-five (45) days after submission of those plans to IDPR. Unless otherwise

agreed to in writing by IDPR prior to construction or modification, Concessionaire shall be responsible for all costs associated with the construction, alteration, or modification of improvements.

11.2 Emergency Repairs. In the event of any emergency such as vandalism, fire, wind, flooding, hail, or other event, which threatens damage to the Premises or harm to the public, IDPR may immediately act to respond to such emergencies and mitigate any potential damage to the Premises. IDPR shall notify Concessionaire of any emergency circumstances, action, or repair, and shall request that Concessionaire make further repairs necessitated by such emergency. Concessionaire shall reimburse IDPR for all reasonable repairs made pursuant to this emergency provision.

11.3 Liens. Concessionaire shall not allow or suffer any liens of any kind or nature to be effected on or enforced against the Premises or against any improvements thereon, including, but not limited to, any mechanics' liens or material suppliers' liens for any work done or materials furnished on the Premises at Concessionaire's instance or request. Concessionaire shall ensure that full payment is made for any and all materials joined or affixed to the Premises pursuant to this Agreement for any and all persons who perform labor on the Premises.

12. Insurance. Concessionaire shall obtain and maintain insurance at its own expense as required herein for the duration of this Agreement, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. Concessionaire shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Concessionaire shall not provide required or optional concession services or facilities or transact business on the Premises until satisfactory evidence of all required insurance is provided to IDPR.

12.1 All insurance, except for Workers Compensation, shall be endorsed to name the State of Idaho and the Idaho Department of Parks and Recreation as Additional Insureds. Concessionaire shall provide to IDPR a certified endorsement naming the State of Idaho and the Idaho Department of Parks and Recreation as Additional Insureds.

12.2 All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State.

12.3 If any of the liability insurance required for this Agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of this Agreement for a duration of twenty-four (24) months thereafter.

12.4 By requiring insurance herein, IDPR does not represent that coverage and limits will necessarily be adequate to protect the Concessionaire, and such coverage and limits shall not be deemed as a limitation on the Concessionaire's liability under the indemnities granted to the state.

12.5 Concessionaire shall maintain insurance in amounts not less than the following:

12.5.1 Commercial General Liability (CGL) with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

12.5.2 Automobile Liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Auto is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

12.5.3 Workers Compensation Insurance in amounts as required by statute in all states in which the contractor performs work, and Employers' Liability with a limit of \$100,000 Bodily Injury by Accident-each Accident, \$100,000 Bodily Injury by disease-each employee, \$500,000 Bodily Injury by Disease-policy limit.

12.5.4 Business property insurance covering all improvements, fixtures, and personal property of Concessionaire upon the Concession Premises. Policy limit shall be sufficient to cover the value of all Concessionaire-owned property upon the Concession Premises, and shall cover all risks to such property unless specifically and explicitly excluded.

13. Hold Harmless Agreement. Concessionaire shall indemnify, defend and save harmless IDPR and the State of Idaho, its officers, agents, and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of Concessionaire's negligent or wrongful performance, acts, or omissions under this Agreement or Concessionaire's failure to comply with any state or federal statute, law, regulation or rule.

13.1 Upon receipt of IDPR's tender of indemnity and defense, Concessionaire shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense

for IDPR, to begin fulfilling its obligation to indemnify, defend, and save harmless IDPR. Concessionaire's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of IDPR under this Agreement. However, if it is determined by a final judgment that IDPR's negligent act or omission is the sole proximate cause of a suit or claim, IDPR shall not be entitled to indemnification from Concessionaire with respect to such suit or claim, and IDPR, in its discretion, may reimburse Concessionaire for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 13.2.

13.2 Any legal defense provided by Concessionaire to IDPR under this section must be free of any conflicts of interest, even if retention of separate legal counsel for IDPR is necessary. Any attorney appointed to represent IDPR must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

14. Assignments, Sale of Interest, and Subleases. Concessionaire and/or any person or entity that owns a controlling interest in Concessionaire's ownership shall not assign or otherwise sell or transfer responsibilities under this Agreement or the concession operations authorized hereunder, or sell, or otherwise assign or transfer (including but not limited to mergers, consolidations, reorganizations or other business combinations) a controlling interest in such operations, this Agreement, or controlling interest in Concessionaire's ownership as defined herein, without the prior written consent of IDPR. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Agreement for which the Agreement may be terminated immediately by IDPR without regard to the procedures for termination set forth in Section 15, and IDPR shall not be obligated to recognize any right of any person or entity claiming an interest in this Agreement or claiming the right to own or operate the concession operations authorized hereunder.

