

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA FISH AND BOAT COMMISSION
BUREAU OF BOATING**

Sealed bids will be received at the Pennsylvania Fish and Boat Commission, Bureau of Boating, Attention: Laurel Anders, 1601 Elmerton Avenue, Harrisburg, PA 17110-9299. Bids must be postmarked no later than September 7, 2021, and will be publicly opened and read on September 14, 2021, at 2:00 p.m. for the operation of the MARINA CONCESSION AT NORTH EAST MARINA AND ACCESS AREA, ERIE COUNTY, PENNSYLVANIA. Bid documents containing all pertinent information may be obtained from Laurel Anders, Bureau of Boating, PA Fish & Boat Commission, 1601 Elmerton Avenue, Harrisburg, PA 17110-9299, or from the Commission's website at www.fishandboat.com.

The Commonwealth of Pennsylvania reserves the right to reject any and all bids, and to waive any informalities, defects, or irregularities in the bids.

**TIMOTHY D. SCHAEFFER
EXECUTIVE DIRECTOR**

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA FISH AND BOAT COMMISSION
BUREAU OF BOATING**

Concession Pre-Bid Fact Sheet

Facility Name: North East Marina and Access Area Facility Oversight: Laurel Anders

Facility Address: 11950 East Lake Road, North East, PA 16428

Phone Number: 717-705-7813 Concession Name: North East Marina and Access Area

The Pennsylvania Fish and Boat Commission (PFBC) will receive bids from individuals or entities interested in managing and operating the facilities at its North East Marina and Access Area, 11950 East Lake Road, North East Township, on the shores of Lake Erie, approximately 20 miles east of the city of Erie.

The 13-acre property contains a two-story main building, which houses the marina manager's office, the marina office, a restaurant, a retail shop, public restrooms with showers, two service bays, and multiple other office spaces. Parking for approximately 500 vehicles and trailers is provided on the property. A fenced area provides secure dry summer storage for boats and trailers.

A boat storage building contains racks for winter storage of up to 120 boats to a maximum of 23 feet in length and 4,000 pounds in weight. An additional 30 boats can be stored on the floor on trailers or boat stands. A marine forklift is used to launch, transport, and rack stored boats.

Boat launching is available on four concrete boat ramps, all of which are designated for free public use. A concrete seawall surrounds the marina basin. Four floating docks contain 220 wet slips that can accommodate boats to a maximum of 32 feet in length. Two of the docks are supplied with electricity and water. All four of the docks are removed from the marina basin each winter. A permanent fuel dock and sewage pump-out facility are located in the basin.

The PFBC first contracted with a concessionaire for the operation of the marina and related services from 1999 to 2016. The second concession agreement began in 2017 and terminates December 31, 2021. The PFBC endeavors to have a new concession agreement in place by **January 1, 2022**.

All bidders shall be required to participate in a pre-bid site visit on August 30, 2021 at 2:00 p.m. to acquaint themselves with the existing conditions prior to the time of bidding.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA FISH AND BOAT COMMISSION
BUREAU OF BOATING**

**INVITATION TO BIDDERS
AND
CONCESSION AGREEMENT PROPOSAL**

CONCESSION NAME: NORTH EAST MARINA AND ACCESS AREA, ERIE COUNTY, PA

BID _____ TIME _____
OPENING DATE: September 14, 2021 OPENING: 2:00 p.m. Prevailing Time

The Commonwealth of Pennsylvania, acting through the Pennsylvania Fish and Boat Commission (hereinafter called the "PFBC"), will receive sealed bids for the operation of the above concession at the Bureau of Boating, 1601 Elmerton Avenue, Harrisburg, PA 17110-9299, Attention: Laurel Anders, which will be publicly opened and read on the above date and hour.

The undersigned submits this bid, EXECUTED IN INK, and hereby agrees, if the bid is accepted, to execute the Concession Agreement and be legally bound by the terms listed herein, which have been examined and are understood by the undersigned.

LICENSE FEE BID

It is understood that (1) the annual license fee for the Concession consists of two payments: there will be an annual lump sum license fee in the amount of \$15,000.00, which is fixed, and a fee based on a percentage of the adjusted gross receipts of the Concession during the preceding calendar year; (2) the PFBC will base its award of the Concession Agreement on the bids received for the latter; and (3) the PFBC will award the Concession Agreement to the highest responsible and responsive bidder. My bid is _____ PERCENT (_____ %) OF ADJUSTED GROSS RECEIPTS calculated from the preceding year. **PLEASE NOTE THAT THE PFBC WILL NOT ACCEPT ANY BID BELOW 2.5% OF ADJUSTED GROSS RECEIPTS BID.** The term of this Agreement shall be from the date of its execution or January 1, 2022, whichever is later, to December 31, 2023, and shall be automatically renewed for up to nine additional successive annual terms; each such successive annual term is to begin January 1 and expire December 31, limited to a total of 10 terms, with a final termination date of December 31, 2031.

BID GUARANTY

Enclosed herewith, as a bid guaranty is a certified check, cashier's check, official bank check, or treasurer's check, drawn to the order of the PENNSYLVANIA FISH AND BOAT COMMISSION, in the amount of One Thousand Five Hundred Dollars and zero cents (\$1,500.00).

It is understood the bid guaranty will be forfeited as liquidated damages if this bid is accepted by the PFBC and the undersigned shall fail to execute the Concession Agreement

within 15 days after award of the Concession Agreement, unless extended or waived by the PFBC. After proper execution of the Concession Agreement, the bid guaranty shall be applied to Concessionaire's first annual lump sum payment (PERSONAL MONEY ORDERS AND PERSONAL CHECKS WILL NOT BE ACCEPTED AS A PROPOSAL GUARANTY). The PFBC will return the bid guaranty of any bidder whose bid is not accepted.

It is understood that the PFBC reserves the right to reject any and all bids, and to waive any informalities, defects, or irregularities in the bids. It is further understood that competency and financial responsibility of bidders will receive consideration before award of the Concession Agreement. The PFBC reserves the right to award the Agreement to the second highest responsible bidder if the highest responsible bidder does not execute the Concession Agreement.

Bidder avers that he is a resident of or licensed to do business in the Commonwealth of Pennsylvania and that he is not an employee of the PFBC. It is hereby certified that the undersigned is the only person(s) interested in this bid as principal, and that the bid is made without collusion with any person, firm, or corporation.

The submission of more than one bid for the concession from an individual, partnership, corporation, or joint venture under the same or different names will invalidate all bids from such bidders.

If a bidder has been suspended or debarred from contracting with the Commonwealth of Pennsylvania under the procedures set forth in Management Directive 215.9 relating to the Contractor Responsibility Program, or otherwise in accordance with applicable law, its bids will not be considered for award. By submitting and signing this bid, the bidder hereby certifies that they have not been suspended or debarred from contracting with any other state or federal government entity.

The PFBC reserves the right to waive any inadequacy of the bid guaranty up to, but not including, the amount of \$1.00.

All bidders shall be required to participate in a pre-bid site visit on August 30, 2021 for a question and answer session and to acquaint themselves with the existing conditions prior to the time of bidding.

All bidders must attach a professional resume that documents a minimum of five years of experience operating and managing or owning a business.

BIDDER MUST PROVIDE TWO PROFESSIONAL REFERENCES:

1. Name: _____
Address: _____
Phone Number: _____
Email Address: _____

2. Name: _____
Address: _____
Phone Number: _____
Email Address: _____

BIDDER: (MUST COMPLETE BELOW INFORMATION)

Name: _____
Address: _____
Telephone Number: _____
Email Address: _____
Federal Identification/Social Security No.: _____

SIGNATURES

*When the Bidder is an individual: _____
Bidder's Signature

*When the Bidder is a partnership: _____
Partner's Signature

Partner's Signature

Partner's Signature

**When the Bidder is a corporation:

Secretary/Treasurer

President

(corporate seal)

* _____ is an individual or partnership trading under a fictitious or assumed name and has (has not) registered under the Act of December 16, 1982 (P.L. 1309, No. 295) as amended; known as the "Fictitious Name Act."

