STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES
REQUEST FOR PROPOSALS
TO CONSTRUCT AND FUND PORTIONS OF, AND OPERATE ALL OF,
A PUBLIC MARINA FACILITY AT
CAESAR CREEK STATE PARK

August 4, 2015

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* Drawings and bid specifications were for bid purposes only. Actual construction may deviate from plans.

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A PUBLIC MARINA FACILITY AT
CAESAR CREEK LAKE

EXECUTIVE SUMMARY

The Ohio Department of Natural Resources, hereinafter referred to as "the Department", requests proposals from persons, corporations, partnerships, and/or other legal entities, hereinafter referred to as "Contractors" to sublease properties, hereinafter referred to as the "Properties", to fund and construct a portion of the Properties in addition to the Department funded construction, and to operate a marina facility that will provide seasonal dockage at Caesar Creek State Park located in Warren County, for the use and benefit of the public.

A Sublease and Contract for the Properties may be awarded to the Contractor submitting the most responsive and responsible proposal to:

Construct and operate facilities for a period not to exceed June 30, 2038. Evaluation will be based on the Contractor's qualifications, plans of construction and operation, and the term of the Sublease and Contract. At the expiration or termination of the Sublease and Contract, the improvements made to the Properties (land improvements, parking lots, building improvements, docks, etc.) become property of the Department.

The Contractor must, at a minimum construct 81 docks identified as "B-Dock", construct additional parking to accommodate B-Dock slips, and construct additional facilities as specified in the Contractor's proposal. The Contractor must show the Department evidence that all structure(s) are in compliance with all applicable codes. The Contractor may include in his proposal other improvements that he intends to incorporate in order to enhance the operating potential of the Properties, such as additional docks, boat storage facilities or other recreation facilities and amenities. The Contractor will be responsible for the maintenance of the facilities throughout the term of the Sublease and Contract.

Activities to occur and a **tentative** timeline for awarding the Sublease and Contract and implementation are as follows:

Advertisement of Notice to Bidders:	August 5-August 26, 2015
Release of the Request for Proposals:	August 5, 2015
Bid Opening:	October 1, 2015
Evaluation of Proposals:	October 1- October 25, 2015
Selection of a Contractor:	October 26, 2015
Lease Negotiations:	October 26 – November 20, 2015
Approval of the Lease by the Director:	December 18, 2015

Title to Facility Improvements Transferred to State Upon Termination of Sublease and Contract.

DEFINITION OF THE PROJECT

Department Objectives:

1. To deliver to the public at Caesar Creek State Park, by this Sublease and Contract, equal or better quality marina services at similar user rates as are currently being provided in the general area.

2. To add additional dock slips and other facility improvements in addition to the Department marina construction through a partnership with a private "Contractor."

3. To ensure that the construction and operation of a public marina at Caesar Creek State Park is within the Department and Army Corps of Engineers policy guidelines and within the laws of the State of Ohio.

General Expectations:

The Contractor awarded the Sublease and Contract will be expected:

1. To assume full responsibility to submit on or before the dates due, to the Army Corps of Engineers and the Department any planning and construction documents for approval for construction proposed by the Contractor.

2. The Department is constructing Phase 1A of the marina facility with 110 docks as listed in Appendix XVI and Appendix XVII. The Contractor shall construct additional dockage as defined in this RFP and in its proposal for the Properties. The Department will look favorably upon any proposal submitted by a Contractor that includes additional docking.

3. To manage and operate the Caesar Creek Marina in accordance with policies and procedures of the Division of Parks, ODNR, and in accordance with applicable State and Federal laws and regulations.

4. To recruit, hire, and train employees without regard to race, color, religion, national origin, ancestry, disability, sex, or military status in accordance with section 125.111 of the Ohio Revised Code.

5. To maintain all Subleased properties and developed facilities as set forth is Section E(7) below.

6. To make the facilities available to all persons on the same terms and conditions, regardless of race, color, religion, national origin, ancestry, disability, sex, or military status.

7. To furnish a contract operation bond to the Department in the amount of $25,000.00 conditioned on full performance of the terms of the Sublease and Contract.

8. To furnish a construction contract performance bond during the term of any construction work to ensure that construction of the facilities is completed in accordance with the plans and specifications that have been approved by the Department's Chief Engineer and to guarantee that all lawful claims of contractors and subcontractors, material men and laborers employed in the construction of the facilities are fully paid. This bond shall be furnished by the Contractor as described in Section B (9) below.

9. Prior to execution of the Sublease and Contract, but after selection of the Contractor by the Department, the Contractor is to complete and submit the following:

    a) Performance Bonds
    b) EEO election
    c) Evidence of required insurance
    d) Signed and notarized Sublease and Contract

10. Prior to any construction work commencing on the properties, the Contractor must:

    a) Submit an Affidavit of Compliance for Prevailing Wages (as required by Ohio Revised Code, Section 4115.03)
    b) Post Prevailing Wage Notification to Employees at the job site(as required by Ohio Revised Code, Section 4115.03)
    c) Submit Construction Bonds

Please do not complete or submit any of the foregoing forms with your proposal.

COMMITMENT OF THE DEPARTMENT

The Department reserves the right to withdraw this Request for Proposals at any time, with or without cause. Receipt of Proposal materials by the Department or submission of a Proposal to the Department confers no rights upon the Contractor nor does it obligate the Department in any manner. A Sublease and Contract based on this Request for Proposals may or may not be awarded. Any Sublease and Contract resulting in an award from the Request for Proposals is invalid until properly approved and executed by all appropriate parties. Any agreement shall be construed and interpreted according to the laws of the State of Ohio.

Potential Contractors should clearly understand that any verbal representations made or assumed to be made in any oral discussion held between representatives of Contractors and any State agency personnel are not binding on the State of Ohio.

LEGAL BASIS

This Project is authorized by Section 1501.012 of the Ohio Revised Code.

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CAESAR CREEK LAKE

A. GENERAL REQUIREMENTS

1. Issuing Office

This Request for Proposals is issued by:

James Zehringer, Director
Ohio Department of Natural Resources
Columbus, OH 43229-6693

Persons having questions regarding this Request for Proposals should contact Nick Hall, Business Administrator, Division of Parks, ODNR, by phone at (614) 265-6545 or by email at nick.hall@dnr.state.oh.us. Questions can also be presented by mail to: Nick Hall, Division of Parks, 2045 Morse Road – Building C-4, Columbus, Ohio 43229-6693.

2. Delivery of Proposals

Sealed proposals will be received at:
Ohio Department of Natural Resources
Division of Parks
2045 Morse Road, C-4
Columbus, Ohio 43229
Attn: Nick Hall

Bids will be received until **October 1, 2015** at 2:00 p.m. Eastern Time. All proposals received after this time will be returned to the Contractor.

