



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Solicitation

NUMBER

DNR214010

PAGE

1

ADDRESS CORRESPONDENCE TO ATTENTION OF

GUY NISBET
304-558-8802

RFQ COPY

TYPE NAME/ADDRESS HERE

V
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DIVISION OF NATURAL RESOURCES
PROCUREMENT OFFICE

324 4TH AVENUE
SOUTH CHARLESTON, WV
25303-1228 304-558-3397

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DATE PRINTED

08/28/2013

BID OPENING DATE: 11/05/2013

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
REQUEST FOR PROPOSAL (RFP)						
THE STATE OF WEST VIRGINIA AND ITS AGENCY, THE WEST VIRGINIA DIVISION OF NATURAL RESOURCES (WVDNR), REQUEST A PROPOSAL TO MANAGE AND OPERATE CANAAN VALLEY RESORT STATE PARK IN DAVIS, WV. AND A NEARBY SATELLITE OPERATION OF BLACKWATER FALLS STATE PARK RESTAURANT, PER THE ATTACHED SPECIFICATIONS AND INSTRUCTIONS TO BIDDERS.						
0001	1	YR		971-60		
1ST YEAR PROPERTY MANAGEMENT SERVICES						
0002	1	YR		971-60		
2ND YEAR PROPERTY MANAGEMENT SERVICES						
0003	1	YR		971-60		
3RD YEAR PROPERTY MANAGEMENT SERVICES						
SIGNATURE						
TELEPHONE						
DATE						
TITLE						
FEIN						
ADDRESS CHANGES TO BE NOTED ABOVE						

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0004	1	YR		971-60		
	4TH YEAR PROPERTY			MANAGEMENT SERVICES		
0005	1	YR		971-60		
	5TH YEAR PROPERTY			MANAGEMENT SERVICES		
***** THIS IS THE END OF RFQ DNR214010						

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

TABLE OF CONTENTS

1. Table of Contents
2. Section 1: General Information and Instructions
3. Section 2: Instructions to Vendors Submitting Bids
4. Section 3: General Terms and Conditions
5. Section 4: Project Specifications
6. Section 5: Vendor Proposal
7. Section 6: Evaluation and Award
8. Certification and Signature Page
9. Sample Management and Operating Agreement (Attachment D) – *This is a sample contract which may be used as the contract between the DNR and the successful vendor.*
10. 5 Year Revenue Pro-Forma (Attachment E)

SECTION ONE: GENERAL INFORMATION

1. Purpose: The West Virginia Department of Administration, Purchasing Division (hereinafter referred to as the “Purchasing Division”) is soliciting proposals pursuant to **West Virginia Code §5A-3-10b** for the **West Virginia Division of Natural Resources; Parks and Recreation Section** (hereinafter referred to as the “Agency”) to provide resort operations and management services for Canaan Valley Resort State Park as well as a satellite operation of Canaan, the restaurant at Blackwater Falls State Park, both located in Davis, Tucker County, West Virginia.
2. By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this Request for Proposal (“RFP”).

An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

3. Schedule of Events:

Vendor’s written Questions Submission Deadline..October 8, 2013 at 2:00 PM.EDT.
Mandatory Pre-bid Conference.October 2, 2013 at 1:00 PM.EDT.
Addendum Issued.....To Be Determined
Bid Opening Date.....November 5, 2013 at 1:30 PM. EDT.
Oral Presentation.....To Be Determined

REQUEST FOR PROPOSAL
West Virginia Division of Natural Resources
DNR-214010

SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

Instructions begin on next page.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

☐

A pre-bid meeting will not be held prior to bid opening.

☐

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

☒

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

West Virginia Division of Natural Resources
324 4th. Avenue
South Charleston, WV. 25303

October, 02, 2013 at 1:00 P.M. EDT.

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required

information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Question Submission Deadline: October 8th, 2013 at 2:00 PM. EDT.

Submit Questions to: Guy Nisbet, Senior Buyer
2019 Washington Street, East
Charleston, WV 25305
Fax: 304.558.3970
Email: Guy.L.Nisbet@wv.gov

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The bid delivery address is:

Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID

BUYER: _____

SOLICITATION NO.: _____

BID OPENING DATE: _____

BID OPENING TIME: _____

FAX NUMBER: _____

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus Four (4) convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: ☒ Technical
☒ Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the official Purchasing Division time clock.

Bid Opening Date and Time: November 5th, 2013 at 1:30 PM. EDT.

Bid Opening Location: Department of Administration, Purchasing Division
 2019 Washington Street East
 Charleston, WV 25305-0130

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

REQUEST FOR PROPOSAL
West Virginia Division of Natural Resources
DNR-214010

SECTION THREE: GENERAL TERMS AND CONDITIONS

Instructions begin on next page.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
 - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

 - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.

 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

 - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

 - 2.5 **"Purchase Order"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.

 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.

 - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

 - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. **CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:



Term Contract

Initial Contract Term: This Contract becomes effective on _____ award
and extends for a period of _____ five (5) _____ year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal must be submitted to the Purchasing Division Director thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to _____ zero (0) _____ successive one (1) year periods. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Reasonable Time Extension: At the sole discretion of the Purchasing Division Director, and with approval from the Attorney General's office (Attorney General approval is as to form only), this Contract may be extended for a reasonable time after the initial Contract term or after any renewal term as may be necessary to obtain a new contract or renew this Contract. Any reasonable time extension shall not exceed twelve (12) months. Vendor may avoid a reasonable time extension by providing the Purchasing Division Director with written notice of Vendor's desire to terminate this Contract 30 days prior to the expiration of the then current term. During any reasonable time extension period, the Vendor may terminate this Contract for any reason upon giving the Purchasing Division Director 30 days written notice. Automatic extension of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases, but Attorney General approval may be required.

Release Order Limitations: In the event that this contract permits release orders, a release order may only be issued during the time this Contract is in effect. Any release order issued within one year of the expiration of this Contract shall be effective for one year from the date the release order is issued. No release order may be extended beyond one year after this Contract has expired.



Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall this Contract extend for more than one fiscal year.

☐ **Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed

5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

- ☐ **BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.
- ☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of . The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.
- ☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

- ☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.
- ☒ **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.
- ☒ **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

- ☒ **Commercial General Liability Insurance:**
\$1,000,000.00 or more.
- ☐ **Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.
- ☒ \$1,000,000.Host Liquor Liability Insurance,each common cause.\$10,000,000 policy aggr
- ☒ \$2,000,000. Innkeeper's Liability Insurance.
- ☒ \$1,000,000. Automobile Liability Insurance, combined single limit.
- ☒ \$2,000,000. Employee Dishonesty Combination Crime Coverage.
- ☐

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

☒ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

- ☒ Certified Pool Operator
- ☒ Chemical Applicators
- ☒ West Virginia Liquor, Beer and Wine
- ☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

9. **LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

10. **ALTERNATES:** Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

11. **EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or

other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount
for

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

13. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

14. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee if applicable.

15. COMMUNICATION LIMITATIONS: In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

16. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

17. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."

18. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

19. DELIVERY: All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.

20. INTEREST: Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

21. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's

failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

22. **SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority-owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
23. **TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
24. **CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
25. **WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.
26. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
27. **APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
28. **COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.
29. **PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage

requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

30. **ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
31. **MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.**
32. **WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
33. **SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
34. **ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
35. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
36. **STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
37. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

38. [RESERVED]

39. CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

40. DISCLOSURE: Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

41. LICENSING: In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

42. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the

purchasing agency tenders the initial payment to Vendor.

- 43. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety, understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

- 44. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

☐

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

- 45. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *etc.* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- 46. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered

by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.
- 50. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:
- ☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.
 - ☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.
- 51. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state

repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

52. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- b. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

53. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance

with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

SECTION 4: PROJECT SPECIFICATIONS

1. LOCATION OF AGENCY AND LOCATION OF PROPERTY:

Agency: is Division of Natural Resources (DNR) located at: 324 4th Avenue, South Charleston, WV 25303

Canaan Valley Resort State Park is located at: 230 Main Lodge Road, Davis, WV 26260

Blackwater Falls State Park is located at: 1584 Blackwater Lodge Road, Davis, WV 26260

2. **Background and Current Operating Environment:** Canaan Valley Resort State Park is a 6,000 acre full-service, four seasons resort and conference center that boasts a brand new 160 room lodge and conference center scheduled for opening late 2013 that includes a full service restaurant, lounge, café, gift shop, indoor pool and fitness center, as well as ample conference rooms and meeting space. Canaan Valley Resort State Park also claims 23 modern cabins as well as 34 full hook-up campsites. The resort offers a variety of activities year-round that includes: A championship 18-hole golf course, wobble-clay shooting range, outdoor pool, hiking and biking, picnic shelters, miniature golf, paintball range, and a nature center and nature program. During the winter, Canaan offers 43 ski slopes with a maximum vertical drop of over 850 feet, a 1200 foot multi-lane tubing run, ice skating in a semi-enclosed rink, as well as cross-country skiing and air-boarding. Operations also include a satellite operation of a restaurant at Blackwater Falls State Park.