** _____ is a corporation organized and existing under the laws of _____ and has (has not) filed articles of incorporation (if a Pennsylvania corporation) or been granted a certificate of authority to do business in Pennsylvania (if an out-of-state corporation), as required by the Act of May 5, 1933 (P.L. 364 as amended, known as the "Business Corporation Law."

**COMMONWEALTH OF PENNSYLVANIA
FISH AND BOAT COMMISSION**

NORTH EAST MARINA AND ACCESS CONCESSION

CONCESSION AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by and between the COMMONWEALTH OF PENNSYLVANIA, acting through THE PENNSYLVANIA FISH AND BOAT COMMISSION, party of the first part, hereinafter called "PFBC," and

_____, a Pennsylvania corporation/partnership/sole proprietorship, party of the second part, hereinafter called "CONCESSIONAIRE." The PFBC and CONCESSIONAIRE are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the PFBC owns the North East Marina and Access in Erie County; and

WHEREAS, under Section 742 of the Fish and Boat Code of 1980 (30 Pa. C. S. § 742), the PFBC is authorized to issue permits, licenses, and leases for use of its property and may charge such fees or rentals as the PFBC deems reasonable; and

WHEREAS, the PFBC has determined that permitting CONCESSIONAIRE to operate the Marina and provide related services on these premises will provide a valuable service to the angling and boating public that use the Marina; and

WHEREAS, CONCESSIONAIRE has responded to the PFBC's Invitation to Bid for the management and operation of the North East Marina and Access Area; and

WHEREAS, the PFBC has determined that CONCESSIONAIRE is the highest responsible and responsive bidder and acceptance of CONCESSIONAIRE's bid is advantageous to the PFBC and in the best interests of the Commonwealth.

NOW THEREFORE, in consideration of the foregoing, the mutual premises hereof and the terms and conditions hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

SECTION ONE: DEFINITIONS

- 1.1 **LICENSED PREMISES.** The term "Licensed Premises" as used herein shall be defined as the designated areas depicted on the map attached hereto as Exhibit A and incorporated herein, and such other areas related to the operation of the concession as mutually agreed upon by CONCESSIONAIRE and PFBC.
- 1.2 **PERMANENT IMPROVEMENT.** The term "permanent improvement" as used herein shall be defined as any development within the Licensed Premises through the expenditure of money or labor that is designed to do more than merely maintain or repair within the Licensed Premises. These improvements are generally thought of as permanent and fixed, intending permanently to enhance property value, beauty, and

utility, or to adapt the property for new or additional purposes. These improvements include the results of work whereby the size, type, or extent of existing facilities within the Licensed Premises is changed or increased.

- 1.3 **MINOR STRUCTURAL REPAIRS.** The term “minor structural repairs” as used herein shall be defined as those repairs that are required to keep the Licensed Premises operational and in good condition. Minor structural repairs include, but are not limited to, painting, replacing glass, repairing HVAC, electrical fixtures, plumbing, and mechanical.
- 1.4 **MAJOR STRUCTURAL REPAIRS.** The term “major structural repairs” as used herein shall be defined as repairs to the Licensed Premises beyond normal maintenance, including, but not limited to, the maintenance of the breakwall and launch ramp and the sewage treatment facilities.
- 1.5 **LICENSE FEE.** The term “license fee” as used herein shall be defined as the amount that CONCESSIONAIRE shall pay the PFBC for CONCESSIONAIRE’s use of the Licensed Premises.
- 1.6 **GROSS RECEIPTS.** The term “gross receipts” as used herein shall be defined as the total amount received by or accruing to CONCESSIONAIRE from all sales made for cash or credit for services, accommodations, materials, and other merchandise made pursuant to the privileges outlined in this Agreement and to include those sales made through any coin-operated device, subconcession and sublicense fees, and commissions earned on contracts or agreements with other persons or companies operating in the area, and excepting only those items which are specifically mentioned herein as being omitted from this paragraph.
- 1.7 **INCLUDABLE TAXES.** The term “includable taxes” as used herein shall be defined as the total sale and excise taxes, such as state sales taxes and gasoline taxes that are added as separate charges to approved sale prices. The total amount of includable taxes to be subtracted from gross receipts in the computation of license fees shall not exceed the amount actually due and paid to governmental agencies.
- 1.8 **ADJUSTED GROSS RECEIPTS.** The term “adjusted gross receipts” (AGR) as used herein shall be defined as the amount of the difference between the gross receipts minus any includable taxes collected on the gross receipts for the same time period and revenue (inclusive of issuing agent fees collected) from the sale of fishing licenses and permits, boat registration fees and launch permits, and PFBC publications or other merchandise.
- 1.9 **MAINTENANCE, REPAIR, AND REPLACEMENT FUND.** The term “Maintenance, Repair, and Replacement Fund” as used herein shall be defined as the amount that CONCESSIONAIRE shall pay into a bank account for upkeep and improvement of the Licensed Premises.

SECTION TWO: TERMS OF AGREEMENT

- 2.1 **INGRESS AND EGRESS.** PFBC grants to CONCESSIONAIRE an unrestricted license for free ingress and egress through and over the Licensed Premises to operate the public concession services described herein.
- 2.2 **TERM OF AGREEMENT.** The term of this Agreement shall be from JANUARY 1, 2022 to DECEMBER 31, 2023 and shall be renewed automatically for up to nine additional successive annual terms, beginning on JANUARY 1 and ending on DECEMBER 31, limited to a total of 10 terms, with a final termination date of DECEMBER 31, 2031.

- 2.3 **LICENSE FEES.** In consideration of the PFBC's grant of the license herein described, CONCESSIONAIRE shall pay the PFBC an annual lump sum license fee (Annual Lump Sum License Fee) in the amount of \$15,000.00 on or before March 31 of the respective year. In addition to the Annual Lump Sum License Fee, CONCESSIONAIRE shall pay the PFBC _____% of AGR during the preceding calendar year on or before June 30 of the following year.
- 2.4 **QUARTERLY REPORTS.** CONCESSIONAIRE shall submit to PFBC a quarterly report of receipts and expenditures on a form approved by PFBC. These reports shall be due no later than the 25th day of the month following the quarter for which a report is due.
- 2.5 **ANNUAL FINANCIAL STATEMENT.** CONCESSIONAIRE shall submit to PFBC, no later than March 15 of each term that this Agreement is in effect (and on or before March 15 of the first year after this Agreement is terminated), an Annual Financial Statement generated by an independent accounting firm, using generally accepted accounting principles. Information provided and any financial records pertaining to this Agreement or operations under or by this Agreement are public records and are subject to review and audit by PFBC or PFBC's representative.
- 2.6 **TERMINATION.**
- A. BY CONCESSIONAIRE:**
1. CONCESSIONAIRE may terminate this Agreement at the end of any term by notifying PFBC in writing by July 1 of its intention not to continue performance under the Agreement for the following term. It is recognized that CONCESSIONAIRE may collect fees during a term for services that will not be performed until the following term and that CONCESSIONAIRE may make capital investments during a term that may not be fully realized until subsequent terms. In the event CONCESSIONAIRE terminates the Agreement under this paragraph, it is understood and agreed that the Parties will meet to discuss and fashion a fair and reasonable allocation of revenues and expenses for the period following termination. Such an allocation shall be based on generally accepted accounting principles.
- B. BY PFBC:**
1. PFBC may terminate this Agreement at the end of any term by notifying CONCESSIONAIRE in writing at least 60 days prior to the end of the term. PFBC may also terminate or suspend this Agreement for events outside PFBC's control by notifying CONCESSIONAIRE in writing at least 30 days prior to the effective date of termination. It is understood and agreed that in the event PFBC terminates the Agreement under this paragraph, the Parties will meet to discuss and fashion a fair and reasonable allocation of revenues and expenses for the period following termination. Such an allocation shall be based on generally accepted accounting principles.
 2. PFBC may terminate this Agreement for default by CONCESSIONAIRE in the performance of its obligations under this Agreement by giving 30 days written notice to CONCESSIONAIRE, provided that prior to terminating this Agreement for default, PFBC shall give CONCESSIONAIRE at least 15 days to cure its deficiencies in performance under this Agreement.
- 2.7 **C.P.I. INCREASES TO ANNUAL LUMP SUM LICENSE FEE.** CONCESSIONAIRE understands and agrees that a new Annual Lump Sum License

