



**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY**

Request for Proposal

Caven Point Recreational Amenities at Liberty State Park

Jersey City, Hudson County

Release Date: November 21, 2017

**Written Question
Cut-Off Date: December 5, 2017**

Bid Submission Due Date: December 22, 2017 by 4:00 p.m.

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1.0 GENERAL INFORMATION

1.1 Purpose and Intent

This Request for Proposal (RFP) is issued by the New Jersey Department of Environmental Protection (Department), Division of Parks and Forestry (Division), on behalf of the State of New Jersey (the State). The purpose of this RFP is to solicit proposals from qualified organizations to operate public or private outdoor recreational amenities within the Caven Point area of Liberty State Park located in Jersey City, Hudson County, New Jersey (Caven Point). Caven Point is shown on the map attached hereto as Exhibit A and the area available for recreational use under this RFP (recreation area). Bidders may propose to utilize all or a portion of the recreation area subject to the conditions set forth herein.

It is the goal of the State to advance the use of this unique location of Caven Point to provide enhanced public or private recreational amenities while preserving or enhancing existing public recreational uses, natural resources and ecological values of the site, including onsite marshlands (or to compensating and/or mitigating for any impacts thereto), and generating sufficient revenue to allow the Department to improve the condition and/or operations of Liberty State Park. The Department is seeking a bidder with a background in developing environmentally friendly recreational opportunities, and the demonstrated financial capacity, expertise and resources to provide the type of quality recreational amenities that will allow the Department to accomplish these goals.

While the site currently contains certain passive recreational amenities, the Department has received substantial interest in the use of the property, causing it consider additional or alternative recreational uses to generate additional revenue to allow the Department to better serve the general public through enhanced or improved park operations within Liberty State Park.

The successful bidder (Lessee) shall execute a Lease Agreement not to exceed twenty-four (24) years, with no term renewal option, on terms and for a rate of return satisfactory to the Department. The Lessee shall pay the Department a fixed annual rent equal to the fair market value of the proposed use of the site, adjusted annually by three (3%) percent. In addition, the Department will require payment of Variable Rent equal to at least eight (8%) percent of the Lessee's annual gross receipts or equivalent compensation proposed by the bidder. The Lessee will also be required to provide compensation to the Department to address impacts to public access and/or impacts to the wildlife, natural resources and ecological values of the site in a manner that enhances Liberty State Park in addition to any mitigation or compensation otherwise required by any applicable statute or regulation.

As set forth herein, all bidders shall submit as part of their bid proposals an Operation Plan detailing how they propose to complete and operate the proposed recreational amenities in accordance with the terms of this RFP. The Lessee shall be the qualified, responsible, and experienced bidder whose proposal demonstrates an enhanced public benefit and is most responsive to the State's goals and whose plan provides an environmentally sensitive and realistic means of generating sufficient revenue for the State, price and other factors considered.

1.2 Background

Caven Point (Block 1497, Lot 1E) is a 21.5-acre peninsula stretching into the Upper New York Bay from the remainder of the 1,212-acre Liberty State Park. The site contains approximately fifteen (15) upland acres including the largest stretch of natural beach in the Upper New York Bay and Hudson River, measuring approximately one-half mile. Caven Point is accessible on foot from Liberty State Park and the surrounding neighborhoods by the Hudson River Walkway which traverses the southwestern border of the site.

This RFP seeks proposals for recreational amenities to be operated within the recreation area.

1.2.1 Site Contamination and Remediation

In 2004, two onsite locations were remediated for elevated (>20 mg/kg) hexavalent chromium: (1) the access road area located along a former pipeline; and (2) the property boundary area located west of the onsite salt marsh. Remediation consisted of excavation and consolidation of 1050 cy and 755 cy, respectively and capping with a high-density polyethylene liner. In addition to hexavalent chromium, beryllium, nickel and vanadium were also detected at elevated levels and used as target contaminants for post-excavation analysis. The remainder of the soils on the site have never characterized.

The Department's Office of Natural Resources Damages also required the construction of an access bridge crossing Caven Creek in the southern portion of the site and connections to the Hudson River Walkway, an educational trail for park personnel on the eastern portion of the site, a two-acre salt marsh and a one-acre freshwater wetland.

The Lessee shall be responsible for conducting an environmental investigation for any activities proposed at the site including, but not limited to, preparation of a Preliminary Assessment (PA) and conducting a Site Investigation (SI), possible Remedial Investigation (RI) and preparation of Remedial Action Workplan (RAW) and Remedial Action Report (RAR) and obtaining a Remedial Action Permit (RAP) and Remedial Action Outcome (RAO) for unrestricted use.

1.2.2 Current Recreational Uses

Caven Point contains existing onsite public passive recreational amenities that include, but are not limited to, the Hudson River Walkway, nature trails and boardwalks, and a beach and water area. The site currently provides opportunities for passive public recreation and eco-tourism in the form of bird watching, boating, fishing, crabbing and various other beach and water uses as well as scenic viewshed of the surrounding skyline from both the Hudson River Walkway and the interior of the site. The interior of the site is open to the public between October and February with access limited during the remainder of the year (March 1 through September 30) to guided tours conducted by the Department due to the presence of migratory bird habitat. The Department also allows other uses pursuant to State Park Service issued special use permits.

Bidders shall formulate their proposals in such a manner to preserve and enhance the existing onsite public recreational amenities to the maximum extent possible, including minimizing any impacts to public access to onsite marshlands, and propose new compatible recreational uses. In addition, all proposals shall include the creation of new public access to the remaining marshlands

and beach and water areas through the extension of the Hudson River Walkway, construction of new or extension of existing trails or boardwalks or some other means proposed by the bidder.

If bidder's proposal impacts any of the existing recreational uses of or limits access to the general public to Caven Point, it shall propose replacement public amenities of greater recreational value onsite or elsewhere within Liberty State Park. The replacement of any impacted public amenities shall be in addition to any other compensation or mitigation under this RFP, any Lease Agreement or otherwise required by applicable law.

1.2.3 Land Use Encumbrances

The Department acquired Caven Point with a combination of funds from the 1978 Green Acres Bond Act and the Federal Land and Water Conservation Fund (LWCF). Thus, the property must be used solely for "recreation and conservation" in accordance with N.J.S.A. 13:8A-48, et seq. (Green Acres Act), and "public outdoor recreation" in accordance with the LWCF Act of 1965, 16 U.S.C. 460, et seq. Any use of the site that is determined to be inconsistent with "recreation and conservation" and/or "public outdoor recreation" is considered a diversion and/or conversion, respectively, requiring compensation. While the Green Acres Act may allow solely for the payment of monetary compensation in an amount equal to the fair market value of the land (at the greater of highest and best or intended use) as compensation for a diversion, the LWCF regulations require compensation in the form of replacement land of equal acreage, fair market value and recreation usefulness for any conversion.