14.1 Concessionaire shall advise the person or entity proposing to enter into a transaction described above that IDPR must be notified and the proposed transaction is subject to review and approval by IDPR. Concessionaire shall request in writing IDPR's approval of the proposed transaction and shall promptly provide IDPR all relevant documents related to the transaction, including all information necessary for IDPR to evaluate the fitness and ability of the prospective Concessionaire to carry out the terms of this Agreement in a manner satisfactory to IDPR.

14.2 IDPR in exercising its discretionary authority herein shall, among other matters, take into consideration the management qualifications of any individual or entity that would obtain an

interest in facilities or services authorized hereunder, the experience of any such individual or entity with similar operations, and the ability of any such individual or entity to operate the concession authorized hereunder in the public interest under the regulation of IDPR.

14.3 For the purposes of this section, the term “controlling interest” in Concessionaire’s ownership shall mean, in the instance where Concessionaire is a corporation or limited liability company, an interest beneficial or otherwise of sufficient outstanding voting securities or capital of Concessionaire so as to permit exercise of substantial managerial influence over the operations of the Concessionaire. In the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of Concessionaire sufficient to permit substantial managerial influence over the operations of Concessionaire shall constitute a controlling interest for purposes of this Agreement.

14.4 No mortgage shall be executed and no bonds or other evidence of interest in, or indebtedness upon the assets or proposed assets of Concessionaire, including this Agreement, shall be issued except for the purpose of installing, enlarging, or improving facilities and equipment for the accommodation of the public upon the Premises and then only with prior written consent from IDPR. In the event of default on such mortgage, encumbrance or other indebtedness or of other assignment or transfer, the creditor or any assignee thereof shall succeed to the interest of Concessionaire in such assets, if any, but shall not thereby acquire any operating right or privilege in or to the operation of the concession, or the Premises, pursuant to this Agreement, without the express prior written consent of IDPR, and any improvements so acquired shall remain subject to the terms of sections 16.2 and 16.3 herein. .

14.5 In the event that approved improvements are financed by any outside investors, Concessionaire shall disclose the identity of said investors to IDPR.

14.6 In the event that IDPR shall approve assignment of this Agreement to any other person or entity, Concessionaire shall pay to IDPR an amount equivalent to ten percent (10%) of the assignment price, minus the amount paid by the assignee for any buildings, improvements, appurtenances, and fixtures owned by Concessionaire existing upon the Premises.

14.7 Concessionaire shall not sublease any portion of the Premises, including Concessionaire-owned improvements or facilities thereon, to any other person or entity.

15. Termination for Breach.

15.1 Violations. Each term and condition of this Agreement is material, and default as to or breach of any of these terms by Concessionaire shall be grounds for termination of the entire Agreement by IDPR. Any material violation by Concessionaire of any rule or regulation now

in force, or hereafter adopted by the Board, shall be grounds for termination of this Agreement. The determination of whether a violation constitutes a material violation subjecting this Agreement to termination shall rest solely in the discretion of IDPR.

15.1.1 A material violation of this Agreement shall be deemed to occur if Concessionaire files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or if involuntary proceedings under any bankruptcy act or insolvency act be instituted against Concessionaire or if a trustee or receiver is appointed of any property of Concessionaire.

15.2 Violation of Land and Water Conservation Fund Act Requirements. All concession operations must comply with the provisions of the Land and Water Conservation Fund Act (LWCF) and implementing guidelines (36 Code Federal Regulations 59), including, but not limited to, provisions requiring the leased area to be maintained as a public outdoor recreation facility, not as a private area; the provision requiring fees to be competitive with fees for similar private facilities; and compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act), with such compliance indicated by signs posted in visible public areas, statements in public information brochures, etc. Noncompliance with LWCF requirements shall be deemed a material violation of this Agreement and cause for termination.