Fee will be in effect at the beginning of each two term period that this Agreement is in effect. PFBC will notify CONCESSIONAIRE in writing of this change. The change in the Annual Lump Sum License Fee will be based on the change in the U.S. Bureau of Labor Statistics Index, commonly called the "Consumer Price Index," specifically the Index for Urban Wage Earners and Clerical Workers, aggregate of all items across the U.S.A. ("C.P.I.-W"). The new Annual Lump Sum License Fee will be instituted for two annual terms starting on the third, fifth, seventh, and ninth annual terms, as follows:

- A. If the "C.P.I.-W" remains the same, the Annual Lump Sum License Fee for the following two annual terms will remain the same as it was for the previous two terms.
- B. If the "C.P.I.-W" increases, the Annual Lump Sum License Fee for the following two annual terms will increase by the percentage increase in the "C.P.I.-W."
- C. If the "C.P.I.-W" decreases, the Annual Lump Sum License Fee for the following two annual terms will decrease by the percentage decrease in the "C.P.I.-W," but shall not decrease to less than the Annual Lump Sum License Fee specified in Section 2.3.
- D. The percentage change in "C.P.I.-W" issued in the month of September to that issued in the month of September two years later, each two year period this Agreement is in effect, will be the basis for computing a new Annual Lump Sum License Fee for the following two term period.
- E. The "C.P.I.-W," issued in the month of September 2021, was [XXX.X], and shall be used as the base year for this Agreement.

In the event such monthly Index should be discontinued, or a new or revised one substituted therefore by the Bureau of Labor Statistics or other agencies of the United States of America, such new or revised or other similar index shall be used for the purpose of computations as described in this section, using such conversion factors or other devices which may be generally recognized or adopted in connection with requirements based on this Index.

2.8 **ADJUSTMENT TO LICENSE FEE AND OTHER PAYMENTS.** PFBC and CONCESSIONAIRE mutually agree that there will be no adjustment of the license fee or other payments due under this Agreement (other than the C.P.I. increases to Annual Lump Sum License Fee as provided in Section 2.7) except as follows:

- A. In the event the Licensed Premises are substantially damaged or destroyed, the Agreement may be terminated and all liability for future payments shall cease, or may be suspended, at the discretion of PFBC in accordance with Section 2.9.
- B. In the event the Licensed Premises or its major facilities are impaired by fire, flood, or other casualty, resulting in a reduction of visitors to the Licensed Premises and a loss to CONCESSIONAIRE, PFBC may at its discretion adjust the payments for the remainder of the current term.
- C. In the event PFBC by its actions closes down some or all of the facilities at the Licensed Premises, resulting in a reduction of visitors at the Licensed Premises and a loss to CONCESSIONAIRE, PFBC may at its discretion adjust the payments for the remainder of the current term.

- D. Within 60 days prior to the end of a term, either party hereto may request reconsideration of the amount, character, and schedule of the payment rates of the license fee or any other payments due under this Agreement. Such requests shall be made in writing. In the event the PFBC and CONCESSIONAIRE cannot agree upon an adjustment of the rates within 60 days of the request for reconsideration as made by either party, the position of CONCESSIONAIRE must be reduced to writing within 30 days therefrom and submitted to PFBC for a determination of appropriate fees consistent with the fair value of any assigned PFBC improvement and probable value to CONCESSIONAIRE of the privileges granted by this Agreement based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested.
- 2.9 **DAMAGE TO THE LICENSED PREMISES.** In the event of damage to or destruction of the Licensed Premises, or a portion thereof, that is so substantial that the remainder is not economically operable for the purposes herein contemplated, by fire, windstorm, or other hazard, operation under this Agreement, at the discretion of PFBC, may be:
- A. suspended until the portions of the Licensed Premises so destroyed or damaged are rebuilt, repaired, or replaced; or
 - B. terminated. In the event such damage or destruction is less substantial so that the remainder of the Licensed Premises is economically operable, CONCESSIONAIRE's operation shall continue by CONCESSIONAIRE to the extent practical while restoration is underway.
- 2.10 **TIMELY SUBMISSION.** License fees, insurance policies, financial statements, price lists, liquidated damages, interest payments, and any other documents or payments which may be required for the operation of the concession or by this Agreement shall be promptly submitted by CONCESSIONAIRE to PFBC at times herein specified.
- 2.11 **LIQUIDATED DAMAGES.** This Agreement has been established to provide a service, or services, to the visitors of the Licensed Premises. CONCESSIONAIRE's failure to comply with provisions of this Agreement may cause a loss of services to said visitors, untimely delays in the administration of this Agreement, or deprive PFBC of agreed upon services and/or a loss of revenue. CONCESSIONAIRE's failure to comply with any Agreement provision, including any addenda, will subject CONCESSIONAIRE to a progressive system of liquidated damages as follows:
- A. If CONCESSIONAIRE violates any provision of the Agreement, PFBC shall send a written notification to CONCESSIONAIRE stating which provision was violated and a date by which said violation must be corrected. If CONCESSIONAIRE does not correct the violation or cease said action by the stated date, CONCESSIONAIRE shall make liquidated damage payments of \$250.00 to PFBC for each seven-day period that the CONCESSIONAIRE fails to correct the violation.
 - B. All liquidated damages required by this section must be paid by CONCESSIONAIRE to PFBC within 30 days of the date of written notification from PFBC to CONCESSIONAIRE.
 - C. This Agreement may be terminated by PFBC for default at its sole discretion if compliance has not been obtained after two sums for liquidated damages have been assessed for the violation of the same provision of this Agreement, not necessarily within the same year.
 - D. Acceptance of liquidated damage payments does not constitute a waiver of CONCESSIONAIRE's obligation to comply with all of the provisions of the Agreement, or a waiver of PFBC's full range of rights and remedies hereunder.

CONCESSIONAIRE's failure to comply with any provision of this Agreement shall be sufficient cause for PFBC, at its sole discretion, to terminate this Agreement under Section 2.6.