3. Qualifications and Experience:

Vendors will provide in **Attachment A: Vendor Response Sheet** information regarding their firm, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.

4. Project Goals and Objectives for CANAAN VALLEY RESORT STATE PARK:

The project goals and objectives are:

4.1 GOAL ONE: Highest operating standards;

OBJECTIVE: To meet the highest quality operating standards of hospitality in the lodging industry of the facilities that the firm manages/operates; Vendor should indicate what

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

standard rating level (star/diamond) Canaan Valley Lodge and Conference Center will operate under;

4.2 GOAL TWO: Activities that keeps our guests on property;

OBJECTIVE: To meet the highest quality operating standards of year-round activities that will keep the visitor engaged, appeal to many age groups, keep our guests active, and within the boundaries of the resort, through utilizing the resort's many amenities;

4.3 GOALTHREE: A destination location for conferences and groups;

OBJECTIVE: To make Canaan a destination for conference and group business by providing a high quality, comfortable, and technically competitive facility that appeals to a wide-variety of groups and demographics for the purpose of conferences, reunions, parties and special events;

4.4 GOAL FOUR: Profitability in operations;

OBJECTIVE: To generate maximum revenue that will assure coverage of all expenses including the management fee, while returning a maximum profit back to the Division;

4.5 GOAL FIVE: A camping destination that appeals to all ages;

OBJECTIVE: To provide quality campground operations through a clean and well maintained campground and facilities along with adequate camping amenities and activities for camping guests of all ages;

4.6 GOAL SIX: Competitive rate schedules;

OBJECTIVE: To create and maintain room rate schedules or process for setting room rates, as well as the creation of creative packaging that will maintain competitiveness, affordability, attractiveness, as well as maximization of revenue;

4.7 GOAL SEVEN: Quality, affordable and enticing food service options;

OBJECTIVE: To provide quality food service options for Canaan and Blackwater Falls, that will appeal to the varying tastes, trends and dietary requirements of vacationing guests, and will allow for a variety of exciting, healthful and unique dining experiences that would keep the guest within the resort and not require them to look outside the boundaries of the resort for other options. To utilize as much locally grown and raised food items as feasibly possible in an effort to support the local economy;

4.8 GOAL EIGHT: Progressive and efficient property management system;

OBJECTIVE: To provide a progressive property management system that will allow for flexibility, multifaceted functionality, and creativeness;

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

4.9 GOAL NINE: A winter activity and recreation destination;

OBJECTIVE: To create a wide range of quality winter recreational activities that focus on the ski and tubing area. To provide excellent mountain management during the winter season to maximize the ski season during seasonable weather for such activities, and to provide best economies of operating during prime skiing months and winter holidays;

4.10 GOAL TEN: A golfing destination;

OBJECTIVE: To provide a quality golfing experience through providing great hospitality, excellent service, progressive turf management, and creativity;

4.11 GOAL ELEVEN: Varied, appropriate and appealing retail opportunities;

OBJECTIVE: To provide retail shopping opportunities and experiences for visitors and guests at the lodge gift shop, golf course clubhouse, and the campground;

4.12 GOAL TWELVE: Efficient operation of Blackwater Falls State Park Restaurant;

OBJECTIVE: To operate nearby Blackwater Falls State Park restaurant under the auspices of the overall management contract with high quality, expense control, and profit maximization for the Agency;

5. Mandatory Requirements

The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms "must", "will", "shall", "minimum", "maximum", or "is/are required" identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the Purchasing Division.

5.1 MANDATORY NUMBER ONE:

Vendor must be in the hospitality, resort and food service operations business.

5.2 MANDATORY NUMBER TWO:

Vendor must detail similar work experience in the hospitality, resort and food service operations business, with references, done in the last eight years.

5.3 MANDATORY NUMBER THREE:

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

6. Oral Presentations:

The WV Division of Natural Resources shall require an oral presentation as a part of the RFP process.

During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below: The Agency has the option of requiring oral presentations of all Vendors participating in the RFP process. If this option is exercised, it would be listed in the Schedule of Events (Section 1.3) of this RFP. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below:

6.1. Materials and Information Required at Oral Presentation

6.1.1

Proposed Marketing and Advertising Plan should be included – discuss elements that address Vendor’s innovative and creative approach to the unique conditions of Canaan;

6.1.2

Proposed staffing, by functional responsibility should be included, including breakdown of full-time positions and salaries as well as part-time positions and cost – include an organizational chart and descriptions of functional responsibilities. Submit position descriptions for its key personnel proposed to be assigned to Canaan: food and beverage (and Blackwater Food and Beverage), sales/marketing, engineering and maintenance, ski operations, golf operations, and lodge operations;

6.1.3

Proposed menus for food service venues should be included – Currently there are a number of food-service areas at Canaan including: “Bear Paw Food Court (Ski-Season)”, “Quenchers Pub” (Ski Season), “The Clubhouse Grill”, “The Laurel Lounge”, the “Hickory Dining Room”, as well as a refreshment stand at the tube run area, golf course beverage carts, and group catering functions. Include Blackwater Falls Restaurant;

6.1.4

Corporate resources committed to the operation: human and financial should be included;

6.1.5

Management Fee calculations and estimate of profit to be returned to Division;

REQUEST FOR PROPOSAL
West Virginia Division of Natural Resources
DNR-214010

6.1.6

Plan and methods of controlling operating expenses and operating within annual budget submitted to be approved by the Agency;

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

SECTION FIVE: VENDOR PROPOSAL

- 1 **Economy of Preparation:** Proposals should be prepared simply and economically providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of the content.
- 2 **Incurring Cost:** Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any Vendor responding to this RFP, including but not limited to preparation, delivery, or travel.
- 3 **Proposal Format:** Vendors should provide responses in the format listed below:

Title Page: State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and Vendor signature and date.

Table of Contents: Clearly identify the material by section and page number.

Attachment A: Within the attached response sheet (**Attachment A: Vendor Response Sheet**), provide the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project. This should include how each of the goals and objectives listed is to be met.

Attachment B: Complete **Attachment B: Mandatory Specification Checklist**. By signing and dating this attachment, the Vendor acknowledges that they meet or exceed each of these specifications as outlined in 4.5 of Section Four: Project Specifications. The State reserves the right to require documentation detailing how each is met at its discretion.

Attachment C: Complete **Attachment C: Cost Sheet** included in this RFP and submit in a separate sealed envelope. Cost should be clearly marked.

Oral Presentations: If established by the Agency in the Schedule of Events (Section 1.3), all Vendors participating in this RFP will be required to provide an oral presentation, based on the criteria set in Section 4.6. During oral

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

presentations, Vendors may not alter or add to their submitted proposal, but only to clarify information.

- 4 **Proposal Submission:** Proposals should be received in two distinct parts: technical and cost.

- **Technical proposals** should not contain any cost information relating to the project.
- **Cost proposal** shall be sealed in a separate envelope and will not be opened initially.

All proposals should be submitted to the Purchasing Division **prior** to the date and time stipulated in the RFP as the opening date. All bids will be dated and time stamped to verify official time and date of receipt. All submissions should be in accordance with the provisions listed below and in Section Two: Instructions to Bidders Submitting Bids above.

- 5 **Technical Bid Opening:** The Purchasing Division will open and announce only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the Agency evaluation committee.

- 6 **Cost Bid Opening:** The Purchasing Division shall schedule a date and time to publicly open and announce cost proposals when the Purchasing Division has approved the technical recommendation of the evaluation committee. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5..

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

SECTION SIX: EVALUATION AND AWARD

1 **Evaluation Process:** Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The selection of the successful Vendor will be made by a consensus of the evaluation committee.

2 **Evaluation Criteria:** All evaluation criteria is defined in the specifications section and based on a 100 point total score. Cost shall represent a minimum of 30 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical point scores:

- **Qualifications and experience** **(30) Points Possible**
 - *Staff Qualifications: 10 points*
 - *Firm History: 10 points*
 - *Description of Properties Managed: 10 points*
- **Approach and methodology** **(25) Points Possible**
 - *Goals: 10 points*
 - *Objectives: 15 points*
- **Oral interview** **(15) Points Possible**
 - *Material and Information: 10 points*
 - *Oral Presentation: 5 points*
- **Cost** **(30) Points Possible**

Total 100 Points Possible

Each cost proposal cost will be scored by use of the following formula for all Vendors who attained the minimum acceptable score: The total cost shall be calculated by taking the monthly unit cost and multiplying the unit cost by twelve months to calculate a total annual cost.