If a bidder proposes private recreational amenities or any other activities that will or may reasonably be expected to result in a diversion and/or conversion, i.e. private recreation, the bid proposal shall set forth how it will satisfy the compensation requirements outlined above. In the event the bidder proposes land compensation (for an anticipated conversion or in lieu of or in addition to monetary compensation offered for a diversion), the compensation proposal shall identify (by block and lot) any potential replacement lands the bidder owns (or can obtain) that will provide equal acreage, market value and recreation usefulness of the intended recreation area. The market value of any compensation offered must equal the greater of the highest and best or intended use of the intended recreation area. Failure to provide a sufficiently detailed compensation proposal for proposed amenities that will or may reasonably be expected to result in a diversion and/or conversion may be grounds for the Department to deem the bid to be materially non-responsive.

The Department may, at its sole discretion, award a Lease Agreement under this RFP for a use that results in a diversion and/or conversion. As a condition of any such award, the Lessee shall be solely responsible for preparing and submitting any required diversion or conversion application and providing all compensation required under the Green Acres Act and/or LWCF regulations. Any compensation required for a diversion and/or conversion shall be separate and in addition to any other compensation or mitigation under this RFP, any Lease Agreement or otherwise required by applicable law.

1.2.4 Natural Resources and Ecological Values

Caven Point provides considerable natural resource and ecological value to Liberty State Park and the surrounding estuary region. Caven Point contains a sandy beach, wetlands, saltwater marshland, tidal pools, mud flats and upland maritime forest. The site provides critical habitat and

nesting grounds for a variety of in-water, brackish and upland flora and fauna species including, but not limited to, migratory and wading birds, black-crowned night heron, sturgeon and winter flounder.

Any activities proposed by the Lessee shall be completed in accordance with all applicable federal and state statutes and regulations including, but not limited to, the permit requirements of the Freshwater Wetlands Act, N.J.S.A. 13:9B-1, et seq., the Waterfront Development, N.J.S.A. 12:5-3, et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50, et seq., the Tidelands Act, N.J.S.A. 12:3-1, et seq., and their respective implementing regulations. The award of a Lease Agreement under this RFP does not guarantee that the Lessee will receive approval from the Department for any permit(s) required to conduct the proposed activities. The Lessee shall apply for all necessary permits and any Lease Agreement shall be contingent upon the receipt thereof. All activities conducted under any Lease Agreement awarded by the Department shall comply with the limitations and requirements of any permit(s) issued under any applicable statute or regulation including, but not limited to, timing restrictions, buffer requirements, mitigation requirements for any anticipated adverse impacts to protected resources and other limitations as may be necessary to protect threatened and endangered species.

All bidders shall describe as part of their bid proposals the method by which they will preserve and enhance the natural resources and ecological values set forth above, any anticipated adverse impacts to the natural resources and ecological values of Caven Point, how they will mitigate for those proposed impacts in a manner that enhances Liberty State Park and any permits it anticipates will require to complete the activities set forth in its proposal. Mitigation for any impacts to natural resources and ecological values shall be in addition to any other compensation or mitigation under this RFP, any Lease Agreement or otherwise required by applicable law.

1.2.5 Structures, Facilities, Parking and Utilities

The Department presently maintains only the aforementioned recreational amenities at the site. There are no parking lots, bathrooms, utilities (water, electric or sewer) or other amenities on the site.

Because the Department does not maintain any utilities at Caven Point, it has no historical data pertaining to the actual costs of the utilities. Accordingly, Bidders must make their own determinations as to the types of utilities required for the proposed activities and should consider what the costs may be to them based on their prior experience. The Lessee shall be solely responsible for paying for all utility usage for Caven Point as well as all costs to maintain and repair the utility systems.

(i) Electricity.

Public Service Electric and Gas Company (PSE&G) is the electrical provider for Jersey City. There are no utility poles on the property. The Lessee shall be solely responsible for obtaining any required utility poles, lines and related infrastructure through PSE&G, and paying for the electricity usage at the property. Additionally, Lessee shall be solely responsible for the costs, maintenance and repair of the electricity and electrical systems.

(ii) Water and Sewer.

There is no public water or sewer service at Caven Point. The Lessee shall be solely responsible for obtaining the water and sewer service necessary for its proposed activities to meet public health requirements, subject to the approval of the Department. The Lessee shall not discharge any human waste and/or waste water onto the property or the surrounding water areas. the Lessee shall be solely responsible for the cost of obtaining the water and disposing of all human waste and waste water.

The Department operates several parking lots and restroom facilities throughout Liberty State Park. The Department may consider an arrangement for shared parking and restroom facilities for a proposed public recreational use if the Department determines, as its sole discretion, that such shared parking is consistent with the requirements of the Green Acres Act and LWCF regulations, where applicable. The Department shall not consider any such shared arrangements if the proposed use is for private, rather than public, recreation.

Bidders shall not propose the construction of additional permanent or semi-permanents structures except for limited ancillary structures necessary for the operation of the proposed amenities.

Proposals for recreational amenities at Caven Point must acknowledge and consider these limitations. Bidders shall explain what changes or improvements they propose to make to the site during the term of the Lease Agreement, keeping in mind the limitations set forth herein, and how it will accommodate the anticipated parking needs for the proposed amenities.

1.2.6 Land and Roads

Entry to Caven Point is limited to foot traffic via the Hudson River Walkway. Vehicles may enter the vicinity of the site through the use of the local roads bordering the property. The Lessee is strongly encouraged to work cooperatively with local authorities to evaluate methods of ingress and egress for its proposed recreational amenities and particularly for access by emergency vehicles.

1.2.7 Maintenance/Trash

The Lessee shall be required to perform routine maintenance and repairs to the portions of the Hudson River Walkway adjacent to the site and all onsite trails, boardwalks and other improvements to the site made by the Lessee, including any necessary utilities. The clearing of snow and ice from the adjacent portions of the Hudson River Walkway and onsite trails and boardwalks shall be the sole responsibility and at the sole expense of the Lessee. If the Lessee determines that ice patches should be salted for safety reasons, the Lessee shall do so at its sole expense.

The Lessee shall also be solely responsible for all maintenance of the site, as approved by the Department, and trash removal. The Lessee shall participate in and comply with all applicable recycling programs in effect in Jersey City and/or Hudson County.

1.2.8 Improvements

Bidders shall propose improvements necessary for the operation of the proposed public or private outdoor recreational amenities including all proposed improvements for the preservation and enhancement of the current public recreational uses, natural resources and ecological values of Caven Point. Bidders shall limit construction of structures only to ancillary permanent or semi-permanent

structures necessary for the operation of the proposed amenities. Bidders shall describe, in detail, all improvements it proposes including expected costs and an expected timeline for completion.

The Lessee shall be solely responsible to obtain and pay for all necessary permits for the making of improvements at Caven Point and shall pay Prevailing Wage for all construction projects. The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement.

