



SOLICITATION INFORMATION

April 6, 2015

RFQ# 7549422

TITLE: EAST MATUNUCK FOOD, BEVERAGE AND SUNDRY CONCESSION

SUBMISSION DEADLINE: Tuesday, April 21, 2015 at, 11:00AM

PRE-BID/PROPOSAL CONFERENCE: YES

MANDATORY: YES

DATE: Tuesday, April 14, 2015 at, 10:00am

LOCATION: East Matunuck State Beach, 950 Succatosh Road, South Kingston, RI 02881

SURETY REQUIRED: YES

BOND REQUIRED: NO

**David A. Cadoret
Chief Buyer**

Applicants must register on-line at the State Purchasing Website at www.purchasing.ri.gov

Note to Applicants:

Offers received without the entire completed three-page RIVIP Generated Bidder Certification Form attached may result in disqualification.

**REQUEST FOR QUALIFICATIONS
EAST MATUNUCK FOOD, BEVERAGE AND SUNDRY CONCESSION**

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF PARKS AND RECREATION**

SECTION 1. INTRODUCTION

- A. The Division of Parks and Recreation (“DIVISION”) is seeking proposals from qualified vendors to operate and manage food, beverage and sundry concession services at East Matunuck State Beach. The purpose of offering a concession program within the state beach system is to provide convenience and enhance the enjoyment of beach patrons.
- B. This **RFQ** does not commit the DIVISION to award a contract. No other party, including any concessionaire, is intended to be granted any rights hereunder. Proposals which, in the sole discretion of the DIVISION, do not meet the requirements listed in this **RFQ** will not be reviewed. Any response to this **RFQ** will become the property of the DIVISION and will be considered public record as defined in Title 38, Chapter 2 of the Rhode Island General Laws. The DIVISION is not liable for any costs associated with the development, preparation, transmittal or presentation of any proposal or material submitted in response to this **RFQ**.
- C. The concession agreement “AGREEMENT” will begin May 1, 2015 and end **October 31, 2018**.
- D. **RFQ# 7549422** is not a Disk-Based Solicitation

SECTION 2. INSTRUCTIONS AND NOTIFICATIONS TO OFFERERS

- A. Offerors are advised to review all sections of this **RFQ** carefully and to follow instructions completely, as failure to make a complete submission as described elsewhere herein may result in rejection of the proposal.
- B. All costs associated with developing or submitting a proposal in response to this **RFQ**, or to provide oral or written clarification, of its content shall be borne by the offeror. The State assumes no responsibility for these costs.
- C. Proposals are considered to be irrevocable for a period of not less than sixty (60) days following the opening date, and may not be withdrawn, except with the express written permission of the State Purchasing Agent.
- D. All pricing submitted will be considered to be firm and fixed unless otherwise indicated herein.
- E. Proposals misdirected to other State locations or which are otherwise not present in the Division of Purchases at the time of opening for any cause will be determined to be late and will not be considered. **PROPOSALS EMAILED OR FAXED TO THE DIVISION OF PURCHASES WILL NOT BE CONSIDERED.** For the purposes of this requirement, the official time and date shall be that of the time clock in the reception area of the Division of Purchases.
- F. It is intended that an award pursuant to this **RFQ** will be made to prime contractor(s) who will assume responsibility for all aspects of the work. Joint ventures shall be considered, so long as the contractor's duties and responsibilities are clearly articulated in such form as acceptable to the State. Subcontractors are permitted, provided their use is clearly indicated in the offeror proposal and the subcontractor(s) to be used are identified in the proposal.
- G. All proposals should include the vendor's FEIN or Social Security number as evidenced by a Form W-9, downloadable from the Division's website at www.purchasing.ri.gov.
- H. In accordance with Title 7, Chapter 1.2 of the General Laws of Rhode Island, no foreign corporation, a corporation without a Rhode Island business address, shall have the right to transact business in the state until it shall have procured a Certificate of Authority to do so from the Rhode Island Secretary of State (401) 222-3040. *This is a requirement only of the successful vendor(s).*
- I. Bidders are advised that all materials submitted to the State for consideration in response to this Request may be considered to be public records, as defined in Title 38 Chapter 2 of the Rhode Island General Laws, without exception, and may be released for inspection immediately upon request, once an award has been made.

- J. The State has a goal of ten percent (10%) participation by MBE's in all State procurements. For further information, visit the website www.mbe.ri.gov or to speak with an MBE officer, call (401) 574-8253.