- 2.12 **INTEREST PAYMENTS.** Any payments that become due from CONCESSIONAIRE to PFBC and that are not paid on or before the due date shall bear interest at 18% per annum until paid, computed from the due date, or the first business day thereafter, should the due date fall on a weekend or a holiday recognized by PFBC. Any payments received shall first be applied against interest due with the remaining portion being applied against the oldest payment due. This percentage is subject to change by PFBC, with PFBC giving CONCESSIONAIRE prior written notice. This provision does not constitute a waiver of CONCESSIONAIRE's obligation to make payments when they are due.
- 2.13 **PRICING.** CONCESSIONAIRE shall have the right and privilege to charge such prices and rates as are reasonable and fair. All charges by CONCESSIONAIRE to the public are subject at all times to the review of PFBC. Either party may request of the other consideration in an adjustment in prices and rates. CONCESSIONAIRE shall not utilize preferential pricing for any item, activity, or service rendered under this Agreement, on Licensed Premises, or any portion thereof. This is to ensure the public be afforded equal treatment and consideration at all times. The use of any package deal or discount rate made available to any individual or group, under this Agreement, shall also be made available to any other individual or group under like circumstances.
- 2.14 **BOOKKEEPING AND POINT-OF-SALE DOCUMENTATION.** CONCESSIONAIRE shall keep proper and complete books and records of accounts of its operation under this Agreement. Internal control procedures implemented by CONCESSIONAIRE shall be adequate to ensure that all revenue is accounted for and recorded. This includes, at a minimum, preprinted consecutively numbered tickets and/or dual tape cash register receipts and/or preprinted consecutively numbered receipts with carbon copies, to record revenue at point-of-sale. Each transaction shall generate a receipt that shall be offered to the patron. A preprinted consecutively numbered ticket shall qualify as a receipt under this specific requirement. If CONCESSIONAIRE uses cash registers that display to patron the cost of each item as they are added in and the total for all items, a printed receipt need not be offered to each patron, but shall be available to the patron upon request.
- Cash register tapes, preprinted consecutively numbered tickets, and all other source documents shall be reconciled daily with cash received. Cash registers, if used, shall be of the type that has either a non-resettable grand total, a non-resettable transaction counter, a non-resettable clear out counter, a computer with a built in electronic journal, or other PFBC approved device that can provide continuous accountability of transactions.
- 2.15 **DAILY RECEIPTS AND BANK ACCOUNT.** All cash, checks, and other receipts received by CONCESSIONAIRE will be deposited into a single bank account maintained solely for the concession operation through which all financial transactions shall pass. Daily cash receipts shall be deposited intact or accounted for in a daily cash journal by CONCESSIONAIRE.
- 2.16 **AUDITS AND RECORD RETENTION.** At any time, CONCESSIONAIRE shall permit PFBC or its authorized agents, to examine and audit the point-of-sale documents, books, and financial records without any delay upon CONCESSIONAIRE's part. Said point-of-sale documents, books, and financial records shall be retained by CONCESSIONAIRE for a period of three years beyond the termination of this Agreement, unless earlier disposal is approved by PFBC in writing.

- 2.17 **DEPARTMENT OF REVENUE.** CONCESSIONAIRE shall comply with Commonwealth of Pennsylvania, Department of Revenue regulations and guidelines, including, but not limited to, those on state sales tax.
- 2.18 **FIRE, FLOOD, AND OTHER CASUALTY INSURANCE.** CONCESSIONAIRE shall provide at its sole expense and maintain in full force and effect fire, flood, and other casualty insurance during each term of the Agreement. Said insurance shall be from a capital stock or non-assessable mutual company or government entity in an amount equivalent to the replacement cost of PFBC's physical facilities licensed by this Agreement, plus the contents, but not less than \$1,000,000. Said minimum may be increased or replacement cost updated by PFBC, with PFBC giving CONCESSIONAIRE at least six months advance written notice of such an increase or update, prior to its effective date. Insurance on PFBC's physical premises and contents shall be made payable solely to PFBC; insurance on CONCESSIONAIRE's contents shall be made payable to CONCESSIONAIRE. Said insurance shall be effective prior to CONCESSIONAIRE taking occupancy of the Licensed Premises. CONCESSIONAIRE shall furnish PFBC with a copy of the required insurance policy prior to the beginning of each term of this Agreement, and/or prior to the expiration of a current policy. PFBC shall be named as a certificate holder and an additional insured on said insurance. CONCESSIONAIRE shall not be required to maintain flood insurance on the administration building.
- 2.19 **LIABILITY INSURANCE.** CONCESSIONAIRE shall provide at its sole expense and maintain in full force and effect at all times during each term of this Agreement, comprehensive, public liability insurance in an amount not less than either:
- A. combined bodily injury and property damage liability \$2,000,000 each occurrence and \$3,000,000 aggregate; or
 - B. bodily injury liability \$1,000,000 each occurrence and \$2,000,000 aggregate; property damage liability \$100,000 each occurrence and \$250,000 aggregate.
- This insurance shall protect CONCESSIONAIRE from claims for damages for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this Agreement or any occurrence on or about the Licensed Premises, whether such operations are by CONCESSIONAIRE or anyone directly or indirectly employed by it. CONCESSIONAIRE shall furnish PFBC with a copy of the required liability insurance policy prior to the beginning of each term of this Agreement, and/or prior to the expiration of a current policy. PFBC shall be named as a certificate holder and an additional insured on said liability insurance.
- 2.20 **WORKER'S COMPENSATION INSURANCE.** CONCESSIONAIRE shall provide at its sole expense and maintain in full force and effect during each term of this Agreement, worker's compensation insurance for personnel employed in the business operated under this Agreement.
- 2.21 **INSURANCE CANCELLATIONS.** PFBC shall be immediately advised by CONCESSIONAIRE should any of the aforementioned insurance policies be canceled by CONCESSIONAIRE or the insurance company prior to the expiration date indicated on said policy.

- 2.22 **LICENSES, PERMITS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND LABOR.** CONCESSIONAIRE shall provide, at its sole expense, all licenses, permits, equipment, supplies, materials, merchandise, transportation, and labor necessary for the satisfactory operation of the concession, except for any particular items of which specific mention is made in this Agreement. The permits that CONCESSIONAIRE must secure and maintain in full force and effect during the term of this Agreement include, but are not limited to, Erie Department of Health and NPDES permits. All licenses and permits for concession operation shall be neatly posted at the Licensed Premises, unless otherwise pre-approved by PFBC. It shall be PFBC's sole responsibility to secure and maintain in full force and effect the necessary U.S. Army Corps of Engineers and Department of Environmental Protection permits for breakwall. In the event that either of these permits are suspended or revoked by the permitting agency, the PFBC will notify the CONCESSIONAIRE in writing to terminate or suspend operations as provided in Section 2.6 (B).
- 2.23 **APPROVAL OF SUB-CONCESSION CONTRACTS.** All contracts and agreements proposed to be entered into by CONCESSIONAIRE with respect to the exercise by others of the privileges granted by this Agreement in whole or part shall be considered as sub-concession contracts and shall be submitted to PFBC for prior approval and shall be effective only if approved. CONCESSIONAIRE shall notify PFBC of the termination or cancellation of any sub-concession agreement.
- 2.24 **TRAINING.** PFBC may require CONCESSIONAIRE, and/or its employees, to attend public contact, solid waste management, or other training sessions appropriate to concession operations from time to time during the term of this Agreement, as deemed necessary by PFBC, but not more than three hours of training per employee per term. CONCESSIONAIRE shall be responsible for paying any wage costs or other costs incurred for CONCESSIONAIRE or CONCESSIONAIRE's employees.
- 2.25 **CONVICTION OF A FELONY.** CONCESSIONAIRE understands and agrees that should CONCESSIONAIRE, or a partner of CONCESSIONAIRE (if CONCESSIONAIRE is a partnership), or an officer or director of CONCESSIONAIRE (if CONCESSIONAIRE is a corporation), be convicted of a felony during the term of this Agreement, PFBC may, at its sole discretion, and without consideration to CONCESSIONAIRE, terminate this Agreement, giving CONCESSIONAIRE 30 days' notice.
- 2.26 **NUMBER OF VISITORS.** It is fully understood by the Parties hereto that PFBC does not guarantee any number of visitors to the Licensed Premises and accepts no responsibility for lack of visitors to the concession or revenue generated thereby for any reason other than is set forth herein.
- 2.27 **EXCLUSIVE RIGHTS.** CONCESSIONAIRE understands and agrees that this Agreement gives CONCESSIONAIRE exclusive right(s) to all concession operations within the Licensed Premises, except as provided herein.
- 2.28 **LEGAL COMPLIANCE.** CONCESSIONAIRE agrees to comply with all laws, rules, regulations, and orders of the Commonwealth of Pennsylvania and other governmental bodies now in effect or hereafter enacted, adopted, or promulgated. CONCESSIONAIRE understands and agrees that CONCESSIONAIRE has full responsibility to have knowledge of all said relevant laws, rules, regulations, and orders.
- 2.29 **SECURITY.** CONCESSIONAIRE is responsible for securing Licensed Premises and shall develop and implement a physical security program for the Licensed Premises. The plan will identify how the facilities within the Licensed Premises are secured at the end of the

day, who is responsible for security, person(s) assigned keys to have access to facilities before and after official hours, persons to contact in case of emergency, etc.