3. Opening of Proposals

Proposals will be opened at the Division of Parks & Recreation & Recreation & Recreation and Recreation, located at the above address, on **October 1, 2015** at 2:00 p.m. Eastern Time. Contractors may attend the proposal opening if they so desire.

4. Negotiation and Rejection

The Department reserves the right to negotiate terms further with any potential Contractor after the proposals are opened or to reject any and all proposals if such is deemed necessary at the

discretion of the Department. The selected proposal will be the proposal that best serves the interest of the Department.

5. Pre-Proposal Conference

A potential contractor's conference will be held at 10:00AM on Wednesday, **August 26, 2015** at the Caesar Creek State Park office located at 8570 E. State Route 73, Waynesville, Ohio 45068.

Contractors are encouraged to send questions by email no less than five business days in advance of that date. Other questions regarding this bid should be addressed to Nick Hall, Business Administrator at (614) 265-645 or by email at nick.hall@dnr.state.oh.us.

6. Economy of Preparation

Proposals should be prepared simply and economically providing a straight forward, concise description of the Contractor's capabilities to satisfy the requirements of this Request for Proposals. Contractors should emphasize completeness and clarity of content. In addition, Contractors must complete and sign the following enclosed forms in a sealed envelope:

a. Proposal Form (**Appendix IV**)
b. Non-Collusion Affidavit (**Appendix V**)
c. Questionnaire and Financial Statement (**Appendix VI**)
d. Plan of Operation and Pro Forma (**Appendix VII**)
e. Standard Affirmation and Disclosure Form EO 2011-12K (**Appendix XIII**)

7. Subcontracting

If any part of the construction or concession operation work is to be subcontracted, the Contractor shall provide in the Questionnaire the identity of the principal contractor, the work to be subcontracted, and the contractual arrangements to be made therewith. Subcontractor selections will be subject to approval by the Department. All subcontractors approved by the Department in regard to the operation of the facilities shall be subject to all terms and conditions of the Sublease and Contract.

8. Properties under Sublease and Contract

The Properties subject to the Sublease and Contract are the land and water areas as are now existing in that portion of Caesar Creek State Park shown in Appendix III. All facility improvements (land improvements, seawall, parking lots, fixed and/or floating docks, boat, etc.) upon the Properties as proposed by the Contractor shall become part of the Properties upon termination of the Sublease and Contract. Upon termination of the Sublease and Contract, the Department reserves the right to reject any and all improvements upon the Properties if the condition of such improvements has not been maintained as set forth in Section E(7) below. Should the Department reject any and all improvements, the Contractor shall remove such rejected improvements at its sole cost and expense, or make further improvements to correct the

substandard condition, subject to the approval of the Department. Slight changes to the land area of the Properties may be negotiated in order to accommodate the Contractor's proposal.

9. Period of Sublease and Contract

The Sublease and Contract will be written for a period to be determined based on the Contractor's proposal and subsequent negotiations, not to exceed **June 30, 2038**. The Sublease and Contract will be non-renewable. The length of the period proposed by the Contractor will be only one factor in evaluating the proposals and selecting the Contractor.

The Department reserves the right to terminate the Sublease and Contract prior to expiration of the period of Sublease and Contract, if it determines that the Contractor has failed to substantially perform in accordance with the Sublease and Contract.

10. Contractual Requirements

All applicable State and Federal contractual requirements shall be met by the Contractor.

11. Proposal Inspection

Proposals submitted and pertinent information furnished by Contractors relating to the selection process, except for completed questionnaires and financial statements, shall be available for public inspection during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, after the Sublease and Contract is negotiated and fully executed.

12. Inquiries

Questions regarding submitting a proposal in response to this RFP may be addressed to Nick Hall, Business Administrator, Division of Parks and Recreation, 2045 Morse Road, Building C-4, Columbus, Ohio 43229-6693; Phone (614) 265-6545. Questions may also be submitted via email to: nick.hall@dnr.state.oh.us.

Questions regarding the state-construction of the marina may be addressed to Phil Miller, Deputy Chief, Division of Parks & Recreation, 2045 Morse Road, Building E-3, Columbus, Ohio 43229-6693; Phone (614) 265-6977. Questions may also be submitted via email to: philip.miller@dnr.state.oh.us.

13. Completeness of Request for Proposals

The physical make-up and content of the electronic Request for Proposals are designed to be complete for the preparation and submittal of proposal; however, the Contractor shall verify to his own satisfaction that all electronic materials posted online at www.ohiostateparks.org, including addenda, are complete. Should the Contractor discover that a page, sheet, or other item is not available electronically, he shall so notify the Department, Division of Parks and Recreation, and the electronic item(s) will be forwarded to the Contractor. After proposals have been submitted, no claims of ignorance of the requirements due to missing material will be

recognized. If, in the judgment of the Department, an addendum is required, the Department will prepare an addendum, and post it with the online electronic bid documents. The sole obligation of the Department with respect to distribution of addenda is to ensure that a notice of each addendum is posted online. Each Contractor shall have the responsibility to satisfy himself prior to submitting his proposal that the proposal is responsive to all addenda issued. Failure to receive any addenda shall not release the Contractor from the obligations imposed in such addenda.

14. Hold Harmless

The Contractor must agree to indemnify, defend, and hold harmless the State of Ohio, its officers, agents, and employees, and the U.S. Army, Corps of Engineers, its officers, agents, and employees, from:

a. Any claims or losses for service rendered by the Contractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Sublease and Contract.

b. Any claims or losses to any person injured or killed or property damaged resulting from the negligent acts or omissions of the Contractor, its officers, agents, or employees in the performance of the Sublease and Contract.

c. Any failure of the Contractor, its officers, agents or employees to observe Ohio laws, including, but not limited to, labor laws and minimum wage laws.

The lake water levels fluctuate, and may result in either drought or flood conditions. The interruption of construction or business operations by changing lake water levels shall not be basis for a claim against the State of Ohio or the U.S. Army, Corps of Engineers.

The State is constitutionally prohibited from indemnifying or holding other parties harmless against claims by Article 2, Section 22, Ohio Constitution.

15. Inspections of the Facilities

Periodic, scheduled, and/or unannounced inspections of the Properties will be conducted during the term of the Sublease and Contract by employees of the Department.

16. Disputes

The Chief Engineer of the Department will be the State's supervisor for construction work conducted under this Sublease and Contract while the Chief, Division of Parks and Recreation will be the State's supervisor for the operation of the facilities.

Any disputes concerning performance of the Sublease and Contract that cannot be resolved between the Contractor and the Chief Engineer or between the Contractor and the Chief of the Division of Parks and Recreation, as appropriate, shall be referred to the Director of the

Department for a decision. The Director will render a decision in writing. These decisions shall be final and conclusive.