Lowest "Grand Total" bid of all proposals

X 30 = Price Score

"Grand Total" of Proposal being evaluated

2.1 Technical Evaluation: The Agency evaluation committee will review the technical proposals, deduct points where appropriate, and make a final written recommendation to the Purchasing Division.

2.2 Minimum Acceptable Score: Vendors should score a minimum of 70% (49 points) of the total technical points possible. All Vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying. A proposal may be deemed non-qualifying

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Cost bids for non-qualifying proposals will also be opened but shall not be considered. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to *West Virginia Code* §5A-3-11(h) and *West Virginia Code of State Rules* §148-1-6.2.5.

- 2.3 Cost Evaluation: The Agency evaluation committee will review the cost proposals, assign appropriate points, and make a final recommendation to the Purchasing Division.

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

Attachment A: Vendor Response Sheet

Section 4; Subsection 2, Qualifications and Experience

Vendor Response:

Provide a response regarding the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.

Vendor should supply the following information:

- A. Information regarding their firm:
 - a. Firm history;
 - b. Principle staff qualifications, experience and education;
 - c. Length of experience in managing and operating facilities of a similar size and nature;
 - d. Description of each property operated/managed over last ten years, including name, brand, address, type of facility, number of lodging rooms, amenities, staffing, and description including whether it was a seasonal or year-round operation.
- B. A minimum of three current management contract references and three past management contract references that includes the facility name and location, as well as current contact information including the name, title, address and phone number of the contact person for said property;
- C. Names of firm's principle officers and managers who would be assigned to this property particularly for lodging, golf, and ski area operations that includes their background, experience and education;
- D. Financial ability of firm to undertake the operation of the facility
 - a. Balance sheet for prior three years
 - b. Income statement for the prior three years
 - c. Statements of Cash Flows for the prior three years
 - d. Credit Report (Dunn & Bradstreet)
 - e. Most recent quarterly financial statement

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

Attachment A: Vendor Response Sheet - Continued

Section 4; Subsection 3, Goals and Objectives

Vendor Response: *Vendor should address each of the following questions.*

List project goals and objectives contained in Section 4, Subsection 4:

Section 4, Subsection 4.1: Highest operating standards; The Division desires the vendor to take action that will meet the highest quality operating standards of hospitality in the lodging industry of the facilities that the firm manages/operates; Vendor should indicate what standard rating level (star/diamond) Canaan Valley Lodge and Conference Center will operate under, and how this goal will be attained.

Vendor Response:

Section 4, Subsection 4.2: Activities that keeps our guests on property; The Division desires that the vendor will take action to meet the highest quality operating standards of year-round activities that will keep the visitor engaged, appeal to many age groups, keep our guests active, and within the boundaries of the resort, through utilizing the resort's many amenities; How will the Vendor attain this goal, primarily by keeping the guest within the four walls of the resort?

Vendor Response:

Section 4, Subsection 4.3: A destination location for conferences and groups; The Division desires that the Vendor will make Canaan a destination for conference and group business by providing a high quality, comfortable, and technically competitive facility that appeals to a wide-variety of groups and demographics for the purpose of conferences, reunions, parties and special events; Explain how the Vendor will work to make Canaan a conference and group business destination.

Vendor Response:

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

Section 4, Subsection 4.4: Profitability in operations; A goal of the Division is for the Vendor to generate maximum revenue that will assure coverage of all expenses including the management fee, while returning a maximum profit back to the Division. How will the Vendor utilize its expense controls and pricing structures to generate maximum revenue?

Vendor Response:

Section 4, Subsection 4.5: A camping destination that appeals to all ages; An objective to operations of the resort is to provide quality campground operations through a clean and well maintained campground and facilities along with adequate camping amenities and activities for camping guests of all ages. What experience does the Vendor have in campground operations?

Vendor Response:

Section 4, Subsection 4.6: Competitive rate schedules; An objective of the resort is to create and maintain room rate schedules or process for setting room rates, as well as the creation of creative packaging that will maintain competitiveness, affordability, attractiveness, as well as maximization of revenue. How will the Vendor attain this objective, and what criteria does the vendor use in setting rates, packages, and group business?

Vendor Response:

Section 4, Subsection 4.7: Quality, affordable and enticing food service options; Foodservice is an important aspect of resort operations. To meet this objective, the Agency desires to provide quality food service options for Canaan and Blackwater Falls, that will appeal to the varying tastes, trends and dietary requirements of vacationing guests, and will allow for a variety of exciting, healthful and unique dining experiences that would keep the guest within the resort and not require them to look outside the boundaries of the resort for other options. To utilize as much locally grown and raised food items as feasibly possible in an effort to support the local economy. Provide information on the Vendor's methodology of establishing menus that appeal to guest's tastes and trends.

Vendor Response:

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

Section 4, Subsection 4.8: Progressive and efficient property management system; An objective is for the Vendor to provide a progressive property management system that will allow for flexibility, multifaceted functionality, and creativeness. What type of PMS system will the vendor utilize, and how will it be flexible, functional and creative?

Vendor Response:

Section 4, Subsection 4.9: A winter activity and recreation destination; A winter objective is to create a wide range of quality winter recreational activities that focus on the ski and tubing area. To provide excellent mountain management during the winter season to maximize the ski season during seasonable weather for such activities, and to provide best economies of operation during prime skiing months and winter holidays. Explain how the Vendor plans to manage the winter recreation operations at the ski and tubing area, and how will the Vendor integrate these operations into lodging and other activities during this time period?

Vendor Response:

Section 4, Subsection 4.10: A golfing destination; A spring – fall objective is to provide a quality golfing experience through providing great hospitality, excellent service, progressive turf management, and creativity. Explain how the Vendor will promote golf and provide a quality experience. What expertise in the golfing industry will the Vendor bring to Canaan?

Vendor Response:

Section 4, Subsection 4.11 Varied, appropriate and appealing retail opportunities; How will retail be integrated into the operations that will provide retail varied and appealing shopping opportunities and experiences for visitors and guests at the lodge gift shop, golf course clubhouse, and the campground?

Vendor Response:

REQUEST FOR PROPOSAL
West Virginia Division of Natural Resources
DNR-214010

Section 4, Subsection 4.12: Efficient operation of Blackwater Falls State Park Restaurant; How will the Vendor focus on and operate nearby Blackwater Falls State Park restaurant under the auspices of the overall management contract with high quality, expense control, and profit maximization for the Agency?

Vendor Response:

REQUEST FOR PROPOSAL
West Virginia Division of Natural Resources
DNR-214010

Attachment B: Mandatory Specification Checklist

MANDATORY NUMBER ONE:

Vendor must be in the hospitality, resort and food service operations business;

MANDATORY NUMBER TWO:

Vendor must detail similar work experience in the hospitality, resort and food service operations business, with references, done in the last eight years;

MANDATORY NUMBER THREE:

Vendor must have a minimum of three other management contracts for hospitality, resort and food service operations;

By signing and dating this attachment, the Vendor acknowledges that they meet or exceed each of these specifications as outlined in 4.5 of Section Four: Project Specifications.

(Company)

(Representative Name, Title)

(Date)

REQUEST FOR PROPOSAL

West Virginia Division of Natural Resources

DNR-214010

Attachment C: Cost Sheet

Cost information below as detailed in the Request for Proposal and submitted in a separate sealed envelope. Cost should be clearly marked. PROPOSERS WILL BE REQUIRED TO ENSURE THAT THEIR PROPOSALS ARE IN FULL COMPLIANCE WITH IRS PROCEDURES AND GUIDELINES AND FEDERAL TAX LAWS GOVERNING PRIVATE BUSINESS USE OF FACILITIES FINANCED WITH TAX-EXEMPT BONDS, AND THE PROPOSED TERM SHOULD NOT EXCEED FIVE YEARS. PROPOSERS ARE EXPECTED TO ADHERE TO IRS SAFE HARBORS PROVISIONS FOUND IN REVENUE PROCEDURE 97-13. A DNR PROJECTION OF TOTAL ANNUAL REVENUES / BUSINESS LEVELS IS ATTACHED AS A REFERENCE FOR PROPOSERS. PROJECTIONS MAY OR MAY NOT BE REALIZED.

Management Fee Canaan Valley State Park & Blackwater Falls Restaurant

- | | | |
|---|----|------------|
| A. Annual fixed management fee
YEAR 1; | \$ | |
| | | Annual Fee |
| B. Annual fixed management fee
YEAR 2; | \$ | |
| | | Annual Fee |
| C. Annual fixed management fee
YEAR 3; | \$ | |
| | | Annual Fee |
| D. Annual fixed management fee
YEAR 4; | \$ | |
| | | Annual Fee |
| E. Annual fixed management fee
YEAR 5; | \$ | |
| | | Annual Fee |
| F. GRAND TOTAL YEARS 1 THROUGH 5 | \$ | |
| | | Total Fee |

If applicable, sign and submit the attached Resident Vendor Preference Certificate with the proposal.