- 2.30 **CONTRACTUAL AMENDMENTS.** PFBC and CONCESSIONAIRE agree that by mutual consent, this Agreement may be amended in writing from time to time as may be required to protect the Licensed Premises, to add to the comfort and convenience of CONCESSIONAIRE's operations, or to expand upon CONCESSIONAIRE's existing operations under this Agreement.
- 2.31 **INSPECTION REPORTS.** CONCESSIONAIRE shall provide copies of all official inspection and certification reports including, but not limited to, the Erie Department of Health, and NPDES discharge reports to PFBC within two weeks of receipt of said reports.

SECTION THREE: OPERATIONAL CONDITIONS

- 3.1 **RIGHT AND OBLIGATION TO OPERATE.** CONCESSIONAIRE shall have the right and the obligation to operate, manage, and maintain in a first class manner the Licensed Premises and to sell merchandise and provide services ordinarily sold or provided at like facilities, according to the terms and conditions set forth herein, during the term of this Agreement. In order to offer any products or services that are not specifically mentioned in this Agreement, CONCESSIONAIRE shall secure the prior written approval of PFBC. PFBC reserves the right to prohibit the sale or rental of any merchandise or service that it deems inappropriate, objectionable, or beyond the scope of that which is necessary for adequate public service under this Agreement. CONCESSIONAIRE may sell or permit the sale of beer or other alcoholic beverages in the restaurant area of the Licensed Premises only. CONCESSIONAIRE shall not sell or permit the sale of beer or other alcoholic beverages on a "take-out" basis. CONCESSIONAIRE shall not operate or permit to be operated a bar on the Licensed Premises. The sale of beer or other alcoholic beverages on the Licensed Premises shall be in compliance with applicable state and local law.
- 3.2 **USE OF THE LICENSED PREMISES.** CONCESSIONAIRE shall have the right to use the Licensed Premises only for the purposes described herein and only in keeping with the intent of this Agreement. Any deviation from said intent, or conflict with, or between any provisions of this Agreement shall be subject to PFBC's review and its written direction for resolution.
- 3.3 **UTILITIES.** CONCESSIONAIRE shall pay all charges incurred for each term that this Agreement is in effect for all public utilities including, but not limited to: gas, oil, telephone, fuel, electricity, water, and any other services furnished to the Licensed Premises, unless otherwise specified herein.

CONCESSIONAIRE shall sign up for the third party notification system, sometimes called a "double notice protection." CONCESSIONAIRE shall list PFBC as third party to be notified. This system shall in no way obligate PFBC to make CONCESSIONAIRE's payments, but it is intended to help ensure public safety, protection of Licensed Premises, and contractual compliance.

- 3.4 **SOLID WASTE MANAGEMENT.** CONCESSIONAIRE shall be responsible for collection, separation, storage, and removal of all solid waste garbage, litter, trash, and recyclables generated or disposed of within the Licensed Premises. CONCESSIONAIRE shall comply with all recycling requirements imposed by applicable law on Licensed Premises or by PFBC. CONCESSIONAIRE's solid waste management procedures shall include, but not be limited to:

- A. **GARBAGE** - CONCESSIONAIRE shall place all garbage in appropriate containers. CONCESSIONAIRE shall complete a thorough garbage and litter pick-up throughout the Licensed Premises prior to leaving each day of operation, and as otherwise required by PFBC.
 - B. **RECYCLABLES** - CONCESSIONAIRE shall recycle (collect, separate, and market) all corrugated cardboard and aluminum. Glass, bimetal cans, and plastic shall be recycled as directed by PFBC. All cardboard containers shall be broken down and flattened before being placed in a pre-approved recycling container.
 - C. **EQUIPMENT** - CONCESSIONAIRE shall supply, clean, and maintain all equipment necessary to provide a sound solid waste management program including, but not limited to, dumpsters, cans, bag liners, and recycling containers. All equipment shall be maintained in first class condition.
 - D. **COST** - CONCESSIONAIRE shall be responsible for all costs associated with collection, separation, storage, and placement of solid waste from the concession operation into designated receptacles.
- 3.5 **CONDITION OF THE LICENSED PREMISES.** CONCESSIONAIRE has examined and knows the condition of Licensed Premises and has received the same in reasonably good repair, and CONCESSIONAIRE agrees that no misrepresentations as to the condition thereof have been made by PFBC prior to or at the execution of this Agreement. CONCESSIONAIRE shall not be responsible for the correction of any pre-existing deficiencies according to the current Building Officials and Code Administrators (BOCA) Code and/or the National Electric Code standards. CONCESSIONAIRE agrees at the termination of this Agreement, by expiration or otherwise, to return to PFBC all of the Licensed Premises in a condition of first-class maintenance.
- 3.6 **ALTERATIONS TO LICENSED PREMISES.** CONCESSIONAIRE shall not make any alterations, deletions, or additions in or to the Licensed Premises without prior written approval of PFBC. Also, CONCESSIONAIRE shall not deface or mutilate the walls, floors, ceiling, equipment, landscaping, or other parts of Licensed Premises in any manner, nor permit any practice or acts that are injurious to the Licensed Premises or that may affect the insurance on the buildings or may be contrary to law.
- 3.7 **PERMANENT IMPROVEMENTS.** CONCESSIONAIRE agrees that all permanent improvements made to the Licensed Premises by CONCESSIONAIRE become PFBC property at the termination of this Agreement for any reason, free of any and all encumbrances, unless otherwise specified herein. Said permanent improvements shall become part of Licensed Premises and be managed according to all provisions of this Agreement upon completion of construction or installation.
- 3.8 **SIGNS.** All signs posted within the Licensed Premises shall be neatly prepared, of a professional caliber, and well maintained. All aspects of sign design, placement, wording, and construction may be reviewed by PFBC.
- 3.9 **MAINTENANCE OF THE LICENSED PREMISES.**
- A. CONCESSIONAIRE's maintenance responsibilities shall include, but are not limited to:
 - 1. Minor structural repairs.
 - 2. Routine interior and exterior maintenance of the buildings, docks, and other structures.

3. Grounds keeping, including mowing, trimming, weeding, fertilization, replanting, and pruning of grass, shrubs, trees, and bushes, and litter collection.
 4. All surface maintenance including sidewalks, walkways, and grass areas, except as included in Section 3.9 (B)(1).
 5. Preventive maintenance of docks and equipment in accordance with the manufacturer's recommendations; keeping maintenance records and providing such records to PFBC personnel upon request.
 6. Snow removal.
 7. Providing all lighting including parking lot lights, and launch ramp lights.
 8. Removal of all refuse.
 9. Providing utilities for docks.
 10. At the end of the boating season, winterization of buildings, docks, dock water supply, pump-out equipment, etc.
 11. Aquatic vegetation control within the marina basin.
 12. Maintenance and repair of sewage pump-out facilities.
 13. Maintenance and repair of Wiggins Forklift SN WL0781045.
 14. Hazardous waste cleanup (boat repairs and winterization).
 15. Maintenance and repair of PFBC equipment and material turned over to CONCESSIONAIRE.
 16. Performing all other repairs/maintenance not specifically listed in Section 3.9 (B).
- B. PFBC's maintenance responsibilities shall include:
1. Surface maintenance of public parking areas, roadways, launch ramps, and drives.
 2. Sand movement associated with Corps of Engineers and DEP permit requirements and channel and basin maintenance.
 3. Major structural repairs.
 4. Providing utilities to the point of entrance into buildings.
 5. Wind warning lights and channel markers.
 6. Maintenance and repair of storm water culverts and inlets.
 7. Maintenance and repair of perimeter fence.
 8. Maintenance and repair of break walls and shore protection structures.
- C. CONCESSIONAIRE may, at CONCESSIONAIRE's own option and expense or through the Maintenance, Repair, and Replacement Fund, make structural alterations and improvements provided the same are approved in advance in writing by PFBC.