B. STANDARD CONTRACT PROVISIONS

1. Non-Collusion:

The Contractor warrants that neither he nor his agents, nor any other party for him, has paid or agreed to pay, directly or indirectly, to any person, firm, corporation, or employee of the Department any money or valuable consideration for assistance in procuring or attempting to procure the Sublease and Contract herein referred to, and further agrees that no such money or reward will hereafter be offered.

2. Contractor's Authorization

The Contractor, if a corporation not incorporated under the laws of the State of Ohio, shall furnish to the Department prior to signing the Lease and Contract, a Certificate from the Secretary of the State showing that the Contractor is authorized to do business in the State of Ohio. If the Contractor is a person nonresident of Ohio, he shall file a power of attorney with the Secretary of State designating the Secretary of State as his agent for the purpose of accepting service of summons in any action brought by the Department.

3. Affirmative Action:

No Sublease and Contract shall be entered into unless the construction contractor possesses a valid certificate of compliance with affirmative action programs issued pursuant to Section 9.47 of the Ohio Revised Code and dated no earlier than one hundred-eighty (180) days prior to the date fixed for the commencement of construction for this project. In order to obtain a certificate, the Certificate of Compliance Application must be submitted to the State EEO Coordinator, Equal Opportunity Division, 4200 Surface Road, Columbus, Ohio, 43228.

4. EEO Options:

The provisions of Section 153.59 of the Ohio Revised Code, relating to Equal Employment Opportunity, apply to this project. The construction contractor must furnish, prior to the commencement of any construction, evidence of compliance by one of the two following options:

Option A:

Adopting the goals and timetables set out in appendices A & B of the State Equal Employment Opportunity Bid Conditions and fulfilling the requirements contained therein (see Appendix I for further information)

Option B:

By utilizing an Affirmative Action Plan that has been approved by the State Equal Employment Opportunity Coordinator (see Appendix II for further information)

5. EEO Reporting:

During any construction work the construction contractor and his subcontractors shall complete on a monthly basis Statewide and State Project Employment Utilization Reports (Input Form 29). The Input Form 29 is to be signed by a responsible official of the company and filed by the tenth (10th) day of each month. The report shall include the total man-hours worked, statewide, for each employee level in each designated trade for the reporting period. The original of the Input Form 29 is to be sent to: State EEO Coordinator, Equal Opportunity Division, 4200 Surface Road, Columbus, Ohio 43228, with a copy to the Chief Engineer, Division of Engineering, ODNR, 2045 Morse Road, Building E-3, Columbus, Ohio 43229; 614-466-8380.

6. Wage Rates:

Wages shall be paid to each employee engaged in the construction work of this project at a rate not less than the prevailing rate of wages for the particular trade or occupation in which he is engaged, as issued by the Department of Commerce of the State of Ohio in accordance with the requirements of Section 4115.03 through 4115.14 of the Ohio Revised Code, as may be amended from time to time. It shall be the responsibility of the Contractor to see that the provisions, duties and obligations of Chapter 4115 of the Revised Code are met, and the Contractor and his construction contractor and subcontractors are subject to the remedies and penalties of Chapter 4115 of the Revised Code.

7. Payroll Reporting:

a. The Contractor shall inform the Office of Chief Engineer, of the Department, prior to the start of construction work, of the schedule of dates when payments of wages to employees are to be made throughout the construction stages of the project. The Contractor is further required to file with the Department a certified copy of his (and his construction contractor's and subcontractor's) payroll for each payroll date. Payroll shall show each employee paid any wages in connection with this project, his/her name, current street address, social security number, work classification, the hourly rate schedule fixed by the Department of Commerce, Division of Labor & Worker Safety, Bureau of Wage & Hour for each classification, the employee's basic hourly rate of pay, the number of hours worked on the project in the applicable pay schedule, number of hours worked each day and the total hours worked for each week during the pay period covered, total wages paid, fringe payments, the amount of any deductions withheld, and an accurate description of all deductions taken from the wages. Payroll shall be filed within two weeks after each pay date and certification of each payroll shall be executed by the Contractor (and his construction contractor and subcontractors, if applicable) and shall state that the payroll is correct, complete, and that the wage rates shown are not less than those required by Chapter 4115 of the Revised Code.

b. The Contractor shall post in a prominent and accessible place on the site of work a legible statement of the current schedule of wage rates of the various classifications of laborers, workers, and mechanics employed. Said statement shall remain posted during the construction period per Section 4115.07 of the Revised Code.

c. The Contractor shall make all records concerning wages and hours paid to employees during the construction phase of the Lease and Contract open to inspection by authorized representatives of ODNR, including the ODNR Prevailing Wage Coordinator, the Department of Commerce, and any other person with right of inspection during normal working hours of business days and as often as may be necessary. Additionally, the street address where the records are kept, the name of the person, street address, and telephone number of the person responsible for keeping and maintaining the payroll records shall be provided to ODNR and other applicable agencies. The Contractor shall notify ODNR of any change and the records shall not be relocated without notification of ODNR. Payroll reports shall remain within the State of Ohio for a period of one year following completion of construction under the Sublease and Contract.

d. Within ten (10) calendar days following the Contractor's receipt of the executed "Notice to Proceed with Construction", the Contractor must submit to ODNR the completed and notarized form titled "Certificate of Wages and Hours on Public Works" (Appendix XI), stating that the Contractor has read and fully understands the wages and hours requirements contained herein, and the other requirements imposed in Sections 4115.03 to 4115.16 of the Revised Code. Contractors requiring assistance in obtaining blank copies of the "Certified Payroll Report" form may contact the Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Labor and Safety, 6606 Tussing Road, Reynoldsburg, OH 43068, 614-644-2223. The form can also be obtained through the Department of Commerce's website at http://www.com.state.oh.us.

   Upon completion of the construction work, the Contractor (and his construction contractor and subcontractors, if applicable) shall submit to ODNR the Contractor's completed sworn and notarized affidavit stating that he has fully complied with the wage and hour requirements of the Lease and Contract, and with Sections 4115.13 to 4115.16 of the Revised Code for this project, and all employees who have performed work on the project have been paid in full the prevailing rate of wage as required by law.

e. Violation of the wage rate requirements may result in penalties imposed in Chapter 4115 of the Ohio Revised Code and other sanctions provided by law, including but not limited to suspension, cancellation, or termination of the Sublease and Contract, forfeiture of contract bonds, and civil or criminal prosecution.