By signing below, I certify that I have reviewed this Request for Proposal in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that, to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

(Company)

(Representative Name, Title)

(Contact Phone/Fax Number)

(Date)

ATTACHMENT D

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT is made as of the 1st day of _____, by and between the Division of Natural Resources, Department of Commerce of the State of West Virginia, a body politic ("DNR"); and _____.

RECITALS

A. DNR owns certain real property (the "Real Property"), which property comprises approximately 6,015 acres, and which is improved by various buildings, containing guest rooms, conference and meeting rooms, a lobby and administrative facilities, recreational facilities, and other improvements (the "Improvements"). The Real Property and the Improvements comprise Canaan Valley Resort ("Canaan") and Blackwater Falls State Park Restaurant.

B. _____ has been chosen to operate and manage Canaan Valley Resort State Park and Blackwater Falls State Park Restaurant, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in accordance with the mutual covenants contained in this Agreement, DNR and _____ agree as follows:

ARTICLE I

DEFINITIONS

1.1 Terms Defined in this Article. In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings assigned to them, unless the context otherwise indicates.

(a) "Cash Flow" shall mean the Gross Revenue for the Improvements for each fiscal period less any Operating Expenses.

(b) "Consumable Supplies" shall mean and refer to office supplies, cleaning supplies, uniforms, laundry and valet supplies, maintenance engineering supplies, stationery, soap, matches, toilet and facial tissues, items to be sold at retail shops within the Improvements, and such other supplies as are consumed customarily in the operation of the Improvements, together with food and beverages that are to be offered for sale to guests of the Improvements and to the public.

(c) "Effective Date" shall mean _____.

(d) "Equipment Leases" shall mean and refer to any leases or rental agreements for Operating Equipment or Furniture, Furnishings, and Equipment used in

the Improvements, or any modifications or renewals thereof, presently existing or made subsequent to the date of this Agreement.

(e) "Fiscal Year" shall mean and refer to a fiscal year beginning July 1 and ending June 30.

(f) "Fractional Year" shall mean and refer to the period from the Effective Date to and including the last day of the Fiscal Year within which the Effective Date shall occur and, if this Agreement shall terminate upon any date other than the last day of a Fiscal Year, the period from the first day of the Fiscal Year during which this Agreement terminates to and including the date of such termination.

(g) "Furniture, Furnishings, and Equipment" or "FFE" shall mean and refer to furniture and furnishings of public areas and guest rooms, office furniture and equipment, signs, carpets, televisions, computers and other electrical and electronic equipment, and vehicles, and such other furnishings and equipment (other than Operating Equipment) as are used in the operation of, and are located in, the Improvements.

(h) "Gross Revenues" for the Improvements shall mean and refer to the total of all rents, revenues, income, and receipts (less any refunds or rebates) of every kind derived directly or indirectly from the operation of the Improvements and all departments and parts thereof, including, without limitation, income (from both cash and credit transactions and before commissions) from the rental of guest rooms, banquet or other facilities, recreational facilities, stores, offices, or exhibit or sales space of every kind; fees and rental receipts from vending and game machines; food and beverage sales; wholesale and retail sales of merchandise; service charges; telephone and internet usage charges; recoveries (by settlements or judgment) in any lawsuit which represent compensation for lost items of Gross Revenue and proceeds, if any, from business interruption or other loss of income insurance but of no other insurance. "Gross Revenues" for the Improvements shall not include: (i) gratuities; paid or payable directly to employees or service charges levied in lieu of such gratuities; (ii) federal, state or local excise, room, sales, use, gross receipts, entertainment admission or tourist taxes or similar impositions collected from third parties or included as part of the sales price of any goods or services and required to be remitted to the appropriate taxing authority; or (iii) discounts, complimentary rooms, or other reductions of charges for use of the Improvements.

(i) "Term" shall mean and refer to that period commencing on the Effective Date and ending at midnight on _____, or on any earlier date upon which this Agreement terminates pursuant to the provisions hereof.

(j) "Management Fee" shall mean the Management Fee described in Section 2.3 hereof.

(k) "Miscellaneous Contracts" shall mean and refer to any contract or commitment or outstanding bid or proposal, whether oral or written, relating to the operation of the Improvements, or any modification or renewal thereof, whether presently existing, or made subsequent to the date of this Agreement, by _____ in accordance with the provisions of this Agreement or with DNR's prior written consent, which consent shall not be unreasonably withheld. Miscellaneous Contracts shall include, without limitation, all space leases, sign leases, service contracts, employment contracts and union contracts.

(l) "Monthly Accounting Period" shall mean and refer to each calendar month.

(m) "Operating Equipment" shall mean and refer to chinaware, glassware, linens, utensils, lawnmowers, snow groomers, golf carts, and other equipment and items of like or similar nature used in the operation of the Improvements.

(n) "Operating Expenses" shall mean:

i. All wages and salaries of all employees employed by _____ who work at the Real Property in connection with the operation and management of the Improvements and all other payroll costs, fringe benefits, employer taxes, and similar charges related to employment, provided, however, that if any such employee also is employed elsewhere by _____ (to the extent permitted by this Agreement), such compensation shall be prorated among the Improvements and such other properties where such employee also is employed only upon prior request to and written approval by DNR; in the event of any such prorating, _____ shall provide to DNR all such information as DNR may request from _____ supporting such proration amounts;

ii. All onsite departmental and administrative and general expenses directly incurred in the operation of the Improvements, including, advertising, promotional, and entertainment expenses, commissions, and costs of heat, light, power, cable television, and other utilities;

iii. All costs and expenses of routine maintenance, repairs and minor alterations to keep the Improvements in good operating condition that under generally accepted accounting principles are expensed currently rather than capitalized;

iv. All license fees and permits relating to the Improvements or the operation thereof;

v. All amounts due under service contracts and Equipment Leases relating to the Improvements or the operation thereof;

vi. The cost of all Consumable Supplies consumed in the operation of the Improvements;

vii. All costs and fees of accountants, attorneys, and other third parties who perform services required or permitted hereunder, provided that such accountants, attorneys, and other third parties who perform services shall have been approved in advance by DNR in writing;

viii. All costs and fees of technical consultants and operational experts for technical or specialized services in connection with non-routine Improvements work or matters, provided that such technical consultants and operational experts who perform services shall have been approved in advance by DNR in writing; and

ix. All other costs and expenses of every kind directly and reasonably and necessarily incurred in operating the Improvements in accordance with this Agreement.

(o) Operating Expenses shall not include:

i. Costs incurred under related party transactions without prior written approval of DNR (a "related party" being an entity under common control with _____; a person related by blood or marriage to an owner, officer, or manager of _____; or a partner with _____ or any owner, officer or manager of _____);

ii. General liability insurance premiums for coverage for _____ related to the operation of the Improvements, unless and to the extent that such premiums are for a separate policy of insurance relating to and covering solely _____'s operation of the Improvements; and

iii. Any costs for workers and employees not working solely at the Improvements unless approved in advance by DNR in writing.

ARTICLE II

ENGAGEMENT AND COMPENSATION OF

2.1 Engagement of _____. DNR hereby engages _____ and _____ hereby accepts such engagement, on the terms and conditions hereinafter provided, as an independent contractor to maintain, operate, manage, supervise, and rent the Improvements. The performance of all activities by _____ hereunder shall be as an independent contractor to DNR. All debts and liabilities to third persons expressly permitted to be incurred by _____ under this Agreement in the course of its operation and management of the Improvements shall be the debts and liabilities of _____. Except as set forth herein, DNR shall not be liable for any such obligations by reason of _____'s management, supervision, direction and operation of the Improvements for DNR; provided, however, that _____ shall

have no liability to DNR for any loss suffered by DNR, so long as _____ performs in good faith in accordance with the duties and authority of _____ set forth in this Agreement and in the absence of negligence or other misconduct. _____, however, shall be responsible for all debts or liabilities to third parties incurred in violation of this Agreement or as a result of negligence or other misconduct. DNR, and _____, each warrant and represent to the other that there do not exist as of the date hereof any contracts or agreements entered into by the warranting party which would prohibit or limit _____ from operating the Improvements in accordance with this Agreement. _____ further warrants and represents that it will ensure that all licenses and permits necessary for the operation of the Improvements either have been obtained or will be obtained prior to the Effective Date, and will on the Effective Date be in full force and effect. DNR agrees upon request by _____ to sign promptly (and without charge) applications for licenses, permits or other instruments reasonably necessary for operation of the Improvements. In the performance of its duties and obligations hereunder, _____ agrees that it shall at all times manage and operate the Improvements for the account and benefit of the DNR, in a business-like and efficient manner, and in accordance with all terms of this Agreement, offering the highest level of quality of customer and guest services consistent with the Improvement's standards.

