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COMMONWEALTH of VIRGINIA  
Department of Game and Inland Fisheries

**STANDARD CONTRACT**

Contract Number: EP2968717

Title: Operation of a Concession Stand at Crooked Creek

This Contract entered into this 21st day of March 2019 by Carroll County Virginia herein after called the "Contractor," and the Virginia Department of Game And Inland Fisheries, hereafter referred to as the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide the services to the Agencies of the Commonwealth of Virginia as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: **March 15, 2019 through March 14, 2020**  
with four (4) optional one-year renewals remaining.

The contract documents shall consist of:

- (1) This signed form,
- (2) The attached purchasing description, which consists of:
  - (a) The Scope of Work, and /or item description
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

By: SB Tault

Title: County Administrator

PURCHASING AGENCY:

By: Robert C. Duncan  
Robert Duncan

Title: Executive Director

## I. SCOPE OF WORK

1. During the term of this Contract, the Purchasing Agency shall provide to the Contractor an agreed upon space at its Crooked Creek Fee Fishing Area in which to operate a concession stand. The Contractor may provide for sale various prepared, pre-packaged foods and sundry items and sell fishing licenses. However all items or services offered for sale, rent or lease to the public shall require a pre-approval by the Purchasing Agency.
2. The Contractor shall have right to all gross sales generated by the concession stand. However, nothing contained herein shall be deemed to exempt the Contractor from payment of any County, State or Federal Tax applicable to the Contractor as a result of this contract.
3. The Contractor shall obtain and display all required business and food licenses, and shall promptly notify the Purchasing Agency upon expiration or revocation of said licenses. The sale of alcoholic beverages is prohibited.
4. All signage associated with the concession whether inside or outside the stand must be pre-approved in writing by the Purchasing Agency.
5. The Contractor agrees to maintain the property and facilities of the Purchasing Agency at the Crooked Creek Fee Fishing Area including rest room facilities and perimeter in a neat and clean condition at all times, including the removal of trash as needed to maintain the visual quality of the area and environs.
6. The Contractor may sell daily fishing permits and other fishing licenses electronically on behalf of the Purchasing Agency; such sales shall be conducted in compliance with State Regulations. All Funds from the sale of these permits along with the required supporting documentation shall be remitted to the Purchasing Agency in accordance with established payment schedules.
7. The contractor shall furnish all equipment to be used in operating the concession stand. The Concession building is equipped with a Fire Suppression System and Hood. The contractor shall ensure that this equipment is used appropriately and safely. Additionally, the contractor shall maintain this equipment in accordance with the manufacturer's recommendations and at the contractor's expense. The Contractor shall be liable to repair / replace at their own cost any of the Purchasing Agency's equipment, which becomes non-operable. All utilities and related costs associated with operating the concession shall be the sole responsibility of the Contractor.
8. Nothing herein shall be construed to convey to the Contractor any right, title, or interest whatsoever in any property, real or personal, of the Purchasing Agency. Nor shall the privileges conferred upon the Contractor herein be deemed authorization of any interference with the Purchasing Agency's right of control, possession, and ownership of the property referred to herein.
9. The Contractor shall maintain the building in which the concession stand is located in a neat, clean and safe condition. The Contractor agrees that the Purchasing Agency or other appropriate regulatory agencies may with out prior notice conduct an inspection of the concession stand premises. Violations noted shall be promptly remedied to the satisfaction of the Purchasing Agency or the Authority citing the discrepancy. Failure of the Contractor to comply with this requirement may result in an immediate termination of this contract.

10. The Contractor shall upon termination of this contract, leave the property and premises of the Purchasing Agency in the condition in which it was upon commencement of this agreement, save normal wear and tear. Damages to the property shall be chargeable fully to the Contractor, and shall be due and payable upon written demand by the Purchasing Agency.
11. Upon request by the Purchasing Agency the Contractor shall promptly provide a report showing a full and complete accounting of all receipts, expenditures, disbursements, liabilities, and such other information relating to the Contractors business operations at the Crooked Creek Fee Fishing Area as the Purchasing Agency may require.
12. Nothing herein shall be construed to impose upon the Purchasing Agency any liability whatsoever for property damage or personal injury arising out of the Contractors operations under this contract. The Contractor, further, agrees to save harmless and fully indemnify the Purchasing Agency for all liability and claims arising out of the Contractors operations hereunder.
13. The Contractor shall be responsible for the conduct of its employees, representatives and relatives located on or visiting the premises. The Contractor shall ensure that said employees conduct themselves in an appropriate and professional manner. The Purchasing Agency shall have the right to reject any person employed by the Contractor for misconduct or misrepresentation to the public.
14. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall insure that all employees are treated during employment without regard to their race, color, religion, sex, or national origin. The Contractor shall not advertise or publicize facilities operated at the Lake or operate facilities in a manner, which discriminates based on race, color, religion, sex, or national origin.
15. If, during the term of this Agreement, the Contractor violates or fails to comply with any of the terms, requirements, or conditions of this Agreement, the Purchasing Agency may in its sole discretion terminate this contract in whole or in part.

## II GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at [www.dgs.state.va.us/dps](http://www.dgs.state.va.us/dps) under "Manuals "
- B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 2.2-4366*). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** The Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the

Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1 and 2 below apply:

1. During the performance of this contract, the contractor agrees as follows:
    - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
    - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that this contract has been made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other individual, supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** The Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

## H. PAYMENT:

### 1. To Prime Contractor:

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

### 2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- I. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
  - J. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
  - K. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
    1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
    2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
      - a. By mutual agreement between the parties in writing; or
      - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
      - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- L. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.
- M. **INSURANCE:** By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
  2. Employer's Liability - \$100,000.
  3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- N. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- O. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based

organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

### III SPECIAL TERMS AND CONDITIONS

1. **AUDIT:** The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period. Upon request by the Purchasing Agency, the Contractor shall promptly provide a report showing a full and complete accounting of all receipts, expenditures, disbursements, liabilities, and such other information, relating to the Contractor's business operations at the Clinch Mountain Fee Fishing Area as the Purchasing Agency may require.
2. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
3. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors, that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
4. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.
5. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.
6. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, either party, without penalty, may terminate the resulting contract after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Either party hereto may, for convenience or for any other reason, terminate this Contract, upon thirty- (30) day's prior written notice. If the Contractor violates or fails to comply with any of the terms, requirements, or conditions of this Agreement, the Purchasing Agency may in its sole discretion terminate this contract.



7. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth upon written agreement of both parties for (four successive one-year periods), under the terms of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.
  
8. **INDEMNIFICATION:** Contractor agrees to indemnify the Commonwealth of Virginia, its officers, agents, and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.