8. Insurance Requirements:

The Contractor is required to maintain in full force and effect during the full term of the Sublease and Contract comprehensive liability insurance for injury, death, or loss to persons and property and fire casualty insurance for the public service facility and all its structures naming the Department and the U.S. Army, Corps of Engineers as additional insured. The Contractor must furnish certificates (on the form furnished by the Contractor's insurance company) of the insurance the Contractor is required to maintain, to the Department, when he

delivers the signed Sublease and Contract to the Department for final execution. Such policy or policies shall, as to form, coverage and carrier, be satisfactory to and approved by the Department, and shall contain a provision that prior to cancellation or reduction of the insurance for any reason, written notice shall be sent to the Department sixty (60) days prior to such cancellation or reduction.

a) The Contractor, at all times during the term of this Contract shall maintain or cause to be maintained in full force and effect commercial general liability insurance with a financially responsible insurance company or companies, covering the respective buildings and/or operations thereon with the State of Ohio, Department of Natural Resources and the U.S. Army, Corps of Engineers an additional insured as its interests may appear. Such insurance shall have a limit of one million dollars ($1,000,000.00) per occurrence/aggregate and shall include five hundred thousand dollars ($500,000.00) for property damage. The institution furnishing such insurance shall be licensed to do business in the State of Ohio and must be approved by the Director prior to execution. The Concessionaire's policy shall be primary over any other coverage.

b) The Contractor shall maintain in full force and effect during the term of the Sublease and Contract property and fire casualty insurance covering the Properties to its full insurable value (subject to such deductible amounts as maybe required by law). This insurance shall include the interests of the Department and the U. S. Army, Corps of Engineers, the Contractor and all sub-contractors. This insurance shall insure against the perils of fire and include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and shall include damages, losses and expenses arising out of, or resulting from an insured loss, or incurred in the repair or replacement of insured property (including fees and charges of engineers, architects, attorneys and other professionals).

c) Workers' Compensation and Insurance:

    1) The Industrial Commission of Ohio must certify that the corporation, partnership or person so awarded the Sublease and Contract and its Contractors have complied with each and every condition of the Workers' Compensation Law, Section 153.08 Revised Code and Section4123.01 et seq., Revised Code. This provision applies except as to materials or apparatus furnished via common carrier and requiring no installation service.

    2) The Contractor shall comply with the State law known as the Workers' Compensation Act, and shall pay into the State Insurance Fund the necessary premiums required by the Act to cover all employees working on this project and under the control of the Contractor, and shall relieve the Department from any costs due to accidents or other liabilities mentioned in said Act. The Contractor shall also furnish at the time of delivery of the fully executed Sublease and Contract and at such other times as may be requested, the official certificates or receipts showing the payments previously referred to

herein, and he shall furnish proof, as required, that adequate compensation insurance is provided.

3) If the Contractor sublets any of the work on this project, the sub-contractor there under shall be required to procure and maintain, during the life of such subcontract, Workers' Compensation and Insurance for all of his/her employees engaged upon the work unless they're covered by the compensation insurance of the prime Contractor.

4) Any class of employees engaged in work on this project which is not covered by the Workers' Compensation Act shall be insured by the Contractor or his/her sub-contractor under Employer's Liability Insurance and/or United States Longshoreman's and Harbor Worker's Compensation Act, and any other Act requiring coverage for liability under Admiralty or Federal Jurisdiction.

9. Contract Construction and Operation Bonds

Prior to any construction, a contract construction bond must be furnished.

Contract Construction Bond(s) shall be required to ensure that construction of the facilities is completed in accordance with the plans and specifications as approved by the Chief Engineer and to guarantee that all lawful claims of contractors, sub-contractors, material men and laborers, employed in the construction of the facilities are fully paid.

The initial Contract Construction Bond, required prior to commencement of construction activity, shall be for the full amount of the estimated cost of construction of the facilities proposed within the initial 18 months from the start of construction. In the event the Contractor proposes to develop the facilities in phases requiring construction after the initial 18 months of the Sublease and Contract, all subsequent construction phases must be covered by subsequent Contract Construction Bonds during the term of the Sublease and Contract. The subsequent Contract Construction Bonds shall be obtained prior to any construction work, as proposed during that particular phase. Each Contract Construction Bond shall remain in effect until the construction covered by said Bond is completed and all construction debts accrued as covered by said Contract Construction Bond are fully paid. All Contract Construction Bonds shall be for the construction work only.

The Contractor must furnish, prior to execution of the Sublease and Contract, a Contract Operation Bond.

The Contract Operation Bond shall be in the amount of $25,000.00 with a surety to be approved by the Department conditioned to ensure the faithful performance of the Sublease and Contract, including operation and maintenance of the facility. The Contract Operation Bond shall remain in full effect throughout the term of the Sublease and Contract. The Department reserves the right to increase the required amount of this bond in order to provide adequate surety as determined by the Department. The Contract

Operation Bond requirement may be met by submitting prior to Sublease and Contract execution, a properly executed contract bond.

The submitted Contract Bonds must be signed by an authorized agent of an acceptable surety bonding company and by the Contractor and must be countersigned by a resident agent of the bonding company, as required by Section 5729.09 of the Ohio Revised Code. The name and address of both the Surety and Surety's Agent must appear on the Contract Bonds. The Surety's corporate seals must also be affixed to all copies. The Contract Bonds must be supported by credentials showing the Power of Attorney of the Agent, the Bonding Company's Certificate of Compliance, and the Financial Statement of the Bonding Company.

10. Legal Status of the Contractor

The legal status of the Contractor, whether a corporation, partnership, or sole proprietorship, shall be stated on the Questionnaire (Appendix VI). All Contractors that are corporations shall name the state in which the firm was incorporated. When a corporation submits a proposal, the proposal shall be signed in the name of, and under the seal of, the corporation by a duly authorized officer or agent of the corporation. The signing officer or agent shall also present legal evidence that he has lawful authority to sign the proposal, that the signature is binding upon the corporation and that the corporation has legal existence.

All Contractors that are partnerships shall give the full names and addresses of all general partners. The signing partner of the partnership shall also present evidence that he has lawful authority to sign the proposal, that the signature is binding upon the partnership, and that the partnership has legal existence.

11. Findings for Recovery

The Contractor represents and warrants to the State that it is not subject to a finding for recovery under O.R.C. 9.24, or that it has taken appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. Contractor agrees that if this representation or warranty is deemed to be false, then any agreement shall be void *ab initio* as between the parties to this Contract, and any funds paid by the State hereunder immediately shall be repaid to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.

12. Public Employees Retirement System

If Contractor is a PERS Retirant, as defined by R.C. § 145.38, Contractor shall notify the Department of such status in writing prior to the commencement of Work. Notices pursuant to this Paragraph IV shall be sent to the Department's Director of Human Resources by mail at 2045 Morse Rd., Building D-2, Columbus, Ohio 43229, by fax at 614-265-7995, or by email at hr@dnr.state.oh.us. The Department shall not be responsible for any changes to Contractor's retirement benefits that may result from

entering into this Agreement nor will the State make any contributions to the public employees' retirement system on behalf of any of the individuals employed by the Contractor, or its sub-Contractor or other agents. Contractor acknowledges and agrees any individual providing personal services under this Agreement is not a public employee for purposes of R.C. Chapter 145. The Contractor certifies that it is a business entity with five or more employees as defined at R.C. § 145.037 (A) for the purposes of the application of R.C. Chapter 145, or that Contractor has completed the necessary forms and returned it to the Department if Contractor is a business entity with no more than four (4) employees.