2.2 Delegation of Authority. Except as otherwise provided herein, the operations of the Improvements shall be under the supervision, direction, and control of _____, and, except as otherwise specifically provided in this Agreement, DNR delegates to _____ full responsibility for the proper and efficient operation, management, and maintenance of the Improvements. Subject to the specific terms of this Agreement, _____ shall be responsible for, and have full power, authority, discretion and control (to be exercised reasonably by _____ and subject to reasonable policy directives as from time to time issued by DNR) in all matters relating to the operation, management, and maintenance of the Improvements, the guest rooms and commercial space and setting of charges therefore, provided, however, that DNR may issue policy directives from time to time governing operation, management, and rates and charges; food and beverage services (including menu development and pricing); employment policies; recreational activities and pricing thereof; credit policies; procurement of inventories, supplies and services; promotion, sales, marketing and publicity; maintenance, repairs and cleaning of all improvements and equipment; and, generally, all activities that _____ may determine to be reasonably necessary or appropriate for the operation, management, and maintenance of the Improvements. In addition to submitting to the specific approval rights afforded DNR in this Agreement, _____ agrees that it shall reasonably follow written policy directives of DNR in connection with the operation, management, and maintenance of the Improvements.

2.3 Management Fee. _____ shall receive a management fee (the "Management Fee"). The Management Fee shall be earned for each Monthly Accounting Period during the Operating Term and shall be payable by DNR in arrears within 20 calendar days after delivery to DNR of the monthly report described in Section 4.4; except the Management Fee for the last quarter of last Fiscal Year under this

Agreement shall be payable following receipt by DNR of the final accounting as provided for in Section 4.5.

ARTICLE III

TERM

3.1 Term. The term of this Agreement shall be the Term, subject to earlier termination, pursuant to the provisions of this Agreement. There shall be no options by either party to extend the Term.

3.2 Termination.

a. Each of the following events shall constitute an event of default by the party with respect to which such events occur:

i. The failure of _____ to pay any amount to DNR provided for herein, or the failure of DNR to pay any amounts provided for herein, for a period of ten (10) days (or such longer period as is applicable under the laws and regulations of the State of West Virginia) after the date on which notice of the failure has been given to the defaulting party by the other party;

ii. The filing of a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by _____;

iii. The consent to an involuntary petition in bankruptcy or the failure by _____ to vacate, within sixty (60) days from the date of entry thereof, any filing of an involuntary petition;

iv. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating _____ a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of a party's assets, if such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) consecutive days; and

v. The failure of either DNR, or _____ to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement for a period of thirty (30) days after written notice of said failure from the other party provided however, that if the default is not susceptible of being cured within the thirty (30) day period and the defaulting party with due diligence takes and continues action to cure then no event of default shall be deemed to have occurred until the failure to take or to continue to take such action.

b. Upon the occurrence of any event of default, the non-defaulting party may, without prejudice to any other legal or equitable remedy which it may have,

give to the defaulting party notice of its intention to terminate this Agreement after the expiration of a period of fifteen (15) days from the date of such notice and, upon the expiration of such period, the Term shall expire and this Agreement shall be deemed terminated.

c. Either _____ or DNR shall have the right to cancel and terminate this Agreement upon thirty (30) days written notice to the other if any material license, permit, or other governmental authorization necessary for the operation of the Improvements in accordance with the provisions of this Agreement is revoked, rescinded, terminated, or renewal refused by the governing authority having jurisdiction thereof where such revocation, rescission, termination, or refusal to renew is due to circumstances beyond the reasonable control of the party electing to terminate under this Section.

d. DNR may terminate this Agreement at any time, with or without cause, upon ninety (90) days' written notice to _____.

3.3 Surrender Upon Termination. Upon DNR's request, _____ agrees that at the expiration or earlier termination of this Agreement with respect to the Improvements, it will deliver to DNR, or its designee, all books, records, contracts, leases, licenses, permits and other governmental authorizations, files, supplies, keys, locks, safe combinations, reservation lists, insurance policies not maintained as part of _____'s blanket policies, warranty contracts and cards, operating instructions and other information, warranties and guaranties concerning all equipment installed in or used in connection with the Improvements, correspondence relating to the Improvements, including but not limited to correspondence with guests and customers or prospective guests and customers, computations of room rate adjustments, maintenance or preventive maintenance programs, schedules and logs, construction records, inventories of personal property and equipment, correspondence with vendors, job descriptions and manning charts, correspondence with federal, state, county, and municipal authorities, brochures and all other information of the Improvements and all accounts and sums held or maintained by _____ on behalf of DNR. _____ shall have a reasonable period of time, not to exceed sixty (60) days from the date of termination, to complete all accounting functions with respect to the Improvements. Thereafter, DNR shall give _____ reasonable access to such records. Any and all contracts, leases, licenses, warranties, guaranties, bank accounts and other assets of the Improvements which are held in _____'s name and which were approved by DNR or which DNR otherwise elects to assume shall be assigned to the extent permitted by law by _____ to DNR. _____ agrees to execute and deliver such instruments of assignment in connection therewith in such form and such descriptions as may be, from time to time, requested by DNR after the termination of this Agreement. In addition, _____ shall account to DNR as of the date of expiration or earlier termination of this Agreement for all amounts expended by _____ from Gross Revenues or otherwise. _____ shall have no further right to act on behalf of DNR or to disburse any of its funds, and shall take all actions reasonably necessary to facilitate the orderly transition of the management of the

Improvements and shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

ARTICLE IV

OPERATION OF THE IMPROVEMENTS

4.1 General Responsibilities of _____. _____ is hereby charged with the sole and exclusive management of the Improvements and shall provide DNR with the services customarily provided for in such instances, and shall do and perform any and all things reasonably necessary for the pleasure, comfort, service, and convenience of the customers and guests of the Improvements. _____ further covenants and agrees to provide for and maintain at the Improvements an experienced and competent general manager at the Improvements. It is expressly understood and agreed that so long as this Agreement is in force and effect and subject to the specific rights afforded DNR under this Agreement, DNR shall not unreasonably interfere, or unreasonably involve itself in any way with the day-to-day operations of the Improvements and shall at no time give or communicate orders or instructions to employees or personnel employed about the Improvements.

4.2 Operating Account and Payments.

a. _____ shall open and maintain a bank account in a bank located in the State of West Virginia (subject to approval by DNR), which bank account shall be called the Canaan Valley Resort Management Account (the "Bank Account"). _____ shall deposit into the Bank Account all of the Gross Revenues, and the Bank Account shall be used for the payment of all Operating Expenses. The Bank Account shall be used solely and exclusively for these purposes, and there shall be no commingling of any other funds in, or making of any other payments from, the Bank Account. _____ shall execute all documents and take all actions necessary to allow DNR the authority to review at any and all times all records of or pertaining to the Bank Account. The Bank Account shall be in the name of _____, but shall be held in trust and used and managed by _____ for the benefit of DNR, and title to all funds held in the Bank Account shall immediately vest in DNR upon termination of this Agreement for any reason.

b. Nothing contained in this Agreement shall be construed to deprive _____ of the right to maintain, as reasonably necessary, petty cash funds and to make payments therefrom as the same are understood and employed in the property management business. _____ shall provide DNR, as part of the monthly reports provided for in Section 4.4, an accounting of funds maintained as petty cash.

c. Within twenty (20) days of the end of each month, _____ shall determine the amount of the Cash Flow of the Improvements for such period and provide an income and expense statement as set forth in Section 4.4(a). If the Cash Flow is negative, _____ shall invoice DNR for the amount of the negative Cash

Flow, and within twenty (20) days of DNR's receipt of the invoice, DNR shall make payment of the invoice to _____ for deposit directly into the Bank Account.

d. Except for the Management Fee (which will be paid directly by DNR to _____), all payments and disbursements permitted or required to be made by _____ hereunder shall be made from the Bank Account.

e. _____ and DNR shall cooperate to prorate various charges. Those Utility Payments and Other Prorations shall be listed as debits and credits in the income and expense statement to be provided to DNR pursuant to Section 4.4(a).

4.3 Collection of Monies. _____ shall collect and deposit into the Bank Account without exception all revenues relating to the Improvements. DNR authorizes _____ to request, demand, collect, receive, and receipt for all such charges and revenues, and to institute legal proceedings in the name of DNR, for the collection thereof. The reasonable expenses of such proceedings shall be Operating Expenses and such expense may include the engaging of counsel or collection services for any such matter.

4.4 Books and Records.

a. _____ shall maintain adequate, complete, and separate books and records in connection with its management and operation of the Improvements. Such books and records shall be kept on a reasonable basis of accounting approved in advance by DNR in writing. All of such books and records including, without limitation, books of account, guest records, and front office records related to the Improvements, shall be the property of DNR. DNR shall have the right and privilege of examining said books and records at _____'s principal office at any and all reasonable times during normal business hours. Within twenty (20) days after the end of each Monthly Accounting Period, _____ shall provide to DNR the following statements showing the results of operation of the Improvements for such period certified as being true and complete by a financial officer of _____.