15.3 Notice of Violation. IDPR shall provide written notice to Concessionaire of any Agreement or rule violation and shall allow Concessionaire thirty (30) days from service of the notice to cure the violation.

15.4 Notice of Termination. Agreement or rule violations which have not been cured within thirty (30) days of receipt of the notice of violation shall subject the Agreement to termination. Notice of termination shall be in writing and shall be effective upon service.

15.5 Administrative Fees. Prior to the termination, Concessionaire may elect to pay the Department's administrative costs associated with enforcing the terms of this Agreement, and the IDPR may agree to accept payment of such costs in lieu of termination for each day that such violation went uncorrected over and beyond the thirty day grace period provided in section 15.3 of this Agreement. IDPR and Concessionaire agree that such administrative costs are fixed at fifty dollars (\$50) for each day that the violation goes uncorrected, up to a maximum of one thousand, five hundred dollars (\$1,500).

15.6 Immediate Termination; No Opportunity to Cure. IDWR shall not be required to provide advance written notice or a cure period and may immediately terminate this Agreement in

whole or in part if IDWR, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis.

15.7 Reinstatement. Not later than thirty (30) days following the termination of this Agreement for cause, the Concessionaire may submit to the IDPR a written request for reinstatement setting forth good cause why the Agreement should be reinstated. At the Director's discretion, the Agreement may be reinstated upon the payment of a reinstatement fee of four hundred dollars (\$400), and upon such other terms and conditions as the Director deems appropriate.

15.8 Termination by Concessionaire. Concessionaire may terminate this Agreement at any time by giving one year written notice to IDPR of its intent to terminate.

16. Concessionaire's Obligations and Rights Upon Termination or Expiration. At the expiration or early termination of this Agreement, Concessionaire shall, within thirty (30) days thereafter, remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR all personal property belonging to Concessionaire, and restore the Premises to as good a condition as the same were in at the date of this Agreement. If removal and restoration is not completed within thirty (30) days after termination, IDPR may, at its election, perform the work and bill Concessionaire for the costs thereof. Concessionaire shall pay such bill within thirty (30) days of receipt.

16.1 Payment of Rent Due. Upon termination, the annual rent for the year in which termination occurs (i.e., the specified percentage of gross receipts received up to the date of termination), as well as any unpaid annual rent from previous years, shall be considered at once due and payable by Concessionaire without notice by IDPR. Concessionaire's obligation to pay all rent due under this Agreement shall survive termination or expiration of this Agreement until all rent is paid in full.

16.2 Improvements and Fixtures. Unless agreed otherwise in writing prior to construction of improvements by Concessionaire, upon expiration of this Agreement or early termination of this Agreement for cause, all improvements and fixtures constructed or installed by Concessionaire during the term of this Agreement shall be considered the property of IDPR, with no further compensation due to Concessionaire, regardless of whether IDPR intends to continue similar business operations upon the Premises or offer an opportunity to a successor concessionaire to operate a similar business upon the Premises.

16.3 Option to Require Removal. At IDPR's option, Concessionaire shall, upon the expiration or termination of this Agreement, be required to remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR, those improvements and fixtures constructed or installed by Concessionaire that are not acceptable to IDPR. If IDPR elects to require Concessionaire to remove any improvements or fixtures, Concessionaire shall do so and restore the

Premises to as good a condition as the same were in at the date of this Agreement. If removal and restoration is not completed within thirty (30) days after termination, IDPR may, at its election, perform the work and bill Concessionaire for the costs thereof.

Concessionaire shall pay such bill within thirty (30) days of receipt.

16.4 Bankruptcy. If, upon bankruptcy or insolvency of Concessionaire, IDPR does not elect to terminate this Agreement pursuant to Section 15.1.1, any use, assignment, or disposition of buildings, improvements, appurtenances, and fixtures existing upon the Premises by a trustee or receiver shall be subject to the terms of this Agreement.

16.5 Going Concern. Blue Sky, Business Values. Concessionaire waives any claim that it is entitled to compensation for going concern, good will, blue sky, business values, trade name, or other intangible property upon expiration or termination of this Agreement, regardless of whether IDPR intends to continue similar business operations upon the Premises or offer an opportunity to a successor concessionaire to operate a similar business upon the Premises.