13. Ethics

The Contractor by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Contractor understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

14. Campaign Contributions

The Contractor affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of $1,000.00 to the Governor or to his campaign committees.

15. Drug Free Workplace

Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engage in the Work purchase, transfer use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

16. Non-Discrimination of Employment

Pursuant to R.C. 125.111 and the State's policy, Contractor agrees that Consultant, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

17. Executive Order 2011-12K – Governing the Expenditure of Public Funds on Offshore Services

A. Executive Order Requirements:

The Contractor affirms to have read and understands Executive Order 2011-12K issued by Ohio Governor John Kasich and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment.

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

B. Termination, Sanction, Damages:

The State is not obligated and shall not pay for any services provided under this Contract that the Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and Contractor shall immediately return to the State all funds paid for those services.

In addition, if the Contractor or any of its subcontractors perform any such services outside of the United States, the State may, at any time after the breach, terminate this Contract for such breach, upon written notice to the Contractor. If the State terminates the Contract, the State may buy substitute services from a third party, and the State may recover the additional costs associated with acquiring the substitute services.

If the Contractor or any of its subcontractors prepares to perform services, changes or shifts the location(s) of services performed by the Contractor or its subcontractors under this Contract to a location(s) outside of the United States, but no services are actually performed, the Contractor has [insert number of days not to exceed 30 days] to change or shift the location(s) of services performed to location(s) within the United States. The State may recover liquidated damages in the amount of [insert the percentage] % of the value of the contract for every day past the time permitted to change or shift the location(s).

C. Assignment / Delegation:

The Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

18. Debarment

Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or 125.25.

19. Sweatshop Free Certification

The Contractor certifies that all facilities used for the production of the supplies or performance of services offered in the Contract are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by the Contractor in furnishing the supplies or services described in the Contract and awarded to the Contractor.

C. SPECIAL TERMS OF THE SUBLEASE AND CONTRACT

1. General Requirements

The Contractor agrees to conduct any and all studies deemed necessary by the Army Corps of Engineers and the Department for improvements not authorized by current permits. The preparation of plans, studies, and the permitting of Contractor-proposed improvements included as part of the proposal are the responsibility of the Contractor.

The Contractor also agrees to operate and maintain the properties including the marina, docks and ancillary facilities, as approved by the Department, on the Properties for the use and benefit of the public as a part of the operation of the State Park. The Contractor will not conduct any other business or operation upon the Properties except with the express prior written consent of the Director of the Department.

Notwithstanding other provisions of the Sublease and Contract, and pursuant to Section1501.012 of the Ohio Revised Code, the Director shall have control and supervision over:

a) the operating season of the public service facility;
b) the facility's hours of operation;
c) the maximum rates to be charged guests using the facility;
d) the facility's sanitary conditions;
e) the quality of service furnished to the guests of the facility; and,
f) the Contractor’s general and structural maintenance responsibilities at the facility.

2. Compliance with Laws and Agreements

a. Throughout the period of the Sublease and Contract, the Contractor will keep itself fully informed of and promptly comply or cause compliance with, all laws, ordinances, rules, and regulations which in any manner affect its use of the Properties and of all orders and decrees of bodies and tribunals having jurisdiction or authority over same, whether

present or future, foreseen or unforeseen, ordinary or extraordinary, whether or not the same shall be presently within the contemplation of the Department and the Contractor, or shall involve any change of governmental policy, which may be applicable with respect to the Properties. The Contractor will protect the Department against any claim or liability arising from any failure to so comply.

b. The Contractor will procure all permits and licenses, except for those furnished by the Department, and pay all charges, license fees, and taxes incident to the performance of the Sublease and Contract and give all notices necessary and incidental to the lawful and proper execution of operations. The Contractor agrees that any and all real estate taxes, sales tax, charges, assessments and the like which arise on or after the effective date of the Sublease and Contract will be fully borne by the Contractor.

3. Law Enforcement and Security

The Park Officers are the primary law enforcement officers in the State Park. The Contractor will be responsible to provide such security for his facilities and operations as he deems appropriate. He will coordinate his security arrangements with the Park Manager.

4. Fiscal Adjustment in the Event of Early Termination

Within ninety (90) days after completion of the construction of each project specified in the Sublease and Contract, the Contractor will submit to the Department certification from an independent Certified Public Accountant, approved by the Department, as to the total Contractor's cost of construction upon the Properties. Upon termination of Sublease and Contract, the facilities become the property of the Department. Facilities include all structures, additions, renovations, improvements, and fixtures, and specifically exclude equipment necessary for construction or operation of the Properties. If the Sublease and Contract terminates prior to its natural expiration, the Department promises to exercise its best efforts to secure funds specifically for this purpose from the General Assembly to make compensation as follows:

a. If the termination occurs in the first three (3) years of the Sublease and Contract, the compensation shall be at the cost of construction work completed as determined by the Certified Public Accountant or at the fair market value, whichever is the lesser.

b. If termination occurs after the first three (3) years but prior to the Sublease and Contract expiration, the Department shall have the option to compensate the Contractor at the lower of the depreciated cost or the fair market value.

   Depreciated cost shall be calculated using the following formula:
   D = T - T x Y/L

   D = Depreciated Cost
   T = Total Contractor cost to construct/modify facilities
   L = Term of the Sublease and Contract in years

Y = Number of Years since commencement of Sublease and Contract

As referred to in this Section and in Section C (4) (a) above, fair market value shall be determined by independent certified MAI appraisal, such appraisal to be contracted for by the Department. MAI valuations shall be confined to items identified in the Certified Public Accountant certification, and shall, if appropriate, include any later Contractor funded development done pursuant to Department approval.

c. The Contractor must maintain the facilities in a good state of repair and appearance. Failure to comply with maintenance requirements shall result in a reduction of the compensation by the cost of any repairs other than those incurred as a result of normal wear and tear as determined by the Department.

d. Any compensation opportunities will cease to exist two years following termination.

e. Upon termination of this Sublease and Contract the Contractor shall forthwith and at its own expense remove all items of its personal property and portable equipment from the premises not contained in the report required in Section C(4)above, prepared by the independent certified public accountant on the Contractor's cost of construction. In the event such property is not removed within sixty (60) days, it shall become the property of the Department and maybe disposed of in any manner the State sees fit.

f. Obligations of the State are subject to provisions of Section 126.07 of the Ohio Revised Code.

g. All valuations made shall be exclusive of the value of land and any developments funded by the Department.