- i. An executive summary noting highlights of operations for such month;
- ii. An income and expense statement for such month and the cumulative results for the Fiscal Year to date;
- iii. An accounting of the funds maintained as petty cash; and
- iv. Such other monthly reports as DNR may reasonably request.

b. _____ will make a representative available to meet with DNR upon presentation (or such other time as may be convenient for DNR) of the documents

listed in Section 4.4(a) to explain those documents and to discuss DNR's operational suggestions.

4.5 Financial Reports.

a. Within sixty (60) days after the end of each Fiscal Year, and within sixty (60) days after the expiration or earlier termination of this Agreement, _____ shall provide to DNR final unaudited financial statements for the Improvements certified as being true and complete by a financial officer of _____.

b. In the event DNR elects to have the books and records of the Improvements audited, the expense of such audit or audits shall be deemed an expense of DNR; provided, however, that if such audit demonstrates that there are material errors in such books and records, the expense of any such audit shall be chargeable against, and may be deducted from, any Management Fee otherwise payable to _____. The preparation of all tax forms, reports, and returns required by any federal, state, county or municipal authority with respect to the Improvements shall be an Operating Expense.

4.6 Insurance

a. _____ agrees to maintain at all times during the term hereof comprehensive general liability insurance on an "occurrence" basis for the benefit of the DNR and _____ against claims for "personal injury," including without limitation, bodily injury, death, and property damage; such insurance also shall include coverage against liability for bodily injuries and property damage arising out of the use of or on behalf of the DNR or _____ of any owned, non-owned or hired automotive equipment and Innkeepers Liability and Host Liquor Liability (but only in the event that _____ is licensed to serve liquor at the Improvements and in fact does so) with such coverages as directed in writing by DNR. Premiums for such insurance shall be an Operating Expense only if and to the extent that such premiums are for a separate policy of insurance (i) relating to and covering solely _____'s operation of the Improvements, (ii) with limits specified by DNR/BRIM (or such other limits as _____ and DNR may mutually agree to in writing), and (iii) entered into after consultation with and approval by DNR. _____ may obtain separate coverages in excess of those specified, but premiums for any such excess coverages shall not be an Operating Expense.

b. All policies of insurance shall: (i) name and designate _____ as a named insured and DNR as an additional insured, as their interests may appear and as commercially available, and (ii) be issued by insurers, be in forms and amounts, and be with limits and deductible amounts customarily carried by _____ with respect to other similar facilities operated by _____. Without limiting the foregoing, all insurance shall be effected under valid and enforceable policies and shall, to the extent obtainable, provide that such policies shall not be canceled without at least thirty (30) days prior written notice to each insured named therein. Certificates of such

insurance, along with evidence of renewal from time to time thereof, shall be given to DNR no less than ten (10) days prior to their effectiveness and as otherwise requested by DNR.

c. _____ shall promptly (in any event not more than ten (10) days following first knowledge by or notice to _____) investigate and report to DNR and any insurance companies involved all accidents and claims for damage relating to the operation, and maintenance of the Improvements and any damage or destruction to the Improvements and notify DNR within ten (10) days following the filing of any written claim in excess of \$5,000. _____ is authorized to settle any and all claims not in excess of \$5,000. If the amount of such proposed settlement is greater than \$5,000, _____ shall give DNR written notice of the amount thereof, and shall specify in such notice the date upon which DNR's approval shall be deemed given unless specific written objection to such proposed settlement is given by DNR to _____ on or prior to such date (which date shall not be less than ten (10) days after the date the notice from _____ is given to DNR). DNR shall not unreasonably withhold approval of any such settlement.

d. _____ shall cause to be placed and kept in force Worker's Compensation Insurance up to the statutory limit, including Employer's liability of at least \$100,000 and such insurance cost shall be an Operating Expense hereunder subject to approval of any allocation of premium. Certificates of such insurance, along with evidence of renewal from time to time thereof, shall be given to DNR no less than ten (10) days prior to their effectiveness and as otherwise requested by DNR.

e. _____ shall provide Employee Dishonesty Combination Crime coverage, the expense of which shall be an Operating Expense, in an amount sufficient to cover all employees employed by _____ who shall be responsible for handling any monies belonging to DNR that come under the custody or control of _____ and further subject to DNR approval of any allocation or premiums covering other locations or operations of _____.

f. DNR will maintain such fire and property insurance on the real and personal property at the Improvements as it deems proper and _____ shall have no right title or interest in any policy of insurance or the proceeds thereof insuring the Improvements.

4.7 Compliance with Legal Requirements. _____ shall take such actions as may be necessary to comply with any and all laws, orders, or requirements of any federal, state, county, or municipal agency, or other authority having jurisdiction thereover, affecting the Improvements or the ownership or operation thereof by DNR, or _____. _____ shall promptly notify DNR in writing of all orders and notices of non-compliance or other requirements. _____ shall prepare, execute, and, after obtaining the approval of DNR, file any such reports and documents as may be required by any local, county, state, or federal authority. _____ hereby specifically covenants and agrees to obtain and maintain all licenses and permits

necessary for the conduct of its business as the operator of the Improvements: the cost of licenses and permits necessary for the operation of the Improvements (but not the property management business), and all other costs incurred by _____ under this Section shall be deemed an Operating Expense. To the extent that compliance with such operational matters is not within _____'s legal capacity (e.g. execution of license applications or securing permits to be held by DNR), the same shall be the obligation of DNR; provided that _____ shall advise DNR of any and all such responsibilities.

4.8 Use and Maintenance of the Property. _____ agrees not to permit the use of the Improvements for any purpose that might void any policy of insurance relating to the Improvements, or which might render any loss thereunder uncollectible, or which would be in violation of any government restriction. _____ shall be expected to perform diligently such other acts and deeds as are reasonable, necessary, and proper in the discharge of its duties under this Agreement. _____ hereby covenants and agrees to keep the Improvements in good condition and repair, except for normal wear and tear, and to make regular inspections thereof. Expenses incurred by _____ in keeping the Improvements in good condition and repair shall be an Operating Expense. _____ further covenants and agrees to take such reasonable precautions against fire, vandalism, burglary, and trespass to the Improvements, the cost of all such precautions to be Operating Expenses.

4.9 Fees and Costs. The reasonable expenses, costs, fees, compensation, and other remuneration of any persons engaged by _____ to perform duties of a specialist nature for the Improvements such as attorneys, auditors, accountants, tax advisors, data processors, engineers, architects, or the like, shall be an Operating Expense, subject to DNR's prior written approval.

4.10 Marketing.

a. _____ shall use its best efforts to secure and retain customers and guests for the Improvements. _____ shall have the right to rent guest rooms, or sell meeting room services in conformance with the practice in the industry, in such manner and upon such terms and conditions as _____ deems advisable, including the offering of complimentary guest rooms, food, and beverages, and recreational facility use when deemed necessary by _____ in the furtherance of marketing activities. All of the foregoing shall be subject to oversight by and directives from DNR.

b. Both parties recognize that the goal is to achieve the highest possible occupancy at the best room rates possible, and that _____ shall use its best efforts to achieve that goal.

4.11 Budget. Within thirty (30) days of the effective date of this Agreement, _____ shall submit to DNR, for approval by DNR, a budget for the operation of the Improvements for the remainder of the then current Fiscal Year. No later than sixty

(60) days prior to the first day of each succeeding Fiscal Year, _____ agrees to and shall submit to DNR, for approval by DNR, a budget for such Fiscal Year. Once a budget has been approved by DNR, the budget may not be changed without the consent of both parties. _____ will notify DNR as soon as reasonably possible of any anticipated or actual significant variance in the budgeted income or expenses, together with an explanation of the reason for the variance and measures being taken with respect thereto. Notwithstanding any other provision in this agreement, DNR, if it so chooses, can exert advance review and approval authority over any expenditure, regardless of dollar amount.

ARTICLE V

MANAGEMENT AUTHORITY

5.1 Contracts. _____ is authorized to make, enter into, terminate and/or cancel for the account and in the name of _____, and as an Operating Expense, all such contracts, equipment leases, and agreements as are reasonably required in the ordinary course of business for the operation, maintenance, and service of the Improvements and to pay the same when due; provided, however, that all such contracts, equipment leases, and agreements shall be assignable to DNR at the exclusive option and election of DNR. _____ shall be required, however, to obtain the consent of DNR before entering into any such contracts, equipment leases, and agreements, of whatever nature, if the total amount payable under such a contract exceeds the sum of \$500, or which has a term extending beyond the term of this Agreement, unless it is made under circumstances which _____ reasonably shall consider to constitute an emergency. Notwithstanding the foregoing, _____ shall use its best efforts to contact and secure approval of DNR in the event any such emergency expenditure should be likely to exceed \$500. _____ shall use its best efforts to secure all possible rebates, discounts, and other benefits to be derived from every contract.