17. Repair and Maintenance Fund. Concessionaire shall maintain a repair and maintenance fund into which one percent (1%) of Concessionaire's annual gross revenue shall be deposited. This fund shall remain Concessionaire's property, shall be accounted for separately from Concessionaire's other funds, and may only be spent with the consent and approval of IDPR, and will be accessible to IDPR on demand in the event Concessionaire fails to maintain the Premises as specified in this Agreement.

18. Equipment. Except as otherwise specified in the Special Term and Conditions, Concessionaire at its own expense shall provide the Premises with all equipment necessary for the services required under this Agreement. The quality and maintenance of such equipment shall comply with all applicable laws and regulations, including but not limited to the rules of the Idaho Department of Health and Welfare governing Food Safety and Sanitation Standards for Food Establishments.

19. Signs and Advertising. Concessionaire shall not erect any sign on the Premises or in the vicinity thereof, without obtaining the prior written approval of IDPR. No signs advertising alcohol or containing brand names are to be displayed on the exterior of any building, or displayed in such a manner as to be visible from outside such building, without the prior written approval of IDPR.

20. Business Name. Any assumed or fictional business name used by Concessionaire in conjunction with its concession operations upon the Premises shall be subject to the approval of IDPR.

21. Licenses and Permits. Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of the concession.

22. Compliance with Applicable Laws. Concessionaire shall at all times comply with all applicable laws, ordinances, and regulations of IDPR, the State of Idaho, the United States, as well as any

applicable county or city ordinances. Violation of such laws, ordinances, or regulations may be considered as cause for termination of this Agreement.

- 23. Utilities.** Concessionaire shall at its own expense be responsible for the extension, hookup, and metering of all utilities used in connection with the Premises where separate metering is available. All new utilities, including electrical wiring, shall be installed underground. Concessionaire shall be responsible for the accrual and payment of all utility charges or fees, commencing seven days prior to the first open business day. The termination of this responsibility will occur seven (7) days after the close of the last business day.

23.1 IDPR-Supplied Water. If IDPR supplies water to the Premises, IDPR shall not be responsible for improvement of the water supply beyond that quantity and quality existing as of the date of this Agreement, and IDPR shall not be liable for any damages due to the failure in the supply of water. IDPR shall give reasonable notice to Concessionaire of any temporary discontinuance of the water supply due to repair or maintenance.

23.2 Trash Service. IDPR will haul normal concession-generated garbage during regularly scheduled maintenance runs if it is properly bagged and placed in trash collector.

- 24. Right to Access.** IDPR shall have access to the Premises and to each part thereof during the regular business hours of Concessionaire for the purpose of inspecting the Premises and daily sales records.

Concessionaire shall have the right at all times to travel across Park property on a route approved by IDPR to get to and from the Premises in order to keep the Premises open during regularly scheduled business hours.

- 25. Taxes.** Concessionaire shall pay all lawfully-levied taxes on personal property and improvements belonging to Concessionaire located on the Premises. Concessionaire shall pay all sales and other taxes levied against the operation of the concession. Concessionaire shall pay all taxes or assessments or charges, which at anytime may be lawfully levied upon any interest in this Agreement or any possessory right that Concessionaire may have in or to the Premises. Concessionaire shall provide IDPR with a valid tax identification number.

- 26. Waiver of Agreement Terms.** No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed a waiver at any time thereafter of the same or any other term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay or failure by IDPR to reenter the Premises or to exercise any right, power or privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option held by IDPR, or be construed as a waiver of such default or relinquishment of any rights herein. No option, right,

power, remedy or privilege of IDPR shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given to IDPR by this concession Agreement shall be deemed cumulative.