5. Failure to Perform According to Proposal

Failure of the Contractor to perform a construction project as identified in his proposal will result in a reduction of the term of the Sublease and Contract as mutually agreed prior to execution. Further, the Department may remove certain areas of the Properties if not developed in accordance with the Sublease and Contract.

D. DESIGN AND CONSTRUCTION

1. General

The Contractor shall construct 81 slip "B-Dock" and additional associated parking as a mandatory bid requirement. The Contractor shall be responsible for matching the docks currently under construction. Contractor shall be responsible for all plans, permits, and construction of all docks and parking areas not already secured by the Department. Additional dock and parking construction may be proposed by the contractor to supplement the docks

installed by the Departments construction project and the mandatory "B-Dock" bid requirement. The Contractor may include in his proposal additional improvements as he considers necessary to enhance the operation potential of the facilities. These facilities must be shown schematically in the proposal to enable proper evaluation. The general quality and character of the Contractor proposed improvements shall meet or exceed those constructed by the State. Preliminary and final designs, along with required permit application materials, must be approved by the Chief and all other required entities.

2. Quality of Design and Construction

All modifications or other construction performed under the terms of this Sublease and Contract must be of the quality and character acceptable to the Department. All proposed construction shall be designed by a registered architect or engineer. Any dock construction proposed by the Contractor must meet or exceed the specifications used for the Department constructed docks on the Properties. The Contractor shall select the appropriate consultant for the design of such facilities, but the Department, in its sole discretion, reserves the right to reject the selection if the design consultant is not suitably experienced in the type of work proposed. Throughout the design of the proposed construction, the Contractor's design consultant shall make submittals for review and approval to the Department as outlined in Appendix XII.

Construction plans for the facility must be reviewed and approved by the Corps of Engineers.

3. Timetable

After final design documents are approved by the Chief Engineer, and all required certificates and bonds are supplied, a Notice-to-Proceed will be issued to the Contractor. The required improvements to the Properties must be completed no later than that agreed upon during negotiations. A timetable for other improvements as proposed by the Contractor must be identified in the Contractor's proposal. A Notice-to-Proceed issued by the Department must be received by the Contractor prior to commencement of any construction work.

4. Compliance with Codes and Permit Requirements

Construction and equipment must meet all applicable codes. The Contractor must obtain all building, electrical, plumbing, EPA, U.S. Corps of Engineers and other required permits except as provided by the Department. The Contractor must also schedule and pay all costs associated with all required inspections of the work in progress and for all inspections required of occupancy. It shall be the responsibility of the Contractor to pay all costs associated with providing utilities upon the Properties.

5. Construction Schedule

The Contractor shall provide the Chief Engineer of the Department a copy of the construction schedule. The Chief Engineer of the Department, or his representatives, reserves the right to review the construction work regularly. The Chief Engineer shall conduct the final inspection of each facility and must approve the completed construction prior to operation of the facility.

E. OPERATION

1. **Scope**

a) **General Conditions**: The Contractor agrees to operate a marina, providing dock spaces for seasonal and transient dockage, restroom facilities, gasoline sales, retail sales typical at marina facilities, and parking areas. The Contractor shall charge reasonable rates for seasonal and/or guest or transient dockage, and for all other services provided. The facility shall be open to the public every day of the operating season unless otherwise approved by the Director.

b) **Other Facilities:** The Contractor may offer to the public other services on the Properties if approved by the Department. The Contractor must submit detailed information regarding any additional services in the bid proposal.

c) **Items or Services Not Accepted for Sale:** The Contractor shall withdraw from sale or service any items disapproved by the Director. The Contractor shall comply with the following special provisions:

1) Intoxicating beverages, or beer with any alcoholic content, may not be sold, dispensed or consumed upon the Properties without specific prior written approval of the Director.

2) The Contractor agrees that it shall not permit gambling or games of chance upon the Properties, or install, operate, or permit to be installed any device for such purposes, or permit or conduct any activities upon the Properties which are illegal or contrary to good morals or are otherwise objectionable. This paragraph does not apply to lottery games conducted pursuant to the Ohio Lottery Commission as permitted under Chapter 3770 of the Ohio Revised Code. The Contractor shall receive annual approval of the Chief of the Division of Parks and Recreation to offer such lottery games. The Department reserves the right to disapprove such lottery games at any time.

d) **Necessary Equipment:** The Contractor shall furnish and maintain a sufficient amount of movable equipment, as may be necessary to operate the facilities under this Sublease and Contract. The Department has at its disposal $50,000 for improvements to the interior of the marina structure. The Contractor shall define in Appendix VI, Questionnaire, their proposed plans for equipping and furnishing the marina with these funds that will best meet their operational needs outlined in Appendix VII, Plan of Operation.

2. Rates and Prices

a) The Contractor shall, at all times, make available to the public the prices, rates, and charges which may be made for dockage or other services to the public. The maximum prices charged shall not exceed rates approved by the Department. A written schedule describing rates for all services and rentals shall be submitted to, and approved by, the

Director prior to the initial opening date of the operation and by March 1st of each subsequent year of the operation.

b) The Contractor agrees to comply with all statutes and rules of the Division of Parks and Recreation which provide for reduced rates and fees on certain recreation facilities, equipment or related activities for persons who are holders of a "Golden Buckeye Card", as issued by the Ohio Department of Aging. Unless otherwise provided by said statutes or rules, such reduced rates and fees will not apply to such items as automatic vending machines, or the sale of merchandise. Typically, a ten percent (10%) reduction in rates and fees will apply to seasonal or transient dockage. This list is not exclusively indicative of all applicable or exempted reduced rates and fees, but is provided to give examples of certain items.

c) No personal dock licenses (PDL's) may be sold to fund any portion of this RFP.

3. Remittances

The Contractor agrees to pay the Department at its office in Columbus, Ohio not later than the fifteenth (15) day of each and every month, as payment for the occupied Properties, a percentage of gross receipts earned during the preceding month. Unless monthly receipts reports as provided in Section E (4) (a) (1) below and monthly payments are postmarked or received by the Department on or before the fifteenth (15th) day of each month, a late penalty fee of $10.00 per day shall be added to the amount due.

4. Reports and Records

a) The Contractor shall furnish to the Department the following reports:

1) The Contractor shall furnish to the Department a monthly receipts report of total gross receipts from the operation of the Properties for the preceding month by category for seasonal dockage, transient dockage, and all other sales, due on or before the fifteenth of each month as outlined in the Department Concessionaire's Manual, made available to the Contractor at the time this Sublease and Contract is entered into, and any subsequently revised versions thereof. Unless monthly receipt reports are postmarked or received by the Department on or before the fifteenth day of each month, a late penalty fee of $10.00 per day shall be charged to the Contractor by the Department.