5.2 Term of Contracts. Any contract, equipment lease, or agreement entered into by _____ shall not exceed a term of one (1) year without the prior written consent of DNR, unless such contracts, equipment leases or agreements are terminable without penalty and without cause on not more than thirty (30) days' notice.

5.3 Employment of Personnel

a. _____ will hire, train, supervise, direct the work of, and discharge all personnel working at the Improvements; provided, however, that DNR shall have the right at all times to review and approve all salaries for all such personnel, which approval shall not be unreasonably withheld. _____ will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin nor violate any applicable law or regulation governing employer obligations. Such personnel shall in every instance be deemed employees of _____ and not of DNR. DNR shall have no right to directly supervise or direct

such employees. DNR shall approve the persons appointed to the positions of general manager of the Improvements, which approval shall not be unreasonably withheld. Failure to respond to _____'s request for approval within ten (10) days following _____'s delivery to DNR of a resume descriptive of the proposed employee's experience shall constitute DNR's approval of such appointments. _____ shall submit to DNR in writing for approval (i) any decision to enter into a union contract for employees at the Improvements and (ii) the establishment of a pension plan for employees at the Improvements.

b. The salaries, wages, and other compensation, including social security, taxes, worker's compensation insurance, and the like, shall be an Operating Expense, except that the following employees not located at the Improvements shall be paid by _____ without reimbursement by DNR:

i. Executive personnel and employees of _____ charged by _____'s own internal organization with the performance and general administration of _____'s performance of the obligations of this Agreement, and with the general supervision, direction, and control of the personnel working at the Improvements;

ii. Human Resources personnel, Accounting personnel, and Purchasing personnel, unless they work solely with regard to and at, the Improvements.

c. _____ shall pay all overhead and indirect expenses of _____'s home offices, including, but not limited to, communication costs (telephone, postage, etc.), computer rentals or items, supplies (including, but not limited to, paper, envelopes, business forms, checks, payroll forms, and record cards, and forms for governmental reports), printing, equipment rentals, taxes and license fees except as otherwise provided herein, employee training costs, and general office expenses, without reimbursement by DNR.

d. If approved in advance by DNR in writing, _____ shall be entitled to reimbursement for any reasonable travel expenses, including air and ground transportation, and lodging at the Improvements, for any employees of _____ described under Section 5.4(b) and for any extraordinary visits to the Improvements by members of _____'s home office staff. Any such expense shall be charged as an Operating Expense, and all such individuals shall receive complimentary lodging at the Improvements, if available.

e. All salaries, wages, and compensation of personnel not otherwise excluded above, to the extent their time shall be at and solely devoted to the Improvements, shall be deemed to be Operating Expenses reimbursed to _____.

f. _____ shall be liable for any failure of the Improvements to comply with all federal, state, local and foreign statutes, laws, ordinances, regulations,

rules, permits, judgments, orders and decrees affecting labor union activities, civil rights or employment in the United States, including, without limitation, the Civil Rights Act of 1870, 42 U.S.C., 1981, the Civil Rights Acts of 1871, 42 U.S.C., 1983, the Fair Labor Standards Act, 29 U.S.C., 201, et seq., the Civil Rights Act of 1964, 42 U.S.C., 2000e, et seq., as amended, the Age Discrimination in Employment Act of 1967, 29 U.S.C., 621, et seq., the Rehabilitation Act, 29 U.S.C., 701 et seq., the Americans With Disabilities Act of 1990, 20 U.S.C., 706, 42 U.S.C., 12101, et seq., the Employee Retirement Income Security Act of 1974, 20 U.S.C., 301, et seq., the Equal Pay Act, 20 U.S.C., 201, et seq., the National Labor Relations Act, 20 U.S.C., 151, et seq., and any regulations promulgated pursuant to such statutes (collectively, as amended from time to time, and together with any similar laws now or hereafter enacted, the "Employment Laws").

g. It is the intention of this Agreement that wages, costs, and expenses of personnel providing services to _____ at the Improvements and at other _____ locations can be allocated or charged to Operating Expenses only if approved in advance by DNR in writing.

5.4 Inventories and Supplies. _____ shall purchase such Consumable Supplies and other expendable items as are necessary to operate the Improvements and shall pay for such supplies. When taking bids or issuing purchase orders, _____ shall be under a duty to use its best efforts to secure any discounts, commissions, or rebates obtainable as a result of such purchases.

5.5 Extraordinary Services. Unless specifically provided in this Agreement, _____ shall not be obligated under this Agreement to provide any services of its construction, architectural, engineering, legal, accounting, or similar staff, or any other service of a professional, technical, extraordinary or non-routine nature, to or on behalf of DNR, or the Improvements, whether in connection with construction or remodeling activities at the Improvements or otherwise.

5.6 Litigation. With respect to litigation directly involving or affecting the Improvements:

a. _____ shall not, except for suits to collect past due accounts, institute any litigation involving a claim of greater than Five Thousand Dollars (\$5,000), without notifying DNR, securing their approval and affording DNR the right to participate in such litigation (including any settlement); and

b. If any suit is brought against _____ or DNR, _____ (i) shall notify DNR promptly of such claim and (ii) shall afford DNR a reasonable period to exercise a right to participate in (or, as to any claim against DNR, control) the defense (including any settlement) of any such claim seeking damages in excess of Five Thousand Dollars (\$5,000).

5.7 Collective Bargaining Agreements. _____ shall not enter into, without DNR's prior written consent, any collective bargaining agreement.

5.8 Right of Inspection and Review. _____ shall afford the duly authorized officers, accountants, employees, agents, and attorneys of DNR the opportunity to enter upon any part of the Improvements at all times during the Operating Term for the purpose of examining or inspecting the Improvements or, upon not less than one day's prior notice to the general manager, examining or making extracts from the books and records of the Improvements' operation, or for any other purpose which DNR, in its reasonable discretion, shall deem necessary or advisable, but the same shall be done with as little disturbance to the operation of the Improvements as reasonably possible.

ARTICLE VI

DESTRUCTION AND CONDEMNATION

6.1 Damage by Fire or Other Casualty.

a. DNR shall have the sole and exclusive right to determine, subject to the provisions of subsection (b) below, to repair, restore, rebuild, or replace any damage to or impairment or destruction of the Improvements, Operating Equipment, or Furniture, Furnishings, and Equipment located at the Improvements, or any portion thereof, resulting during the term hereof from fire or other casualty to the extent _____ determines to be necessary to continue to operate the Improvements of the type and class immediately preceding such casualty. DNR shall be entitled to receive any and all insurance proceeds with respect thereto for sole account and use of DNR, as DNR may determine in its sole discretion.

b. If the Improvements, or any of them, shall be destroyed or substantially destroyed during the term hereof by fire or other casualty, DNR shall have the right and option, upon written notice given to _____ within sixty (60) days after such fire or other casualty to terminate this Agreement. However, if DNR shall elect to rebuild the destroyed Improvements, then _____ shall have the right to manage such new Improvements on the same terms as are set forth in this Agreement, except for such changes (if any) in such terms as are required in order to reflect the differences in the operations of such new Improvements. If DNR should fail to elect to terminate this Agreement by giving such notice within sixty (60) days, _____ shall have the further right to terminate this Agreement by giving written notice of termination to DNR within an additional period of thirty (30) days. For purposes of this Section 6.1(b), the Improvements shall not be deemed to have been substantially destroyed unless Twenty-Five percent (25%) or more of the guest rooms are materially destroyed. Any notice of termination under this Section shall become effective thirty (30) days after the giving of such notice.

ARTICLE VII

GENERAL PROVISIONS

7.1 Relationship.

a. It is the intent of the parties hereto that, except as otherwise provided herein, _____ shall at all times be an independent contractor of DNR in performing its duties hereunder. _____ shall have no interest in the Improvements other than as specifically described herein, and _____'s rights and interests hereunder shall not be deemed to be "coupled with an interest" for any purpose. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between _____ and DNR, or any of their successors or assigns.

b. Subject to Section 7.14, nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage, or operate property or to conduct business activities which are competitive with the business of the Improvements. _____ covenants and agrees that even though it may have either an ownership interest in or a management responsibility for other similar properties which, from time to time, may be competitive with the Improvements, _____ always shall represent the Improvements fairly and deal with DNR on an equitable basis so as to achieve the goals set forth in this Agreement.

7.2 Assignment.

a. This Agreement is not assignable by _____ without the prior written consent of DNR, except to a person or entity controlled by, controlling, or under common control with _____.

b. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed at any time to constitute a lien of any nature against the Real Property, the Improvements, or DNR's interest in the Improvements.

7.3 Benefits and Obligations. Subject to the provisions of Section 7.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns, and any other person who may acquire an interest in the Improvements during the term hereof.