3.10 MAINTENANCE, REPAIR, AND REPLACEMENT (MR&R) FUND.

- A. **PURPOSE.** The purpose of the MR&R Fund is to ensure that sufficient funds are available to satisfy certain maintenance and replacement responsibilities of CONCESSIONAIRE and to ensure the continued operation of the Licensed Premises as first class public service facilities and to permit them to serve effectively as part of PFBC's boating access program.

- B. **ESTABLISHMENT.** CONCESSIONAIRE will establish a checking account and obtain printed checks with the name of the "North East Marina - Maintenance, Repair, and Replacement Fund." The checking account will be used exclusively for payment of invoices based on approved withdrawals from the MR&R Fund. On a quarterly basis, CONCESSIONAIRE shall forward copies of monthly bank statements, paid invoices, and a report on the form provided by the PFBC. These quarterly filings shall be due no later than the 15th day of the month following the quarter for which a report is due. The quarterly filings shall be submitted to:

Pennsylvania Fish and Boat Commission
Bureau of Boating
PO Box 67000
Harrisburg, PA 17106-7000

- C. **PAYMENT.** CONCESSIONAIRE shall make annual payments of \$13,000 into the MR&R Fund by no later than March 31 each year.
- D. **TERMINATION.** At such time as this Agreement is terminated, any funds remaining shall be turned over to PFBC to be held for the purpose of re-establishing the MR&R Fund. It is the intent of PFBC to maintain the MR&R Fund for the continued benefit of the Licensed Premises.
- E. **EXPENDITURES AND WITHDRAWALS.** All expenditures and withdrawals from the MR&R Fund shall require prior written approval of PFBC on the form provided by PFBC. CONCESSIONAIRE shall obtain, for all expenditures in excess of \$5,000, two written competitive bids or price quotes and submit evidence of said quotes to PFBC with the request for prior written approval, unless otherwise approved by PFBC. PFBC agrees to respond to requests for use of the MR&R Fund in a timely manner.
- F. **PERMISSIBLE USES.** Permissible Uses for the MR&R Fund are minor structural repairs and normal maintenance including:
1. the maintenance and replacement of items provided by PFBC, such as furniture, furnishings, fixtures, and equipment.
 2. dock maintenance, repair, and replacement.
 3. changes and alterations to improve the Licensed Premises.
 4. any bank charges levied for its services, in connection with maintaining the MR&R Fund.
- G. **IMPERMISSIBLE USES.** Impermissible Uses of the MR&R Fund are:
1. salary of maintenance or other personnel employed by CONCESSIONAIRE.
 2. the purchase of equipment necessary for the operation and maintenance of the Licensed Premises, including but not limited to furnishings, food service equipment, office machinery, maintenance equipment and tools, vehicles, boats, and rental equipment.
 3. any replacement or repairs to items owned by CONCESSIONAIRE not scheduled to be turned over to PFBC upon expiration of this Agreement.
 4. items considered operational or expendable in nature.
 5. consultant's fees in connection with design, specification, selection, or purchase of replacement items.

6. any repairs to the Licensed Premises necessitated by CONCESSIONAIRE's negligence or failure to perform required routine maintenance.
- H. It is expressly understood between CONCESSIONAIRE and PFBC that the limitations on the use of the MR&R Fund do not limit the overall maintenance responsibilities of CONCESSIONAIRE, and that the amount available in the MR&R Fund does not constitute CONCESSIONAIRE's total liability with regard to CONCESSIONAIRE's maintenance and other responsibilities. Materials or parts used for maintenance and/or repairs shall be the same as, equal to, or of better quality than, the original materials or parts as approved by PFBC. Any painting done by CONCESSIONAIRE within the Licensed Premises shall be done with paint pre-approved by PFBC for color, type, and quality. All repairs or maintenance done by CONCESSIONAIRE shall be made according to current Building Officials and Code Administrators, International standards (BOCA Code), and/or the National Electric Code standards.
- I. CONCESSIONAIRE shall endeavor to recover costs for repairs resulting from incidents covered by fire, flood, or other casualty insurance. Such reimbursement shall be deposited in the MR&R Fund.
- 3.11 **MAINTENANCE BY PFBC.** CONCESSIONAIRE understands and agrees that if maintenance and/or repair work on the Licensed Premises, as herein specified as CONCESSIONAIRE's responsibility, are not accomplished by CONCESSIONAIRE to the satisfaction of PFBC, PFBC may, at its option, do the work and invoice CONCESSIONAIRE for same. CONCESSIONAIRE shall make full payment to PFBC for said invoice within 30 days after the date of said invoice.
- 3.12 **INSPECTIONS.** CONCESSIONAIRE agrees to periodic operations and maintenance inspections of the Licensed Premises with PFBC's representatives. CONCESSIONAIRE understands that PFBC expects CONCESSIONAIRE's maintenance to be first-class. CONCESSIONAIRE agrees to correct any defects found within a reasonable amount of time, but in no event more than 15 days. Furthermore, if said defects, as determined by PFBC, would result in a condition hazardous to the public, employees, or the Licensed Premises, said defects shall be corrected immediately by CONCESSIONAIRE.
- 3.13 **REMOVAL OF PROPERTY.** CONCESSIONAIRE agrees to remove all personal property from Licensed Premises at the termination of this Agreement. Any property not removed within 30 days of termination shall be considered abandoned, and PFBC may dispose of the same without being accountable to CONCESSIONAIRE.
- 3.14 **TERMINATION RESPONSIBILITIES.** CONCESSIONAIRE agrees upon termination of this Agreement to return the Licensed Premises to PFBC in good condition at least equal to the condition of the Licensed Premises when turned over to CONCESSIONAIRE. The following conditions shall be complied with:
- A. All payment of license fees, and any other amounts due to PFBC by CONCESSIONAIRE shall have been made.
 - B. CONCESSIONAIRE shall transfer a mutually agreed upon proration of fees collected in advance, such as winter boat storage fees, to the next CONCESSIONAIRE as identified by PFBC.
 - C. All debris, rubbish, and discarded items shall have been removed from the Licensed Premises by CONCESSIONAIRE.
 - D. The entire Licensed Premises shall be clean and operable.