(i) Signage

The Lessee may place one permanent sign at a mutually agreeable location within Liberty State Park and may place other permanent and semi-permanent signs as detailed in the bid, subject to the Department's approval and at the Lessee's expense.

(ii) Lighting

The Lessee may add exterior lighting to the site with the Department's approval.

NOTE: After execution of a Lease Agreement, whenever the Lessee plans on making additional improvements to Caven Point, it will be required to submit design documents to the Department showing the proposed improvements, expected costs, and expected timeline for completion of the improvements. Upon written conceptual approval from the Department the Lessee shall be solely responsible for preparing construction plans and specifications. All plans and specifications must be professionally prepared, signed and sealed by the appropriate professional: architect, landscape architect, or engineer. The Lessee shall be required to obtain all federal, State and local approvals required prior to undertaking any improvements. All improvements shall be maintained and repaired by the Lessee. All improvements shall become the property of the Department at the end of the Lease Agreement, unless otherwise specified by the Department.

1.2.9 Personal Property

The Lessee shall be solely responsible for providing all equipment and other such personal property (as defined below) necessary to operate the recreational amenities proposed under this RFP.

Prior to the execution of a Lease Agreement, the Lessee shall provide a list of all personal property that shall not become a part of the Department's property at the expiration of the Lease Agreement. The list of personal property items shall be attached as an exhibit to the Lease Agreement and may be updated as necessary during the term of the Lease Agreement. Any property not listed shall be considered an improvement and, at the Department's discretion, be removed or become the property of the Department upon expiration of the Lease Agreement.

1.2.10 Security

While State Park Police do patrol Liberty State Park, the Lessee shall be solely responsible for the provision and cost of security for its operations at Caven Point against burglary, theft, vandalism and unauthorized entry and, where necessary, crowd control. The Lessee shall contact the Department whenever an incident occurs at Caven Point in the manner set forth in the Lease Agreement and by calling 1-877-WARN-DEP (877-927-6337).

If the Department agrees to allow Lessee to install any locks or other security measures at Caven Point, it shall provide the Department with appropriate means of access such that the Department has unimpeded access to the site at all times.

1.2.11 Alcohol License

The Lessee shall be allowed to secure an Annual State Permit from the New Jersey Division of Alcoholic Beverage Control (NJ ABC), for the service and consumption of alcoholic beverages in any semi-permanent facility and, if allowed by NJ ABC, an outdoor fenced-in area, subject to the limitations set forth herein. Because this is State-owned land, the Lessee must obtain the license from the NJ ABC and not from the local municipality.

It is the intent of the Department that alcoholic beverage service be associated only with the service of food, precluding bar service, where such service is consistent with the character of the proposed recreational amenities. Nothing in this RFP or any of the attachments hereto shall be construed as a guarantee that the Lessee shall obtain a liquor license from the NJ ABC. Failure to obtain a liquor license does not negate or void this RFP or the resulting Lease Agreement in any way and the Lessee shall be expected to perform under this Lease Agreement.

1.2.12 Revenue; Audits

The Lessee will be required to deposit all revenue (cash, checks, credit cards, etc.) into a single bank account, maintained at a bank located within the State of New Jersey and maintained solely for its activities at Caven Point, and through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

The Lessee will be required to provide annual financial statement audits to the Department which include a CPA's highest level of assurances and verification and substantiation procedures. Financial statement compilations, financial statement reviews, or any other lower level of financial statements will not be accepted in lieu of an audit. A final audit will be required after the Lease Agreement expires or is terminated.

1.3 Key Events

The Lessee shall meet with members of the Department within seven (7) days of the proposal award. The Lessee must be prepared to assume full operation of Caven Point on the date the Department executes the Lease Agreement.

1.3.1 Questions and Inquiries

The Department will accept questions and inquiries regarding this RFP from all potential bidders receiving the RFP. Questions may be submitted via email only to the Department at the following address:

officeofleases@dep.nj.gov

1.3.1.1 Question Submission Cut-Off Date

The cut-off date for the submission of questions shall be **December 5, 2017**.

1.3.1.2 Question Protocol

Questions must be directly tied to the RFP. Questions should be asked in consecutive order, from beginning to end, following the organization of this RFP. Each question should begin by referencing the RFP page number and the section number to which it relates.

Brief *procedural* inquiries may be accepted over the telephone by the Office of Leases and Concessions. However, oral explanations or instructions given over the phone shall not be binding upon the State. Bidders shall not contact the Division of Parks and Forestry or any other branch of the Department directly, in person or by telephone, concerning this RFP.

1.3.2 Mandatory Pre-Bid Meeting and Site Visit

Because Caven Point is publicly accessible as part of Liberty State Park, the Department will not hold a mandatory pre-bid meeting or site visit for this RFP. Bidders are encouraged to visit Caven Point on their own during regular park hours to obtain information necessary to formulate a responsive bid.

1.4 Additional Information

1.4.1 Revisions to the RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any RFP addendum will be distributed as follows:

- i. Any addendum issued before the cut-off for the submission of questions and will be posted on the Office of Leases and Concessions website:

http://www.nj.gov/dep/parksandforests/parks/business_ops/current_leases.htm, and

1.4.2 Addendum as Part of the RFP

Any addendum to this RFP shall become part of this RFP, as well as part of any agreement resulting from the RFP.

1.4.3 Issuing Office

This RFP is issued by the New Jersey Department of Environmental Protection, Office of Leases and Concessions. The Manager of the Office of Leases and Concessions is the sole point of contact between the bidder and the Department for purposes of this RFP.

1.4.4 Bidder Responsibility

The bidder assumes sole responsibility for the complete effort required to formulate a bid responsive to this RFP. No special consideration shall be given after proposals are opened because of a bidder's failure to be knowledgeable of all the requirements of the RFP. By submitting a proposal in response to this RFP, each bidder represents that it has satisfied itself, from its own investigation, of all the requirements of this RFP. The bidder further represents that it has made its own calculations, based on the information provided and its own research and experience, of costs, expenses, and revenues, for which the Department bears no liability.

1.4.5 Cost Liability

The State assumes no responsibility and bears no liability for costs incurred by bidders in the preparation of proposals in response to this RFP. Furthermore, the Department does not warrant or guarantee any current or future revenues that may be generated from the operation of recreational amenities at Caven Point.

1.4.6 Contents of Proposal

The entire content of every proposal that is opened and read shall become a public record, notwithstanding any statement to the contrary made by a bidder in its proposal. As public records, all proposals are available for public inspection with the filing of an Open Public Records Act request with the Department.

1.4.7 Operation Plan

Detailing how the bidder will complete and operate the recreational amenities set forth in their proposal in accordance with the terms of this RFP.

1.4.8 Bid and Performance Security

Neither bid nor performance security is required for this RFP.

1.4.9 Price Alteration

Bid prices must be typed or written in ink. Any changes, including "white-outs," must be initialed. Failure to initial changes may preclude an award from being made to a bidder.