7.4 Indemnification. _____ hereby agrees and covenants that _____ will indemnify, defend and hold DNR harmless from and against any claim (including, but not limited to, the hiring and discharge of Improvements personnel), action, judgment, cost, expense (including attorney's fees) or loss whatsoever sustained because of any and all events or occurrences arising out of the performance of this Agreement which result in bodily injury, disease, death, property loss or property damage to DNR, or to any third party or to DNR's patrons, employees, agents,

licensees, permittees, visitors, or tenants which such loss, cost, damage, liability or expense resulted from the negligence or other misconduct of _____, its agents, contractors, or employees or due to the failure of _____, its agents, contractors or employees to perform their obligations hereunder.

7.5 Notices. All notices provided for in this Agreement shall be in writing and mailed by registered or certified mail return receipt requested, postage prepaid, or sent by commercial overnight courier/delivery service, to the following addresses, until such time as written notice of a change of address is given the other party. Notice shall be deemed given three (3) days after mailing if by mail, and upon delivery if by courier/delivery service:

Vendor

With a copy to:

DNR:

WV Division of Natural Resources
ATTN: Director
324 4th Avenue
South Charleston, WV 25303-1228

With a copy to:

WV Division of Natural Resources
Parks and Recreation
ATTN: Chief
324 4th Avenue
South Charleston, WV 25303-1228

7.6 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and no alteration, modification, or interpretation hereof shall be binding unless in writing and signed by the parties hereto.

7.7 Severability. In the event any term of provision of this Agreement or any application thereto to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent, as determined by a court of competent jurisdiction, such term or provision shall, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining terms or provisions hereof, unless such would

effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the Agreement on the party benefited by such term of provision.

7.8 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia, without regard to their choice of law provisions.

7.9 Force Majeure.

a. It is further understood and agreed that with respect to any obligation to be performed by a party during the term of this Agreement, such party shall in no event be liable for failure so to do when prevented by any force majeure cause beyond the reasonable control of such party such as strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts of employees necessary to perform such obligation, or war or other emergency. The time within which such obligation shall be performed shall be extended for a period of time equivalent to the delay from such cause. DNR's lack of funds or credit, however, shall in no event constitute a force majeure cause.

b. If at any time during the term hereof it becomes necessary in _____'s reasonable opinion to cease operation of the Improvements in order to protect the Improvements or the health, safety and welfare of the guests, customers or employees of the Improvements for reasons of force majeure such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, environmental risk or other casualty, then in such event, subject to DNR's consent, except in the event of an emergency, _____ may close and cease operation of all or part of the Improvements, reopening and commencing operation when _____ deems, in the exercise of reasonable business judgment, that such may be done without jeopardy to the Improvements, its guests, the public, or employees.

7.10 Authorization. DNR and _____ each represent that it has full power and authority to execute this Agreement and to be bound by and perform the terms hereof. On request each party shall furnish the other evidence of such authority. However, DNR's power and authority is conditioned upon various statutorily required reviews and approvals of other state governmental entities, and _____ acknowledges and accepts the same.

7.11 No Waiver. The failure of either party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No provision of this Agreement shall be deemed to impair the right of any party to

exercise any right or remedy, whether for damages, injunctions, specific performance or otherwise, upon any breach, default or termination hereunder.

7.12 Consent. Whenever in this Agreement the consent or approval of _____ or DNR is required, the consent or approval shall not unreasonably be withheld or delayed.

7.13 Time of Essence. Time shall be of the essence in the performance of this Agreement.

7.14 Freedom of Action. Subject to the terms and conditions of this Agreement, _____ may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to the ownership, financing, leasing, operation, management, brokerage and development of real property. The DNR shall not have any right by virtue hereof in and to such other business venture or to the income or profits derived therefrom.

7.15 Recourse Limitations.

ANYTHING HEREIN CONTAINED, AND ANYTHING AT LAW, TO THE CONTRARY NOTWITHSTANDING, IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES (INCLUDING, WITHOUT LIMITATION, ANY ARBITRATION PROCEEDING) ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT OR IN ANY MANNER PERTAINING TO THE IMPROVEMENTS OR TO THE RELATIONSHIP OF THE PARTIES HEREUNDER, EACH PARTY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY RIGHT, POWER OR PRIVILEGE EITHER MAY HAVE TO CLAIM OR RECEIVE FROM THE OTHER PARTY HERETO ANY PUNITIVE OR EXEMPLARY DAMAGES, EACH PARTY ACKNOWLEDGING AND AGREEING THAT THE REMEDIES HEREIN PROVIDED, AND OTHER REMEDIES AT LAW AND IN EQUITY, WILL IN ALL CIRCUMSTANCES BE ADEQUATE. THE FOREGOING WAIVER AND RELEASE SHALL APPLY IN ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES AND FOR ALL CAUSES OF ACTION OF THEORIES OF LIABILITY, WHETHER FOR BREACH OF THIS AGREEMENT OR FOR VIOLATION OF ANY OTHER DUTY OWING BY EITHER PARTY TO THE OTHER WHICH MAY IN ANY WAY RELATE TO _____'S MANAGEMENT OR OPERATION OF THE IMPROVEMENTS. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THEY ARE EXPERIENCED IN NEGOTIATING AGREEMENTS OF THIS SORT, HAVE HAD THE ADVICE OF COUNSEL IN CONNECTION HERewith, AND HAVE BEEN ADVISED AS TO, AND FULLY UNDERSTAND, THE NATURE OF THE WAIVERS HEREIN CONTAINED.

7.16 Venue. The West Virginia Court of Claims shall have sole and exclusive jurisdiction over any and all claims asserted by _____'s against DNR arising from or related to this Agreement, the Management Agreement, or the relationship between _____ and DNR.

7.17 Trade Name. All Canaan and Blackwater Falls State Park Restaurant trade names belong to DNR. _____ shall not use _____'s trade name or the trade name of any subsidiary of _____ at Canaan or Blackwater Falls State Park Restaurant without prior written approval of DNR.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

ATTACHMENT E

CANAAN VALLEY STATE PARK - FIVE YEAR PROJECTED REVENUE PROFORMA

OCCUPANCY DESCRIPTION	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Number of Rooms	162	162	162	162	162
Annual Forecasted Occupancy	40%	45%	49%	50%	52%
ADR* LODGE ROOMS	\$ 120.28	\$ 121.48	\$ 122.70	\$ 123.92	\$ 125.16
Number of Cabins	23	23	23	23	23
Annual Forecasted Occupancy	64.00%	65.00%	65.00%	65.00%	65.00%
ADR* CABINS	\$ 145.87	\$ 147.33	\$ 148.80	\$ 150.29	\$ 151.79
REVENUE	OPEN YEAR 1	OPEN YEAR 2	OPEN YEAR 3	OPEN YEAR 4	OPEN YEAR 5
Room & Cabin Revenue	\$ 3,628,592.90	\$ 4,036,410.97	\$ 4,366,979.51	\$ 4,483,925.92	\$ 4,676,783.95
Food and Beverage	\$ 2,061,040.76	\$ 2,292,681.43	\$ 2,480,444.36	\$ 2,546,869.92	\$ 2,656,413.28
Golf	\$ 803,128.56	\$ 893,392.29	\$ 966,558.13	\$ 992,442.27	\$ 1,035,128.18
Ski / Tubing / Clay	\$ 2,506,148.16	\$ 2,787,814.51	\$ 3,016,127.18	\$ 3,096,898.17	\$ 3,230,098.78
Recreation	\$ 125,791.22	\$ 139,928.91	\$ 151,388.62	\$ 155,442.77	\$ 162,128.51
Rentals / Other Revenue	\$ 551,546.12	\$ 613,534.47	\$ 663,780.89	\$ 681,556.74	\$ 710,871.16
Total Forecasted Revenue	\$ 9,676,247.72	\$ 10,763,762.58	\$ 11,645,278.69	\$ 11,957,135.79	\$ 12,471,423.86

THE FORCASTED REVENUE LISTED ABOVE IS FOR BID EVALUATION PURPOSES ONLY

ACTUAL REVENUE, OCCUPANCY AND ADR MAY DIFFER

**AVERAGE DAILY RATE*

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety, understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

(Company)

(Authorized Signature)

(Representative Name, Title)

(Phone Number)

(Fax Number)

(Date)

Rev. 07/12

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with **West Virginia Code**, §5A-3-37. (Does not apply to construction contracts). **West Virginia Code**, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 ____ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 ____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,

2. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

3. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

4. Application is made for 5% resident vendor preference for the reason checked:

- ____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,

5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- ____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,

6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- ____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

7. Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with West Virginia Code §5A-3-59 and West Virginia Code of State Rules.

- ____ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____

Signed: _____

Date: _____

Title: _____

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division
PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20____.

My Commission expires _____, 20____.

AFFIX SEAL HERE**NOTARY PUBLIC** _____

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: DNR214010

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

<input type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.