- E. All deficiencies found in the final inspection of the Licensed Premises by PFBC shall have been corrected by CONCESSIONAIRE.
- 3.15 **ENVIRONMENTAL IMPACT.** All aspects of CONCESSIONAIRE's operation, including any renovations, alterations, or maintenance, shall be conducted with effective concerns and practices as to prevent and protect the Licensed Premises from any adverse environmental impacts.
- 3.16 **UNFAIR BUSINESS PRACTICES.** Misrepresentation of products for sale or rent at the Licensed Premises or unfair business practices for the concession operation shall be sufficient reason for PFBC to terminate this Agreement.
- 3.17 **ACKNOWLEDGMENT OF PFBC.** CONCESSIONAIRE shall give the Licensed Premises recognition in all forms of advertising and related custom printed materials to include, but not be limited to, brochures, signs, tickets, postcards, posters, maps, and news releases. The wording and use of said acknowledgment are to be pre-approved by PFBC.
- 3.18 **ALCOHOLIC BEVERAGES.** The sale of beer or other alcoholic beverages on the Licensed Premises that is not in accordance with this Agreement is prohibited. CONCESSIONAIRE and all persons acting on behalf of CONCESSIONAIRE are prohibited from selling or possessing illegal substances on the Licensed Premises. Such activity may subject CONCESSIONAIRE to an immediate termination of this Agreement without consideration to CONCESSIONAIRE.
- 3.19 **SCOPE OF OPERATIONS.** CONCESSIONAIRE agrees to operate the Licensed Premises and shall use the premises for no purpose other than those outlined herein, except as may be authorized by the express written consent of PFBC, upon terms and conditions herein set forth, and to keep the Licensed Premises open to the public charging reasonable rates established pursuant to Section 2.13 of this Agreement. CONCESSIONAIRE shall keep the Licensed Premises open to public use and operate the concession services described herein, at a minimum, from March 1 through October 31 of each term and at such other times as needed. The minimum period that the Licensed Premises shall be open to the public may be adjusted by mutual agreement of the Parties.
- A. The services to be rendered exclusively by CONCESSIONAIRE and the provisions of such services shall include the following:
1. The sale of gasoline and oil.
 2. The sale of boat accessories and marine equipment including, but not limited to, such items as boat safety equipment, fishing supplies, bait, and tackle.
 3. The rental of seasonal and transient dockage.
 4. The provision of seasonal dry storage and winter rack-storage of boats and trailers. CONCESSIONAIRE may make modifications to the Licensed Premises to accommodate such boat storage, provided such modifications are approved in advance, and remain the property of PFBC at the expiration of Agreement, unless otherwise directed by PFBC.
 5. The operation of a sewage pump-out facility. CONCESSIONAIRE may charge the public up to \$5 for the use of the pump-out facility.
 6. The sale of fishing licenses and PFBC publications.
 7. Free docking and winter storage of PFBC law enforcement patrol boats and fisheries research vessels. Winter storage of PFBC law enforcement patrol boats and

fisheries research vessels is limited to one boat on the floor and five boats in the rack. CONCESSIONAIRE shall provide storage space for additional PFBC boats depending upon its availability.

8. Free, unrestricted use by PFBC of one office at the North East Marina.

B. CONCESSIONAIRE may:

1. Sell other items provided the public interest would be better served thereby, subject to the approval of PFBC.

2. Provide repair service and/or watercraft towing service. CONCESSIONAIRE shall make provisions for service of boats by individuals and outside contractors. If CONCESSIONAIRE chooses not to provide these services, it shall assist any boater in securing the needed services from private marine dealers or repair services in the area.

3. Install and operate vending machines at the Licensed Premises, dispensing such items as coffee, soft drinks, sandwiches, and snacks, provided such machines are conveniently and properly installed in compliance with state and local health department standards. CONCESSIONAIRE shall place signs on all machines indicating where refunds may be obtained. PFBC will not be responsible for refunds.

4. Sell food and beverage, miscellaneous refreshments, and confectionery in quantities adequate for the needs of the public.

5. Rent boats and boating or fishing equipment.

6. With the express written advance approval of the PFBC, charge reasonable fees for parking on the Licensed Premises.

C. CONCESSIONAIRE may not:

1. Sell or use any items disapproved by PFBC, including but not limited to, merchandise and materials determined by PFBC to pose a negative environmental impact.

2. Sell intoxicating beverages, including beer with any alcoholic content, except as otherwise provided in the Agreement.

3. Charge fees for launching of boats from the launch ramp(s) at the Licensed Premises.

SECTION FOUR: LEGAL REQUIREMENTS

4.1 **ASSIGNMENTS.** CONCESSIONAIRE agrees not to assign this Agreement, in whole or part, or sublicense any part of the Licensed Premises, without first obtaining written consent from PFBC, and in the event PFBC consents to any such assignment or sublicense, CONCESSIONAIRE shall remain primarily liable for the payment of all rentals and other conditions herein provided, unless otherwise expressly provided in the written consent of PFBC. No assignment or sublicense made by CONCESSIONAIRE, without PFBC's prior written consent, shall vest any right or interest whatsoever in the assignee or sublicensee in or to the Licensed Premises.

4.2 **NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE.** During the term of this Agreement, CONCESSIONAIRE agrees as follows:

- A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any subcontract, the CONCESSIONAIRE, each subcontractor, or any person acting on behalf of the CONCESSIONAIRE or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the CONCESSIONAIRE, nor any subcontractor, nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Agreement.
- C. Neither the CONCESSIONAIRE, nor any subcontractor, nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the Agreement.
- D. Neither the CONCESSIONAIRE, nor any subcontractor, nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act, or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- E. The CONCESSIONAIRE and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- F. The CONCESSIONAIRE and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the Agreement relates.
- G. The CONCESSIONAIRE and each subcontractor represent that they are presently in compliance with, and will maintain compliance with, all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The CONCESSIONAIRE and each subcontractor further represent that they have filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The

CONCESSIONAIRE and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion, and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

- H. The CONCESSIONAIRE shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- I. The CONCESSIONAIRE's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Agreement through the termination date thereof. Accordingly, the CONCESSIONAIRE and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- J. The Commonwealth may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the CONCESSIONAIRE in the Contractor Responsibility File

4.3 **AMERICANS WITH DISABILITIES ACT.** During the term of this Agreement, CONCESSIONAIRE agrees as follows:

- A. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., CONCESSIONAIRE understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from Agreement participation or from activities provided for under the Agreement. As a condition of accepting and executing the Agreement, CONCESSIONAIRE agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. CONCESSIONAIRE shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of CONCESSIONAIRE's failure to comply with the provisions of paragraph A above.

4.4 **CONTRACTOR INTEGRITY PROVISIONS.** It is essential that those who seek to contract with the Commonwealth of Pennsylvania (Commonwealth) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

- A. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

1. **“Affiliate”** means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 2. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 3. **“Contractor”** means the individual or entity, which has entered into this contract with the Commonwealth.
 4. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
 5. **“Financial Interest”** means either:
 - i. Ownership of more than a 5% interest in any business; or
 - ii. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 6. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.
 7. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- B. In furtherance of this policy, Contractor agrees to the following:
1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations, or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
 2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees, and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 3. Contractor, its affiliates, agents, employees, and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive, or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
 4. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the

Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

5. Contractor certifies to the best of its knowledge and belief that within the last five years Contractor or Contractor Related Parties have not:
 - i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - ii. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - iii. had any business license or professional license suspended or revoked;
 - iv. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and
 - v. been, and is not currently, the subject of a criminal investigation by any federal, state, or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal, or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

6. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
7. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
8. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices, or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these

Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

9. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents, or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract, or subcontract it enters into in the course of the performance of this Agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
10. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

4.5 **CONTRACTOR RESPONSIBILITY.** For purposes of this paragraph, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

- A. The contractor hereby certifies that neither the contractor, nor any subcontractors, nor any suppliers are currently under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority.

- B. The contractor hereby certifies that contractor has no tax liabilities or other Commonwealth obligations.
- C. The contractor's obligations pursuant to this paragraph are ongoing from and after the effective date of this Agreement through the termination date hereof. Accordingly, the contractor shall have an obligation to inform the PFBC if, at any time during the term of the Agreement, the contractor becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if the contractor or any subcontractors are suspended or debarred by the Commonwealth, the federal government, or other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- D. The failure of the contractor to notify PFBC of a suspension or debarment by the Commonwealth, or any other state of the federal government shall constitute an event of default of this Agreement with the PFBC.
- E. The contractor agrees to reimburse the PFBC for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of the investigators, including overtime, travel, and lodging expenses, expert witness, and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.
- F. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.pa.gov> or contacting:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No. (717) 787-9138

- 4.6 **MAINTAINING ORDER.** CONCESSIONAIRE agrees to maintain order among its customers and be responsible for safeguarding the health and property of its customers as may be required by law, and shall observe and require its workers and customers to observe all laws and regulations of the Commonwealth of Pennsylvania. CONCESSIONAIRE shall not permit any person or persons who may be visibly intoxicated or under the influence of drugs in or about the Licensed Premises, but CONCESSIONAIRE's obligation in this respect shall be limited to a reasonable request to offenders to cease such violations and remove themselves from the Licensed Premises. The above stipulations shall not impose upon CONCESSIONAIRE the duty and obligation of exercising powers and duties of a police officer. Violators of Commonwealth laws or regulations shall be brought to the attention of PFBC or PFBC's designee.
- 4.7 **PFBC DUTIES.** It is hereby fully and mutually understood and agreed that no rights are granted in this Agreement that shall in any way be construed as to impair the powers, privileges, or duties of PFBC or its representatives in the execution of the laws of the

Commonwealth now in force or hereafter enacted or adopted with reference to the Commonwealth, protection, maintenance, utilization, or development of the Licensed Premises.