1.4.10 Causes for Rejection

In addition to the reasons for rejection of bid proposals mentioned throughout this RFP, proposals shall be rejected for any or all of the following reasons:

- a. The bidder is not authorized to do business in the State of New Jersey;
- b. The proposal is not responsive to the RFP;
- c. Bidder has failed to include any information by this RFP with its submittal;

- e. The submittal contains false or misleading statements; and/or
- f. Bidder has not provided a valid New Jersey Business Registration Certificate.

Also, the Department may reject any and all bids for the following reasons:

- a. The Department has determined there is an actual or perceived conflict of interest;
and/or
- b. Bidder has failed to disclose a potential conflict of interest.

Notwithstanding the above, the Department reserves the right, in its sole discretion, to reject all bids, responsive or otherwise, and not to pursue the project outlined in this RFP.

2.0 DEFINITIONS

The following definitions shall be part of any agreement executed as a result of this RFP:

- a. “Annual Gross Receipts” shall mean all sales at the gross selling price of admissions, food, alcoholic and non-alcoholic beverages, and items of every character sold in, upon, or through any part of Caven Point by the Lessee, including, but not limited to, all revenues and sales related to the operation of Lessee’s recreational activities and gross charges for all services to customers or patrons, performed by the Lessee, in, upon, or through any part of Caven Point, and shall include sales and charges for cash and credit regardless of whether or not the same is collected or uncollected, less only any New Jersey sales taxes collected by the Lessee and remitted to New Jersey taxing authorities with respect to each Term Year of the Lease Agreement.
- b. “Department” or “the State” shall mean the State of New Jersey, Department of Environmental Protection.
- c. “Caven Point” shall mean the approximately 21.5-acre peninsula, containing 15 upland acres, stretching into the Upper New York Bay from the 1,212-acre Liberty State Park, located in Jersey City, Hudson County, New Jersey and identified as Block 1497, Lot 1E on the official tax map of the City of Jersey City, as shown on the map attached hereto as Exhibit A.
- d. “Lease Agreement” shall mean the written agreement resulting from this Request for Proposal and executed by the New Jersey Department of Environmental Protection and the Lessee.
- e. “Lessee” shall mean the successful bidder to this Request for Proposal that enters into an Lease Agreement with the New Jersey Department of Environmental Protection.
- f. “Bidder” shall mean an organization that submits a proposal in response to this Request for Proposal.

- g. “Trash” shall mean any and all garbage, rubbish, refuse and other solid waste materials.
- h. “Improvements” shall mean any renovations, changes, alterations, modifications, retro-fittings, replacements, upgrades, additions, out-fittings, and the like, including any and all woodwork, fixtures, hardware, wiring, pipes, and appurtenances that are a part of the improvements, but shall not mean personal property. Improvements shall also mean the re-building of any building due to damage to the building or the building of any new structure or trail.
- i. “Personal property” shall mean operating equipment and any other personal property necessary for the maintenance, management and operation of the recreational amenities at Caven Point in accordance with this RFP and the Lease Agreement, placed or used in Caven Point by the Lessee that are not attached to and/or physically incorporated into Caven Point.
- j. “Routine maintenance and repairs” shall mean those planned work activities that reoccur on a periodic cycle to sustain the useful life of an item and those work activities undertaken to restore damaged or worn out items to a fully functioning operating condition.
- k. “Division” shall mean the Division of Parks and Forestry.
- l. “Office” shall mean the Office of Leases and Concessions.
- m. “Manager” shall mean the Manager of the Office of Leases and Concessions.
- n. “Commissioner” shall mean the Commissioner of the New Jersey Department of Environmental Protection.
- o. “Evaluation Committee” shall mean a committee established by the Department to review and evaluate proposals submitted in response to this Request for Proposal and to recommend a proposal award.
- p. “Request for Proposal (RFP)” shall refer to this document, which establishes the bidding requirement and solicits proposals to meet the needs of the Department for operation of recreational amenities at Caven Point as identified herein.

3.0 SCOPE OF WORK

The Department seeks to execute a Lease Agreement not to exceed twenty-four (24) years, with no renewal option, with a bidder with a background in developing environmentally friendly recreational opportunities and the demonstrated financial capacity, expertise and resources to provide the type of quality recreational amenities at Caven Point that will generate sufficient revenue and allow the Department to enhance the condition and/or operations of Liberty State Park in accordance with this RFP and the Lease Agreement. The standard Lease Agreement is attached hereto as Exhibit B and shall be modified as necessary to reflect the specifics of Lessee’s proposal. Bidders should refer to both this RFP and the Lease Agreement in preparation of submitting a proposal to gain a full understanding of the services required to be performed and their obligations thereunder.

As consideration for entering into the Lease Agreement, the Lessee shall pay the Department a fixed annual rent equal to the fair market value of the proposed use of the site, adjusted annually by three (3%) percent, plus, as variable rent, a percentage of its annual gross receipts of at least eight (8%) percent or equivalent compensation as proposed by the bidder.

3.1 Required Services

The Lessee shall be required to provide, at a minimum, the type of quality public or private recreational amenities at Caven Point that will generate sufficient revenue to allow the Department to meet the goals of this RFP while preserving and enhancing the current public recreational uses, natural resources and ecological values of Caven Point and compensating and/or mitigating for any adverse impacts thereto in a manner that enhances Liberty State Park. The Department encourages bidders to consider a variety of public or private, passive or active recreational uses of Caven Point.

3.2 Optional Services

In addition to the services required by section 3.1, the Lessee may provide additional recreational amenities such as:

- a. Activities or amenities designed to serve the youth of surrounding urban communities,
- b. Educational services and classes;
- c. Hiking and running trails;
- d. Winter recreational activities in addition to or as an alternative to its primary recreation amenities;
- e. Timed races for any recreational activity;
- f. Sponsorships: The Lessee may obtain sponsorships of events, trails, and structures but at no time may the Lessee obtain sponsorship for Caven Point and thereby rename Caven Point;
- g. Food;
- h. Customer service enhanced amenities.

Bidders shall propose additional services or events as options in their bid submissions.

4.0 PROPOSAL PREPARATION & SUBMISSION

4.1 General Information

Each bidder must strictly follow the instructions contained in this RFP in preparing and submitting its proposal. Bidders are advised to thoroughly read and follow all instructions.

The information required for submission in response to this RFP has been determined to be essential in the proposal evaluation and bidding award process. Any qualifying statements made by the bidder as to the RFP's requirements may result in a determination that the bidder's proposal is materially non-responsive. Each bidder is given wide latitude in the degree of detail it elects to offer or the extent to which plans, processes, and procedures are revealed. However, each bidder is cautioned that insufficient detail may result in a determination that the proposal is materially non-responsive or, alternatively, may result in a low technical score being given to the proposal.