2) The Contractor shall furnish the Department prior to April 1st of each year:

- a combined profit and loss statement for the operations under this Sublease and Contract; and,

- a copy of its audited balance sheet and of its combined operations for each year, including all operations not under this Sublease and Contract; the Chief of the Division of Parks reserves the right to require an audited balance sheet.

b) The Contractor will use its best efforts to follow recognized, modern business practices to the end of providing efficient and adequate service to the public at fair and reasonable rates.

c) The Contractor shall provide to the park manager by June 1 of each year a list of dock holders, including names, addresses, phone numbers, makes of boats, types of boats, boat lengths, boat license numbers, and the assigned dock numbers. This inventory shall be updated monthly, as changes occur, or as directed by the park manager. In the case where seasonal docks are unavailable for use due to flooding or other causes, the Contractor shall issue seasonal dock refunds consistent with the policy of the Division of Parks and Recreation regarding dock refunds unless otherwise approved by the park manager.

5. Relationship of Parties and Contractors Employees:

a) Contractor shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Contractor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

b) While Contractor shall be required to render services described hereunder for the Department during the term of this Lease and Contract, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder as an independent contractor, that the Department shall have or exercise any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.

c) Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

d) It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Department or the State of Ohio.

e) For any employees or subcontractors working onsite at any Department location, Contractor understands that these employees or subcontractors may be subject to a background check conducted by the Department. Such a background check may include criminal records, tax records, driving records, verification of academic credentials or degrees. The Department reserves the right to refuse access to the job site at any time if the Department determines in its discretion that Contractor's employee or subcontractor presents a potential security threat or

if there is a change in the results of the background check at any time during the term of the Agreement.

f) The Contractor shall employ only competent and qualified employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all guests and patrons. The Contractor's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt and efficient service to the public and to properly carry out all housekeeping and maintenance and all other responsibilities associated with the operation of the Properties. Whenever the Director notifies the Contractor that its manager of the Properties or any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Contractor shall discharge such person within twenty-four (24) hours provided, however, that such discharge does not violate any outstanding union contract or Ohio or Federal employment regulation, in which event such discharge shall take place in accordance with said contracts and regulations. In the case of any managerial or supervisory personnel deemed unsatisfactory by the Director, the Director shall give written notification to the Contractor stating the reason(s) for discharge. The Contractor shall have thirty (30) days to replace supervisory personnel and sixty (60) days to replace the manager. Any person so discharged shall not be re-employed upon the Properties except with the written consent of the Director.

g) In the event the Director specifies uniforms to be worn by persons working on the Properties, the Contractor shall furnish the necessary uniforms or require the employees to furnish them and shall require their use in accordance with the requirements of the Department. Any uniforms so required shall be of the type ordinarily worn by employees doing like work in similar places of business.

6. Utilities

The Contractor shall be solely responsible for, and promptly pay, all charges for water, sewer service, electricity, and any other utility used or consumed on the Properties on a year round basis. In no event shall the Department be liable for an interruption or failure in the supply of any such utilities to the leased Properties. The Contractor may be required to install utility meters if needed.

7. Maintenance, Repair, Replacement, and Restoration

Except as to loss or damage caused by fire or other casualty insured against, or in the case of uninsured property, loss or damage resulting from windstorm, other natural casualty, or fire not resulting from negligence or fault of the Contractor, its agents, employees, assignee, sub-contractors Subleases, or licensees, the Contractor shall provide at its expense all maintenance, repairs, replacements, and restoration needed to keep and maintain the whole of the Properties and appurtenances in good, safe, first-class order and condition at all times during the term of the Sublease and Contract.

a) The Contractor shall prepare a Site Operations and Maintenance Plan and submit it to the Division of Parks for review and approval on an annual basis. The plan should identify the routine inspections that will be performed to verify that the facilities remain clean and in good repair, the frequency of performance for specific maintenance activities and the anticipated repair and replacement schedules for the facilities. The Contractor will be responsible for maintaining records that document the date the specific action was performed, a brief description of the maintenance activity along with its approximate location and cost and identify the entity responsible for completing the task. Upon request, the Contractor shall make these records available to the Division of Parks.

b) Responsibilities of the Contractor shall extend to areas of the subleased Properties and shall include, but shall not be limited to:

    1) Maintenance, repair, replacement, and restoration of all facilities, structures and docks in the Sublease and Contract.

    2) Maintenance, repair, replacement, and restoration of the grounds and walkways in the immediate vicinity of the docks and within the Properties covered under this Sublease and Contract including mowing, trimming, weeding, fertilization, replanting, and pruning of grass, shrubs, trees and bushes, and litter collection.

    3) Maintenance, repair, replacement, and restoration of sidewalks, driveways, and parking areas located upon the Properties.

    4) Removal of all refuse from the operation, unless otherwise agreed upon between the Contractor and the park manager.

    5) Cost of structural repairs which result from the Contractor's negligence or failure to perform required routine maintenance.

    6) Removal of dead or dying trees upon the Properties, as approved by the park manager.

    7) Maintenance, repair, replacement and restoration of gasoline tanks and dispensing equipment, if applicable.

    8) All other routine repairs and maintenance not specifically listed under Section E(7)(c) below.

c) Maintenance responsibilities of the Department shall include:

    1) surface maintenance of the main roadways, the access drive from the main roadway to the youth fishing pond and snow removal from main roadways when necessary.

8. Alterations and Improvements

a) The Contractor may, at his own option and expense, make alterations and improvements in addition to those proposed by the Contractor, provided the same are approved in advance in writing by the Director. The Contractor shall not make or cause to be made any alterations, additions, or improvements, or install or cause to be installed any trade fixture, exterior signs, exterior lighting, or plumbing fixtures to the facilities without first obtaining the Department's written approval and consent. The Contractor shall present to the Department sealed (stamped by a registered architect) plans and specifications for such work at the time approval is sought.

b) All alterations, decorations, additions, and improvements, including docks made by the Contractor shall not be removed from the Properties prior to the end of the term of the Sublease and Contract without prior consent in writing from the Director. Upon expiration of the Lease and Contract, the Contractor shall remove its trade fixtures and all such alterations, decorations, additions, and improvements as the Director shall direct, and shall restore the Properties to the same condition as they were at the commencement of the operation of the facilities, ordinary wear and tear excluded. All alterations, decorations, additions, and improvements not directed to be removed shall, upon expiration of the Lease and Contract, be and become the property of the Department.

9. Right of Entry

a) The Department and the U.S. Army, Corps of Engineers shall have full right and power to enter upon the Properties for the purpose of inspection, enforcing laws, rules and regulations, and for any other lawful purpose.

b) The Department or its authorized representatives may, at all reasonable times and without interfering with the operations being conducted upon the Properties, enter into and upon said Properties to examine the condition thereof and determine whether the Contractor is conducting its operations thereon in compliance with the terms and provisions of this Sublease and Contract.

c) The Department reserves the right to enlarge, close or reduce the size of any area for the purpose of improvement, repair, construction, or any other legitimate purpose.