- 27. Marketing and Media:** IDPR and Concessionaire will coordinate their media and marketing activities. Such coordination shall address but shall not be limited to the following: trade names, logos or marks, materials, websites, press releases, press outings and press conferences, logoed apparel and merchandise, and events. IDPR shall retain the right to reject any material inappropriate to the mission of IDPR. The Concessionaire shall have the right to use the park name and to reference materials published by IDPR in carrying out its marketing and media activities. The Concessionaire shall have the right to purchase and/or develop web domain names, names, and logos or marks in the commercial development of the Concession. The Concessionaire and IDPR shall work diligently to protect the said names and marks in all their forms. The Concessionaire is authorized to make exclusive use of these names and marks for commercial purposes, i.e., logoed merchandise, 'official energy bar of...' type partnerships, etc., in conjunction with ongoing operation of approved activities as contained in the Concession Agreement, and with written approval by IDPR, for development of products. Nothing in this section precludes the State of Idaho from the use of the names and logos for non-commercial purposes or for the production of pins or other memorabilia for State of Idaho activities. Upon termination of this Concession Agreement, domain names developed in connection with the operation of the Concession shall be available on the basis of first right of refusal for purchase by IDPR from the Concessionaire for the total amount of one dollar (\$1.00) for each domain name. Names and logos shall be available on the basis of first right of refusal for purchase by IDPR for their cost of development, but not more than \$1,000 each.
- 28. Concession Performance Review:** A performance review shall be conducted every year during the term of this contract to determine the Concessionaire's compliance with this Agreement and to evaluate performance. During these reviews, visitor services and corresponding fees charged by the Concessionaire shall be reviewed and be subject to approval of IDPR. Revenue (e.g. rent) paid to IDPR shall also be reviewed, and such fees may be adjusted up or down by mutual agreement of both contracting parties.
- 29. IDPR Consent.** Whenever any action by Concessionaire requires IDPR's consent pursuant to a provision in this Agreement, IDPR's consent to such action shall be strictly construed to apply to the specific action to which such consent applied and not to imply consent to any similar or subsequent actions by Concessionaire or waiver of any rights provided to IDPR by this Agreement. Consent of IDPR to any action of Concessionaire must be explicit; no provision in this Agreement shall be construed to allow consent by omission.

- 30. Complete Statement of Terms.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Agreement, shall be deemed to enlarge, limit, or otherwise affect the operation of this Agreement. All rights of Concessionaire and the legal relations of IDPR and Concessionaire are defined herein and no rights not specifically identified herein are intended.
- 31. Modification.** Notwithstanding any of the provisions hereof; the parties hereinafter, by mutual consent, may agree to written modifications or additions to this Agreement, subject to approval of the Idaho Park and Recreation Board. No modification, release, discharge, change, or waiver of any provision hereof shall be of any force, effect, or value unless it is in writing and signed by both parties to this Agreement. IDPR shall have the right to grant reasonable extensions of time to Concessionaire for any purpose, or for performance of any obligation of Concessionaire hereunder.
- 32. Severability.** If any term or provision of this Agreement is declared invalid or becomes inoperative for any reason, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be continued and enforced as if the invalid term or provision were not contained in this Agreement.
- 33. Officials, Agents, and Employees of IDPR Not Liable.** It is agreed by and between the Parties that in no event shall any official, officer, employee, or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement contained in this Agreement, express or implied, nor for any statement, representation, or warranty made in or in any way connected with this Agreement or the Premises. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the State of Idaho shall have any personal liability or responsibility under this Agreement, and the sole responsibility and liability for the performance of this Agreement and all of the provisions and covenants contained in this Agreement shall rest in and be vested with the State of Idaho and IDPR.
- 34. Terms Binding Upon Successor.** All the terms, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assignees of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment set forth above.
- 35. Non-Discrimination.** Concessionaire and its employees shall not discriminate against any person because of race, gender, color, ancestry, national origin, or disability by refusing to furnish such person any accommodation, facilities, services, or privileges offered to or enjoyed by the general public. Nor shall Concessionaire or its employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability or the patronage of any person because of race, gender, religion, color, ancestry, national origin or disability.

In the performance of this Agreement, Concessionaire shall not discriminate against any employee or applicant for employment because of race, gender, color, religion, national origin or disability. Concessionaire shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, gender, color, religion, ancestry, national origin or disability. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Concessionaire shall permit access to its records of employment, employment advertisement, application forms and other pertinent data and records by any agency of the State of Idaho designated for the purpose of investigation to ascertain compliance with Title 67, Chapter 59, Idaho Code.