4.2 Proposal Delivery and Identification

To be considered, a proposal responding to this RFP must arrive at the Office no later than **4:00 p.m. on Friday, December 22, 2017**. All bidders submitting proposals are advised to allow adequate delivery time to ensure punctual delivery of proposals by the date and time set forth herein. Late proposals shall be ineligible for consideration. The exterior of all proposal packages must be labeled with "Caven Point RFP", the Bid Due Date, and the Bidder's Name. The proposal shall be submitted to the following address:

Department of Environmental Protection
Natural & Historic Resources
Office of Leases & Concessions
Attn: Rich Boornazian, Assistant Commissioner
Mail Code 501-04C
P.O. Box 420
Trenton, New Jersey 08625-0420

4.3 Number of Proposal Copies

Each bidder must submit one (1) complete original proposal that clearly has been marked as the "ORIGINAL" proposal. Each bidder also must submit four (4) full, complete, and exact copies of the original. The copies are necessary in the evaluation of each proposal. Bidders failing to provide the requisite number of copies shall be charged the cost incurred by the Department to produce the necessary number of copies. It is suggested that the bidder make and retain a copy of its proposal for its own records.

4.4 Proposal Content

The proposal should be submitted in one (1) volume that is divided into six (6) parts as follows:

4.4.1 Forms (Part 1)

4.4.1.1 Affirmative Action Employee Information Report

The bidder must complete the attached Affirmative Action Employee Information Report (Exhibit C), or alternatively, must supply either (1) a New Jersey Affirmative Action Certificate or (2) evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. This requirement is a precondition to entering into a valid and binding contract with the State.

4.4.1.2 Business Registration Reporting; Stock Ownership

Pursuant to N.J.S.A. 52:32-44, the State (including the Department of Environmental Protection) is prohibited from entering into a contract with an organization unless the contractor has provided a copy of its business registration certificate (or interim registration) as part of its bid submission. Failure to submit a copy of the Business Registration Certificate within the bid proposal will be cause for rejection of the bid proposal.

In addition, in the event the bidder is a corporation, partnership or sole proprietorship, pursuant to N.J.S.A. 52:25-24.2, the bidder must complete the attached Ownership Disclosure Form found at Exhibit D. A current completed Ownership Disclosure Form must be received prior to or accompany the proposal. Failure to submit the form will preclude the award of a contract.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>.

4.4.1.3 Pay to Play

Pursuant to N.J.S.A. 19:44A-20.13, et seq. (P.L. 2005, c.51) and specifically N.J.S.A. 19:44A-20.21, and Executive Order No. 117 (2008) the Lessee shall not be allowed to contract with the State if the bidder: (1) makes or solicits a contribution in violation of P.L. 2005, c.51; (2) knowingly conceals or misrepresents a contribution given or received; (3) makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (4) makes or solicits any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (5) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the bidder itself, would subject the bidder to the restrictions of P.L. 2005, c.51; (6) funds contributions made by third parties, including consultants, attorneys, family members, and employees; (7) engages in any exchange of contributions to circumvent the intent of P.L. 2005, c.51; or (8) directly or indirectly through or by any other person or means, does any act which would subject the bidder to the restrictions of P.L. 2005, c.51. Further, where the bidder is a business entity, as defined by N.J.S.A. 19:44A-20.17, and the value of the Lease Agreement exceeds \$17,500, the bidder

shall submit with the Lease Agreement a “Certification and Disclosure of Political Contributions Form”, certifying that the bidder has not made any contributions prohibited by P.L. 2005, c.51 and reporting all contributions the bidder made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, and the “Ownership Disclosure Form”. It is the Lessee’s continuing obligation to report any contributions it makes during the term of the Lease Agreement. Additionally, unless the Lease Agreement is required by law to be publicly advertised for bids, if the bidder is a for-profit business entity, as defined by N.J.S.A. 19:44A-20.26 and the value of the Lease Agreement exceeds \$17,500, the bidder shall submit with the Lease Agreement a “Vendor Certification and Political Contribution Disclosure Form” listing its political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L. 1973, c.83 (C.19:44A-1 et al.) and that were made by the bidder during the preceding 12-month period, along with the date and amount of each contribution and the name of the recipient of each contribution. All bidders must complete and submit with their bid proposals the following enclosed forms, copies of which are attached and incorporated by reference as Exhibit D, in accordance with their instructions: (1) Ownership Disclosure Form; (2) Contractor Certification and Disclosure of Political Contributions Form (P.L. 2005, c. 51); and (3) Vendor Certification and Political Contribution Disclosure Form (P.L. 2005, c. 271). Please note that forms and instructions are also available at <http://www.state.nj.us/treasury/purchase/forms.shtml>.

Bidders further are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if the bidder receives contracts in excess of \$50,000.00 from a public entity in a calendar year. It is the bidder’s responsibility to determine if filing is necessary. Failure to so file will preclude a proposal award and can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or at www.elec.state.nj.us.

4.4.2 Background Information (Part 2)

Each bidder shall submit written answers to the following inquiries:

- i. How many years has your organization been in business under its present business name?
- ii. Under what other or former names has your organization operated?
- iii. If your organization is a corporation, provide the following information: date of incorporation; State of incorporation; president’s name; vice president’s name; secretary’s name; treasurer’s name; and corporate agent for service.
- iv. If the organization is a partnership, provide the following information: date of organization; type of partnership; and name(s) of general partner(s).
- v. If your organization is individually owned, provide the following information: date organization established; and name of owner.

- vi. Has your organization ever failed to complete any contract awarded to it?
- vii. Within the past five (5) years, has any officer or principal of your organization ever served as an officer or principal of another organization when it failed to complete a contract?
- viii. Are there any judgments, claims, arbitration proceedings, or lawsuits pending or outstanding against your organization or its officers or principals?
- ix. Has your organization filed any lawsuits or requested arbitration with regard to any contracts within the last five (5) years?
- x. Has any owner made a claim against you, which has resulted in arbitration or litigation with the past five (5) years?
- xi. Has your organization or any of its officers, principals or owners ever been convicted of a crime, or are they presently the target of any criminal or administrative investigation?
- xii. Has your organization or any of its officers, principals, or owners ever been disqualified, suspended, or debarred from a contract with any Federal, State, or local government entity?
- xiii. Does your organization or any of its officers, principals or owners currently possess a liquor license issued by the New Jersey Division of Alcoholic Beverage Control?
- xiv. Has your organization or any of its officers, principals, or owners ever applied to and been unable to obtain a liquor license issued by the New Jersey Division of Alcoholic Beverage Control?
- xv. Has your organization or any of its officers, principals or owners ever possessed a liquor license issued by the New Jersey Division of Alcoholic Beverage Control (NJ ABC) and has any license for the last ten (10) years ever been suspended or revoked?
- xvi. Has your organization or any of its officers, principals or owners ever possessed a liquor license issued by the NJ ABC and has been fined by the NJ ABC?
- xvii. Has your organization or any of its officers, principals or owners that possessed a liquor license from any other issuing authority and had the issuing authority revoke or suspend the liquor license for any reason?