10. Advertising and Printing

a) The Contractor shall be responsible for all costs and expenses incurred in connection with advertising, promotional, and sales activities, including services and materials for such advertising and promotions.

b) Materials to be used for printing or websites (i.e., stationery, brochures, post cards, display advertising, and other like materials) in connection with the operation of this business, or any advertising in any manner or form, whether on

or about the premises or elsewhere, or in any newspaper, website, or otherwise, shall be submitted for review on an annual basis or as requested by the Director. The Contractor shall not display, distribute or advertise anything which has been disapproved by the Director.

11. Signs

a) Signs or advertisements placed by the Contractor upon any property of the Department or upon any vehicle used by the Contractor directly in the Properties under Sublease and Contract shall be approved by the Department. The Department shall have the right, without notifying the Contractor, to remove any sign or signs that have not been approved by the Department.

b) The Contractor further agrees to maintain any sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved, in good condition and repair at all times.

12. Standards of Performance

The Contractor shall be responsible for assuring that the operations authorized under the Sublease and Contract provide service to the best standards prevailing for similar businesses. The service rendered by the Contractor shall at all times be orderly and sufficient to meet the reasonable demands of the public. The Director has the right to object to the service or any particular condition of the Properties and order the unsatisfactory service or condition to be corrected. The Contractor shall correct any unsatisfactory service or condition immediately if such action is necessary to protect and maintain the public health, safety, or welfare.

13. Ohio Clean Marina Program

The Contractor shall make every effort to become a Certified Ohio Clean Marina and maintain the Ohio Clean Marina status throughout the term of the Sublease and Contract without regard to the availability of grant funding.

14. Assignments and Subleases

The Contractor will not assign the Sublease and Contract in whole or in part, nor sublet all or any part of the Properties, without first obtaining the written consent of the Director.

15. Termination by the Department

a) The Department may, at its option, declare the Contractor to be in default if any of the following events occur:

1) The Contractor fails to make any payment due from it to the Department, and if such default shall continue for ten days after written notice from the Department to the Contractor designating such default.

2) The Contractor fails to maintain in full force and effect any insurance or bond required by the terms of the Sublease and Contract;

3) The Contractor assigns or sublets the Properties or portions thereof in violation of the terms of the Sublease and Contract, without prior written approval of the Department;

4) The Contractor vacates or abandons the Properties or any part thereof, or discontinues the operation of the facility in such scope as contemplated in the Sublease and Contract;

5) The Contractor makes an assignment for the benefit of creditors;

6) The interests or any of the assets of the Contractor are sold upon execution or other legal process;

7) The Contractor files a petition in bankruptcy;

8) Any involuntary petition under any of the provisions of the Bankruptcy Act is filed against the Contractor, and such proceeding is not dismissed within ninety (90) days thereafter;

9) The Contractor is dissolved by operation of law or the order or decree of any court of competent jurisdiction;

10) The Contractor fails to substantially keep, perform, and/or observe any covenant, provision, or term of the Sublease and Contract;

11) The Contractor is prohibited by a court of competent jurisdiction from using all or part of the Properties;

12) The Contractor violates discrimination prohibitions cited in the Sublease and Contract.

13) The Contractor's principal(s) or officer(s), if the Concessionaire is a corporation, or its partner(s), if the Concessionaire is a partnership, are convicted of any theft offense.

b) In the event of default or abandonment of premises by the Contractor, the Department may exercise one or more of the following rights or remedies:

1) The Department may, upon written notice to the Contractor, declare the Sublease and Contract together with all rights, interests, and privileges hereunder to be terminated;

2) The Department may pay or perform any obligation created through the Sublease and Contract and not performed by the Contractor. The value of any performance so rendered

by the State shall be paid by the Contractor and shall bear interest at the rate of ten (10) percent per annum from the date of such performance;

3) The Department may bring suit;

4) The Department may immediately enter and take possession of the Properties and enjoy the Properties as though the Sublease and Contract had expired. The parties acknowledge that the rights and remedies created herein are in addition to those that may otherwise be available at law or inequity. Exercise of any right to relief by the Department shall not be construed as a waiver of any other available right or remedy.

16. Termination by the Contractor

The Contractor shall have the right to cancel the Sublease and Contract upon sixty (60) days written notice to the Department upon the happening of any of the following events:

a) Any court of competent jurisdiction issues an injunction preventing or restraining the Contractor from using any substantial part of the Properties for a period of ninety (90) days or more;

b) The Contractor is unable to conduct its operation in substantially the same manner and to the same extent as theretofore conducted for a period of at least ninety (90) days because of: (1) any law; or (2) any rule, order, regulation, or other action of any governmental authority, board, agency, or office which may have jurisdiction thereof; or (3) fire, earthquake, or other casualty, or act of nature or civil commotion, or any cause not due to the fault of the Contractor or beyond its control.

F. EVALUATION OF PROPOSALS

1. Proposal Submission Requirements

Each Contractor shall fully complete all forms required herein and failure to fully complete any form may result in rejection of the entire proposal. These forms are as follows:

- Proposal **(Appendix IV**)
- Non-Collusion Affidavit **(Appendix V**)
- Questionnaire and Financial Statement **(Appendix VI**)
- Plan of Operation and Pro forma **(Appendix VII**)
- Standard Affirmation and Disclosure Form EO 2010-09S (**Appendix XIV**)

These forms must be submitted in a sealed envelope. The envelope shall be provided by the bidder and clearly state "Caesar Creek Marina Bid Proposal" with the bid opening date of October 1, 2015 affixed to the exterior of the envelope.

2. Method of Evaluation

Evaluation of the proposals will be performed by the professional staff of the Ohio Department of Natural Resources. The Department reserves the right to negotiate with any prospective Contractor during any stage of the evaluation process. The evaluation will be conducted as follows:

a) Preliminary Screening - During this preliminary screening stage, all complete proposals will be reviewed. Those proposals consistent with the Department's overall objectives of the project, and which show the potential of being beneficial for public interest will be chosen for further review. All incomplete proposals and those not consistent with the project's objectives will be rejected.

b) Clarification Process – The proposals chosen for further review will be scrutinized. The Department will request additional information from prospective Contractors which may include conceptual plans, details regarding past experience operating similar facilities, financial records and/or other documents demonstrating financial capability, or any other areas needing clarification. A formal interview will be held with each prospective Contractor. Based upon the information received during this step of the selection process, certain proposals will be selected for final review.

c) Final Review – During this final review stage, site visits to the prospective Contractors' existing installations may be made. The information received during these site visits, if applicable, and all other previously received information regarding the proposals will be the basis used in selection of the successful proposal and Contractor. All Contractors will be notified of the final selection in writing.

d) Lease Negotiations and Execution – Following successful Lease negotiations with the selected Contractor, the Lease and Contract will be executed.