- 36. Time of the Essence.** Time is expressly declared to be of the essence in this Agreement.
- 37. Notices.** Any notice given under the terms of this Lease shall be deemed given and delivered when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party. Notices to Concessionaire shall be addressed to Concessionaire at the address designated in the Data Page of this Lease. Notices to IDPR shall be addressed to IDPR shall be addressed to IDPR at the address designated in the Data Page of this Lease.
- 38. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Idaho.
- 39. Force Majeure.** IDPR is not liable any delay or inability of Concessionaire to provide the services and operate the facilities specified in this agreement when such delay or inability is occasioned by unforeseeable causes beyond the control and without the fault or negligence of IDPR, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantines, restrictions, strikes, freight embargoes, or unusually severe weather, war, or escalation of hostilities.
- 40. Special Terms and Conditions.** Attachment A sets forth the general terms and conditions applicable to all concessionaires. Attachment C sets for the Special Terms and Conditions applicable to the signatory Concessionaire. In the event of any conflict between the General Terms and Conditions in Attachment A, and the Special Terms and Conditions in Attachment C, the Special Terms and Conditions are deemed to be controlling.
- 41. Terms and Conditions for Concession Located on State Park Lands Leased from United States.** If the concession is located on state park lands leased from an agency of the United

States, including the Bureau of Reclamation, the Army Corp of Engineers, or the United States Forest Service, then the following terms and conditions apply in addition to those specified above.

- 41.1 Federal Approval.** This Agreement is subject to the approval of the United States, and may be terminated by the United States for the causes specified in 43 C.F.R. § 429.28.
- 41.2 No Federal Obligation.** In the event of the expiration or termination of IDPR's lease with the United States, this Agreement shall terminate. Absent agreement with the United States, the Concessionaire shall remove all fixed assets and personal property from the Park. No financial obligation or risk will reside in the United States for reimbursement for fixed assets and personal property removed pursuant to this provision.
- 41.3 No Interference with Project Purposes.** This Agreement is subject to the rights of the United States and its agents to use the Concession Premises as necessary to fulfill the purposes for which the United States set the lands and reservoir aside.
- 41.3 Annual Operation Plan.** Concessionaire shall prepare and submit to IDPR and the United States an annual operations and maintenance plan.
- 41.4 Annual Reviews.** The United States will conduct an annual review and evaluation of concession operations, and may conduct unplanned reviews as necessary. Concessionaire shall correct any operational or administrative deficiencies identified during such reviews.
- 41.5 Advertising and Signs.** The logo or name of the applicable United States agency, along with the logo or name of IDPR, will be displayed at all concession entrances used by the public. Outdoor signs or advertising on federal lands must be approved by the United States before being displayed.
- 41.6 Insurance.** In addition to the Insurance requirements set forth in Section 12 of this Agreement, Concessionaire must have and maintain an appropriate insurance policy that will indemnify the United States, provide that the insurance company will have no right of subrogation against the United States, and name the United States as an additional insured.
- 41.7 Employment of United States Employees and Family Members.** Employees or family members of the applicable agency of the United States may not be owners, partners, board members, corporate officers, general managers, or employees of the Concessionaire, nor may they have any financial interest in the Concessionaire's company.
- 41.8 Minimum Wage.** Concessionaire shall comply with the requirements of Executive Order No. 13658 (Jan. 2015), and Executive Order 13838 (May 2018), and all related regulations of the U.S. Department of Labor, requiring that employees be paid the minimum wage published by the Secretary of Labor at <https://www.dol.gov/agencies/whd/government-contracts/minimum->

[wage](#), excepting those employees involved exclusively in the provision of seasonal recreational services such as seasonal recreational outfitter services, seasonal recreational guide services, other seasonal recreational services, or the rental of seasonal recreational equipment. Provided further, that employees connected with the provision of lodging or food services relating to the provision of such seasonal recreational services shall be paid the above-described minimum wage.

41.9 Sick Leave. Concessionaire shall comply with the requirements of Executive Order 13706 (Sept. 2015), and all related regulations of the U.S. Department of Labor, requiring that Concessionaire provide qualified employees up to seven days of paid sick leave annually, including paid leave allowing for family care.

Attachment B
Concession Premises/Map