If the answer to any questions “vi” through “xvii” is yes, please provide details.

Each bidder also shall describe in detail its experience and expertise in providing events, event services and recreational amenities, including the following:

- i. A description of the bidder’s experience as a provider of events, event services and recreational amenities;
- ii. A list of any other qualifications, awards or experience as a provider of events, event services and recreational amenities; and
- iii. The beginning and ending dates of each management contract or lease associated with each event and recreational amenity listed in “i” above.

4.4.3 Technical Proposal (Part 3)

In this Section, the bidder shall describe its plans and approach for fulfilling the requirements set forth in this RFP and the Lease Agreement. The RFP and the Lease Agreement fully describe the minimum services to be provided by the Lessee. The bidder must present its understanding of the requirements of the RFP and Lease Agreement and its ability to fulfill said requirements successfully. However, the bidder is encouraged to expand upon, supplement, or add other amenities and services areas where the bidder has expertise that may benefit the State and maximize the use of Caven Point as described in this RFP. This section of the bidder’s proposal should contain at least the following information:

4.4.3.1 Operation Plan

Each bidder shall submit an Operation Plan containing a complete description of how the bidder intends to fulfill its obligations under the RFP and Lease Agreement, in narrative format. The Operation Plan shall contain a complete description of how the bidder intends to implement each of the requirements set forth in the RFP and Lease Agreement. The narrative should exemplify to the Department that the bidder understands the objectives of the RFP and Lease Agreement, the nature of the services required, and the level of effort necessary to successfully execute the services under the RFP and Lease Agreement. The bidder’s narrative should further be designed to convince the Department that the bidder’s Operation Plan demonstrates an enhanced public benefit, is viable, environmentally sensitive and can be successfully executed, and that the bidder’s general approach to undertaking the RFP and Lease Agreement and fulfilling the State’s goals is in accordance with the tasks and subtasks involved.

Mere reiteration of the requirements set forth in the RFP and Lease Agreement is strongly discouraged because it does not provide the Department with insight into the bidder’s ability to successfully perform under the RFP and Lease Agreement. In sum, the bidder’s response should be designed to demonstrate that the bidder’s detailed plans and proposed approach to performing the requirements under the RFP and Lease Agreement are realistic, attainable, and appropriate and that the bidder’s proposal will lead to successful performance thereunder in satisfaction of DEP’s state goals.

4.4.3.2 Specific Plan Content

The bidder’s Operation Plan should identify and fully detail the following:

- i. Description of the recreational amenities the bidder will provide;

- ii. Description of how it will preserve and enhance the existing public recreational uses, natural resources and ecological values of Caven Point;
- iii. Description of how it will compensate and mitigate for any adverse impacts, including replacement of any lost recreational uses with ones of greater recreational value, in a manner that enhances Liberty State Park;
- iv. Description of the public benefits of bidder's proposal to the surrounding communities and the State;
- v. A list of all anticipated permits necessary to complete bidder's proposal;
- vi. Anticipated staffing and personnel structure;
- iii. Plans for advertising and publicizing the opening of the recreational amenities at Caven Point;
- iv. Proposed hours of operation and months of operation;
- v. Proposed budget including a schedule of proposed fees and prices;
- vii. Proposed additional improvements to all parts of Caven Point and/or Liberty State Park;
- vi. Proposed optional services to be provided by the bidder;
- vii. Description of security including crowd control measures for events and handling of emergencies and closures;
- viii. Description of how the bidder will accommodate its anticipated parking, water, sewer, waste disposal and utility needs
- ix. Description of how the bidder will maintain the property; and
- x. Description of any other information required by this RFP or pertinent to the Department's decision to award the Lease Agreement.

With respect to fee and price schedules, the Lessee in its Plan shall establish all applicable fees and prices, which will be subject to the Department's review and ultimate approval. Fees and prices should be comparable to those charged for similar recreational amenities in the area.

4.4.3.3 Mobilization and Implementation Plan

The bidder must include as part of its proposal a detailed mobilization and implementation plan, beginning with the date of notification of the proposal award. The mobilization and implementation plan must include the following elements:

- i. A detailed timetable for the mobilization and implementation period. This timetable should be designed to demonstrate how the bidder plans to have the proposed recreational amenities operational and by what date.
- ii. The bidder must submit a plan for the purchase and distribution of all ancillary structures, equipment, inventory, supplies, materials, etc. that will be required to fully implement the Lease Agreement on the required start date.
- iii. The bidder also should submit a plan for the use of sub-operators, if any, with respect to implementing any portion of its proposed activities. Bidders must explain in detail how any sub-operator identified will be involved in the mobilization and implementation plan. All sub-operators are subject to the same conditions and disclosures as the bidder and must be approved by the Department prior to the bidder contracting with any sub-operator(s).

4.4.3.4 Potential Problems

The bidder should set forth a summary of any and all problems anticipated during the term of the Lease Agreement. For each problem identified, the bidder should provide its proposed solution.

4.4.4 Organizational Support and Experience (Part 4)

The bidder should include information relating to its organization, personnel, and experience, including but not limited to references, together with contact names and telephone numbers, evidencing the bidder's qualifications and capabilities to perform the services required by this RFP and Lease Agreement. Bidders shall include the names and addresses of agents for service of legal documents.

4.4.4.1 Location

The bidder should include the name(s) of key personnel, location of the office, and telephone number of the office that will be responsible for the project.

4.4.4.2 Resumes

Detailed resumes should be submitted for all management, supervisory, and key personnel who will be acting under the Lease Agreement. Resumes should be structured to emphasize the relevant qualifications and experience of these individuals.

In the event the bidder must hire or otherwise engage management, supervisory, and/or key personnel if awarded the proposal, the bidder should include a recruitment plan for such personnel. Said recruitment plan should demonstrate that the bidder will be able to initiate and complete the project within the time frame required by this RFP.

4.4.4.3 Organization Chart (Complete)

The bidder should include an organization chart depicting its entire organizational structure. This chart should show the relationship of the individuals performing under the Lease Agreement to the bidder's overall organizational structure.

4.4.4.4 Sublease(s)

The Lessee may not enter into any sublease agreements with outside entities for the operation of the recreational amenities provided under this RFP and Lease Agreement without prior notification to and approval by the Department in writing. The Department shall grant approval solely for subleasing of discreet tasks or operations under the Lease Agreement and not for the entirety of the operation. Any approved sub-lessee shall be subject to the same conditions and disclosures as the bidder.

4.4.4.5 Experience of Bidder on Projects of Similar Size and Scope

As evidence of the bidder's ability to complete the services set forth in the RFP and Lease Agreement, the bidder should provide a comprehensive listing of recreational amenities and event services it has provided of similar size and scope within the past five (5) years. A description of all such projects should be included and should demonstrate how such projects relate to the bidder's ability to complete the services required under the Lease Agreement. For each such project, the bidder should provide the name and telephone number of a contact person.