- 4.8 **HOLD HARMLESS.** CONCESSIONAIRE shall at all times hereafter indemnify and save harmless the Commonwealth and PFBC, its employees, officers, and assigns from and against any and all detriment, damage, loss, claims, demands, suits, and expenses not herein provided, for which the Commonwealth or PFBC may suffer, sustain, or be subjected to, directly or indirectly, by reason of the operation, management, or exercise of any of the provisions herein.
- 4.9 **BANKRUPTCY.** If CONCESSIONAIRE becomes insolvent, fails in business, files for a receiver, or has a receiver appointed by the court; or a creditor of CONCESSIONAIRE attaches or executes a judgment against CONCESSIONAIRE's equipment, materials, or facilities at the Licensed Premises or on collateral pledged to PFBC; and CONCESSIONAIRE cannot demonstrate or prove to PFBC's satisfaction the ability to continue to operate in compliance with the conditions of this Agreement, all the rent reserved for the full term of this Agreement shall become due and collectible immediately, this Agreement shall terminate, and the Licensed Premises shall be immediately surrendered to PFBC. If CONCESSIONAIRE files a petition in bankruptcy, CONCESSIONAIRE shall notify PFBC of same at the time of filing.
- 4.10 **WAIVER OF NOTICE TO QUIT.** CONCESSIONAIRE hereby waives the usual notice to quit and agrees to surrender said Licensed Premises at the expiration of said term, or the termination of this Agreement without any notice whatsoever, and upon any proceeding instituted for the recovery of said rent, CONCESSIONAIRE waives the benefit of all appraisalment, stay, and exemption laws, the right of inquisition on real estate, and all bankruptcy or insolvency laws now in force or hereafter passed.
- 4.11 **BREACH BY CONCESSIONAIRE.** Upon breach of any of the conditions of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE hereby authorizes the Prothonotary or any Attorney of any Court of Record in Pennsylvania to appear for and confess judgment against CONCESSIONAIRE in favor of PFBC for any charges or fees due to PFBC, including the license fee for the unexpired term and/or any portion thereof as herein above provided and waives the benefit of all appraisalment, stay and exemption laws of this Commonwealth, in addition to the right of inquisition on real estate and authorizes and empowers PFBC to terminate the Agreement and to collect, as well, the license fees due thereon, an Attorney's commission of 15% and all costs of collection.
- 4.12 **EJECTMENT.** CONCESSIONAIRE hereby authorizes the Attorney General of the Commonwealth, or any Attorney of any Court of Record, to appear for him upon breach of the conditions of this Agreement, and to enter an amicable action of ejectment and confess judgment therein for the premises herein described, and CONCESSIONAIRE does hereby authorize said Attorney to issue a writ of possession without leave of court.
- 4.13 **PERFORMANCE GUARANTEE.** As security for CONCESSIONAIRE's faithful performance of its obligations hereunder, CONCESSIONAIRE shall furnish PFBC with a performance guarantee made payable to PFBC in the amount of \$50,000 to cover payments from CONCESSIONAIRE to PFBC for one year from the date of default, plus the additional costs that PFBC would incur to operate the Licensed Premises during that period. The performance guarantee shall be in the form of an operation/performance bond, irrevocable letter of credit, or other surety that is acceptable to PFBC. Such performance guarantee shall remain in effect as long as this Agreement is in effect.

4.14 **CONSTRUCTION CONTRACT PERFORMANCE/PAYMENT BOND.**

- A. If CONCESSIONAIRE elects to enter into a construction contract between \$30,000 and \$120,000, CONCESSIONAIRE shall cause the construction contractor to furnish PFBC and CONCESSIONAIRE, prior to the award of any contract, contract performance security in an amount equal to at least 50% of the contract price.
- B. If CONCESSIONAIRE elects to enter into a construction contract in excess of \$120,000, CONCESSIONAIRE shall cause the construction contractor to furnish PFBC and CONCESSIONAIRE, prior to the award of any contract, the following bonds that shall be binding upon the award of the construction contract:
 - i. A performance bond, executed by a surety company authorized to do business in the Commonwealth of Pennsylvania, at 100% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans and specifications approved by PFBC, and the conditions of the construction contract. Such bond shall be solely for the protection of CONCESSIONAIRE and PFBC and shall be on the form provided by PFBC.
 - ii. A payment bond, executed by a surety company authorized to do business in the Commonwealth of Pennsylvania, at 100% of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the prime contract to whom the construction contract was awarded, or to any of his subcontractors, in the prosecution of the work provided for in such contract and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site. Said bond shall be on the form provided by PFBC.

4.15 **RIGHT TO KNOW LAW.**

- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- B. If the Commonwealth needs the CONCESSIONAIRE's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the CONCESSIONAIRE using the legal contact information provided in this Agreement. The CONCESSIONAIRE, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- C. Upon written notification from the Commonwealth that it requires the CONCESSIONAIRE's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the CONCESSIONAIRE's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the CONCESSIONAIRE shall:
 - 1) Provide the Commonwealth, within 10 calendar days after receipt of written notification, access to, and copies of, any document or information in the CONCESSIONAIRE's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

- 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- D. If the CONCESSIONAIRE considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the CONCESSIONAIRE considers exempt from production under the RTKL, the CONCESSIONAIRE must notify the Commonwealth and provide, within seven calendar days of receiving the written notification, a written statement signed by a representative of the CONCESSIONAIRE explaining why the requested material is exempt from public disclosure under the RTKL.
- E. The Commonwealth will rely upon the written statement from the CONCESSIONAIRE in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the CONCESSIONAIRE shall provide the Requested Information within five business days of receipt of written notification of the Commonwealth's determination.
- F. If the CONCESSIONAIRE fails to provide the Requested Information within the time period required by these provisions, the CONCESSIONAIRE shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment, or harm that the Commonwealth may incur as a result of the CONCESSIONAIRE's failure, including any statutory damages assessed against the Commonwealth.
- G. The Commonwealth will reimburse the CONCESSIONAIRE for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- H. The CONCESSIONAIRE may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the CONCESSIONAIRE shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment, or harm that the Commonwealth may incur as a result of the CONCESSIONAIRE's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the Parties, the CONCESSIONAIRE agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- I. The CONCESSIONAIRE's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the CONCESSIONAIRE has Requested Information in its possession.
- 4.16 **HEADINGS.** The section and paragraph headings herein are for convenience only and are intended to have no legal force or effect.
- 4.17 **EFFECTIVE DATE.** This Agreement shall not be valid or enforceable against any Commonwealth party, including PFBC, until it has been fully executed, approved, and delivered to CONCESSIONAIRE.

4.18 **CONSTRUCTION.** This Agreement shall be construed in accordance with the laws and regulations of the Commonwealth of Pennsylvania.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the Parties hereto have signed and sealed these presents as of the date first above written.

Attest:

(NAME OF CONCESSIONAIRE)

Secretary or Treasurer (Date)

President or Vice President (Date)

Attest:

**Commonwealth of Pennsylvania
Fish and Boat Commission**

Administrative Secretary (Date)

Executive Director (Date)

Approved As To Legality and Form:

PFBC Authorized Attorney (Date)

Office of Attorney General (Date)

Approved:

Comptroller (Date)

EXHIBIT A