Specifically, the bidder should describe its expertise in providing recreational amenities and event services, including the following:

- i. a description of all recreational amenities and events it has provided or been involved with, including size, type, and location for each;
- ii. a description of all recreational amenities and event facilities the bidder has operated or managed; and
- iii. the beginning and ending date of each ownership, operating agreement or lease associated each item listed in "i" and "ii" above.

4.4.4.6 Financial Viability of the Bidder

The bidder shall provide proof of its financial capacity and capabilities to undertake and successfully carry out its responsibilities under the Lease Agreement. To satisfy this requirement, the bidder shall submit the following with its bid proposal:

- i. the name and address of the bidder's bank, chief banking representative handling the bidder's account, documentation from a bank or financial institution regarding current lines of credit, and the bidder's federal employer information number (FEIN);
- ii. certified financial statements which include a balance sheet, income statement and statement of cash flow, assets, liabilities, net worth, revenues and receipts, expenses, profit or loss, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year; or
- iii. if a certified financial statement is not available, then either a reviewed or compiled statement from an independent accountant setting forth the same information together with a certification from the Chief Executive Officer and the Chief Financial Officer,

that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements.

4.4.5 Monetary Proposal (Part 5)

The bidder must submit a monetary proposal. Failure to submit a monetary proposal shall result in the bidder's proposal being considered materially non-responsive. Each bidder must hold its price(s) firm through completion of the proposal award process.

Each bidder shall submit, as part of its monetary bid, a proposal for fixed annual rent equal to the fair market value for the proposed use, adjusted annually by three (3%) percent. Each bidder shall provide sufficient information to demonstrate that the fixed rent offered is equal to the fair market value of the proposed use.

Each bidder shall also submit, as part of its monetary bid, a percentage of the annual gross receipts of at least eight percent (8%) or other equivalent compensation that will be paid to the Department as variable rent (e.g. if the Lessee proposes a percentage of eight percent (8%), the Lessee shall be required to remit eight percent of all gross receipts to the Department as variable rent). Bidders shall provide financial projections demonstrating the estimated amount of variable rent the Department will receive for the term of the Lease Agreement. Bidders are encouraged to propose a greater percentage. If the bidder proposes Variable Rent in a form other than a percentage of annual gross receipts, it shall demonstrate how the proposed compensation will be equivalent to the minimum of eight percent. The determination of equivalency of compensation shall be in the Department's sole direction; however, the bids of bidders that propose less than eight percent or other equivalent compensation shall be deemed non-responsive. For purposes of this RFP and the Lease Agreement, annual gross receipts shall be defined as set forth herein.

4.4.6 Compensation Proposal

Each bidder shall submit a detailed proposal setting forth how it intends to provide compensation to the Department to address any impacts to public access and/or wildlife, natural resources and ecological values of the site in a manner that enhances Liberty State Park, any mitigation or compensation anticipated under any applicable environmental statute or regulation and, where the bidder proposes private recreational amenities or any other activities that will or may reasonably be expected to result in a diversion and/or conversion, how it will satisfy the compensation requirements of the Green Acres Act and the LWCF regulations.

4.4.7 Changes to Terms and Conditions (Part 6)

A bidder may propose changes or modifications or takes exception to any of the State's terms and conditions. If a bidder does so, the bidder must state specifically in writing in the bid proposal. Any proposed change, modification or exception in the State's terms and conditions by a bidder will be a factor in the determination of an award of a contractor purchase agreement. Bidders must be aware, however, that there are certain terms and conditions that are required by law (e.g., Pay to Play, Affirmative Action, Business Registration, Prevailing Wage).

5.0 OPERATION AGREEMENT

5.1 Precedence of Agreement Terms and Conditions

The Lease Agreement shall ultimately consist of this RFP, any addendum to the RFP, the Lessee's proposal, any best and final offers, the Department's Notice of Acceptance, the executed Lease Agreement, and all exhibits to the Lease Agreement.

In the event of a conflict between the provisions of this RFP and any addendum to the RFP, the addendum shall prevail. In the event the bidder's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the bidder is notified in writing of the State's acceptance of the bidder's terms and conditions. In the event of a conflict between the terms of any other document and the Lease Agreement, the Lease Agreement shall prevail.

5.2 Agreement Term

The term of the Lease Agreement shall be for a period of not more than twenty-four (24) years, unless earlier terminated pursuant to its terms, with no renewal option. The anticipated effective date will be provided in the Lease Agreement. If delays in the selection process result in an adjustment of the anticipated Effective Date, the Lessee shall agree to accept an agreement for the full term of same.

If the Department permits the Lessee to continue operating the Property after expiration of the Lease Agreement without having executed a new written agreement, the Lessee shall continue to operate subject to all terms, covenants, and conditions contained in the expired Lease Agreement. Such continuation of operations by the Lessee shall not constitute a renewal or extension of the expired Lease Agreement.

5.3 Insurance

The Lessee shall, at its sole cost and expense, obtain and maintain at all times during the Term of this Agreement, insurance of the types and in the amounts hereinafter provided:

- | | | |
|------|---|----------------|
| a. | Commercial General Liability & Property Damage | \$5,000,000.00 |
| b. | Worker's Compensation | |
| i. | Bodily Injury each occurrence | \$1,000,000.00 |
| ii. | Disease each employee | \$1,000,000.00 |
| iii. | Disease aggregate Limit | \$1,000,000.00 |
| c. | Such other insurance and in such amounts as may from time to time be reasonably required by the Department. | |

d. If issued a liquor license by the New Jersey Division of Alcohol Beverage Control, the Lessee shall procure such insurance, with the Department as an additional insured, that shall include but not be limited to the sale and service of alcohol.

All insurance coverage shall be issued by an insurance company authorized and approved to do business in New Jersey and shall name the State of New Jersey, Department of Environmental Protection, as an additional insured.

The Lessee shall provide the Department with a certificate of insurance evidencing that all insurance coverage has been obtained. Failure to provide a certificate of insurance by the execution of the Lease Agreement shall render the agreement null and void. The certificate of insurance shall provide for sixty (60) days' notice, in writing, to the Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained. The Lessee shall also provide the Department with valid certificates of renewal of the insurance upon the expiration of the policies so that the Department is continuously in possession of current documentation.

Any insurance protection shall in no way limit the Lessee's indemnification obligations in this RFP and Agreement.

Additional terms and conditions regarding insurance can be found in the Lease Agreement attached hereto as Exhibit B.

5.4 Indemnification

The Lessee for itself, its successors, and assigns, assume all risks and liabilities arising out of bidder's possession, operation, maintenance, and improvement of Caven Point. The Lessee covenants to defend, protect, indemnify, and save harmless the State and releases the State and each of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of every nature arising from or claimed to arise, in whole or in part, in any manner out of, be occasioned by, or result from:

- a. Any injury to, or the death of, any person in or on, or any damage to property which occurs in, on, or about Caven Point, or in any manner growing out of or connected with the use, nonuse, condition, or occupancy of Caven Point;
- b. Violation of any agreement or condition of the Lease Agreement by the Lessee, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through the Lessee;
- c. Violation by the Lessee of any contracts, agreements, or restrictions of record concerning Caven Point or any federal, State, or local law, ordinance, or regulation affecting Caven Point and/or Lessee's possession, use and occupancy thereof; or
- d. Any act, error or omission by the Lessee, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through the Lessee in the performance of the Lease Agreement.

The Lessee's indemnification and liability is not limited by but is in addition to the insurance obligations and any terms set forth in the Lease Agreement.

5.5 Claims and Remedies

5.5.1 Claims

The following shall govern claims made by the contractor regarding contract award rescission, contract interpretation, contractor performance and/or suspension or termination.

Final decisions concerning all disputes relating to contract award rescission, contract interpretation, contractor performance and/or contract reduction, suspension or termination are to be made by the Commissioner. The Commissioner's final decision shall be deemed a final agency action reviewable by the Superior Court of New Jersey, Appellate Division.

All claims asserted against the Department by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. However, any claim against the Department relating to a final decision by the Commissioner regarding contract award rescission, contract interpretation, contractor performance and/or contract reduction, suspension or termination shall not accrue, and the time period for performing any act required by N.J.S.A. 59:8-8 or 59:13-5 shall not commence, until a decision is rendered by the Superior Court of New Jersey, Appellate Division (or by the Supreme Court of New Jersey, if appealed) that such final decision by the Commissioner was improper.

5.5.2 Remedies

Nothing in the contract shall be construed to be a waiver by the Department of any warranty, expressed or implied, or any remedy at law or equity.

5.6 Taxes and Assessments

During the term of the Lease Agreement, the Lessee shall promptly pay when due all taxes and/or assessments, together with interest and penalties thereon that are levied upon or assessed by any government body by reason of the Lessee's activities at Caven Point. The Lessee immediately shall forward any notice of such tax payment to Department and any notice of assessment, tax bill, or any other notice, correspondence or document relating to local property taxation of Caven Point to the Department.

5.7 Prevailing Wage Act

The Lessee shall comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 as codified in N.J.S.A. 34:11-56.25, et seq. The Lessee also agrees to comply with 42 U.S.C. § 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and § 9604 (g)(1), the Lessee must comply with the federal requirements.

5.8 Conflicts of Interest

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of Environmental Protection or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs a through e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

5.9 MacBride Principles

The Lessee must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles. The MacBride Principles Certification form can be found at Exhibit E.

5.10 Iran Certification

Bidder shall certify, pursuant to Public Law 2012, c. 25, that neither the bidder nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). The Iran Certification form can be found at Exhibit E

5.11 Americans with Disabilities Act; Anti-discrimination

The Lessee must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

The Lessee shall not discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

Additional terms can be found in the Lease Agreement at Exhibit B.

5.12 Applicable Law and Jurisdiction

This RFP and the resulting Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey and any legal actions filed shall be filed in the courts of the State of New Jersey.

6.0 PROPOSAL EVALUATION & SELECTION PROCESS

6.1 Proposal Evaluation Committee

Proposals will be reviewed and evaluated by a committee, which shall include participants from the Department's Natural and Historic Resources.

6.2 Oral Presentation and/or Clarification of Proposal

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its proposal. The Evaluation Committee also may require a bidder to submit written responses to questions regarding its proposal. The purpose of such communication with a bidder, either through an oral presentation or written letter of clarification, is to provide an opportunity for the bidder to

clarify or elaborate on its proposal. However, original proposals may not be supplemented, changed, or corrected in any way. No comments regarding other proposals are permitted. Further, bidders may not attend presentations made by other bidders.

It is within the discretion of the Evaluation Committee to require a bidder to make an oral presentation or to submit written responses to questions regarding its proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a proposal. The Manager will be the sole point of contact regarding any request for an oral presentation or written clarification.

6.3 Evaluation Criteria

The following evaluation criteria, not necessarily listed in order of significance, shall be used to evaluate proposals received in response to this RFP. The evaluation criteria categories may be used in developing more detailed evaluation criteria for the review process:

- i. The bidder's general approach and plans in meeting the requirements of this RFP;
- ii. The bidder's detailed approach and plans to perform the services proposed to be conducted under the Lease Agreement;
- iii. The public and/or community benefits of the bidder's proposal;
- iv. The benefit to the State of bidder's proposal;
- v. The bidder's documented experience in developing and administering environmentally friendly outdoor recreational amenities, events and facilities;
- vi. The qualifications and experience of the bidder's personnel, with emphasis on documented experience;
- vii. The bidder's overall ability to mobilize, undertake, and successfully perform in accordance with the Lease Agreement, including providing any mitigation and/or compensation required under this RFP. This judgment will include but not be limited to the qualifications of the proposed personnel and the bidder's Operation Plan;
- viii. The bidder's availability and commitment to effectuating the Lease Agreement;
- ix. The bidder's financial viability and organizational history;
- x. The bidder's monetary proposal;
- xi. The manner in which bidder's proposed compensation and/or mitigation for adverse impacts enhances Liberty State Park.

6.4 Selection Process

The proposal shall be awarded with reasonable promptness and by written notice to the responsive bidder whose proposal, conforming to the invitation for proposals, is most advantageous to the State, price and other factors considered. Any or all proposals may be rejected if the Department determines that it is in the public interest to do so.

6.5 Negotiation and Best and Final Offer (BAFO)

After evaluating proposals, the Department may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and price. Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by the Department to safeguard information and ensure that all bidders are treated fairly.

Similarly, the Department may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not higher in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the Department will revert to consideration and evaluation of the bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the bidder(s). The Department may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State.

Negotiations will be conducted only in those circumstances where they are deemed by the Department to be in the State's best interests and to maximize the State's ability to obtain the best value. Therefore, the bidder is advised to submit its best technical and price proposal in response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for clarification, negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

NOTE: If the Division contemplates negotiation, proposal prices will not be publicly read at the proposal submission opening. Only the name and address of each bidder will be publicly announced at the proposal submission opening.

7.0 EXHIBITS

- A. Survey Map of Caven Point
- B. Lease Agreement (proposed)
- C. Affirmative Action Employee Information Report
- D. Pay to Play Forms: (1) N.J.S.A. 52:25-24.2 Ownership Disclosure Form; (2) Contractor Certification and Disclosure of Political Contributions Form (P.L. 2005, c. 51); (3) Instructions -- Contractor Certification and Disclosure of Political Contributions (P.L. 2005, c. 51); and (4) Vendor Certification and Disclosure of Political Contribution Disclosure Form (P.L. 2005, c. 271)
- E. MacBride Principles and Iran Certification