SECTION 3. EQUAL EMPLOYMENT OPPORTUNITY (RIGL 28-5.1)

- A. **Declaration of policy.** § 28-5.1-1 – (a) Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities, and in the classified, unclassified, and non-classified services of state employment. This policy applies in all areas where the state dollar is spent, in employment, public service, grants and financial assistance, and in state licensing and regulation. For further information, contact the Rhode Island Equal Employment Opportunity Office at 222-3090.
- B. Interested parties are instructed to peruse the Division of Purchases' website on a regular basis, as additional information relating to this solicitation may be released in the form of an addendum to this RFQ.

SECTION 4. INSURANCE REQUIREMENTS

- A. Vendors shall procure at their expense and maintain all insurance required in form and terms acceptable to State for the duration of the contract or as otherwise specified. Vendor shall provide State with replacement Certificate(s) and endorsements upon expiration, renewal, expiration or cancellation of the policies during the term of the contract, unless a longer period is specified. All certificates and endorsements shall reference this solicitation.
1. **Commercial General Liability Insurance** covering bodily injury broad form property damage, personal and advertising injury, independent contractors, products completed operations, and contractual coverage. Coverage shall be written on an occurrence basis and shall extend to an agent, independent contractor, temporary worker and a leased worker. A combined single limit of \$1,000,000.00 per occurrence and aggregate is required.
 2. **Auto Liability Insurance** covering all owned, non-owned, or hired vehicles. A combined single limit per occurrence of \$1,000,000.00 will be obtained.
 3. **Workers Compensation** coverage in compliance with the workers' compensation laws of the State. Coverage shall include Employers Liability Insurance with minimum limits of \$500,000.00 each accident, \$500,000.00 disease or policy limit, \$500,000.00 each employee.
 4. **Alternative Employer Endorsement** will be required for both the workers compensation and employers liability policy.

5. **Professional Liability Insurance** coverage to include Errors or Omissions, Product Failure, Security Failure, Professional Liability and Personal Injury. Contractor will obtain Professional Liability Insurance with minimum limits of \$1,000,000.00 per occurrence and aggregate.
6. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this section or in any way limit the Contractor's liability.
7. The Commercial General Liability Insurance, Auto Liability Insurance and the Professional Liability Insurance shall include the State, agencies, officers and employees as Additional Insured but only with respect to the Contractor's activities under the contract.
8. The insurance required through a policy or endorsement shall include:
 - a. A waiver of subrogation waving any right to recovery the insurance company may have against the State, it agencies, officers and employees.
 - b. A provision that Contractor's insurance coverage shall be primary to any insurance, self-insurance or self-insured retention maintained by the State, its agencies, officers and employees. Any insurance, self-insurance or self-insured retention maintained by the State, its agencies, officers and employees shall be in excess of the Contractor's insurance and shall not contribute.
 - c. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal without 30 days written notice from the Contractor or its insurer(s) to the Department of Administration, Division of Information Technology and to the Purchasing Agent. Any failure to comply with the reporting provisions of this clause shall be grounds for immediate termination of this contract.
 - d. Insurance coverage required under the contract shall be obtained from insurance companies acceptable to the Purchasing Agent.
 - e. The Contractor shall pay all deductibles, self-insured retentions and/or self-insurance included hereunder.
 - f. The Contractor shall disclose to the State the amount of any deductible, self-insured retention and/or self-insurance. The State reserves the right to reject any such insurance as not complying based on the amount of the deductible, self-insured retention and/or self-insurance.

- g. The Purchasing Agent reserves the right to consider and accept alternative forms and plans of insurance or to require additional or more extensive coverage for any individual requirement.

SECTION 5. RESPONSES TO SOLICITATION

- A. Offerors are directed to submit proposals as a paper document in sealed and marked envelope.
- B. Proposals misdirected to other agencies or locations or which are otherwise not submitted to the Division of Purchases prior to the time of opening for any cause will be determined to be late and shall not be accepted for consideration. The "Official" time clock is in the reception area of the Division of Purchases. Postmarks shall not be considered proof of timely submission. Please be advised that FedEx/UPS do not always arrive on time, so Offerors should plan accordingly.
- C. The Division of Purchases reserves the right to make an award (s) or to reject any or all proposals based on what it considers to be in the State's best interest.
- D. Offerors are encouraged to submit written questions to the Division of Purchases. No other contact with State parties regarding the **RFQ** will be permitted unless expressly authorized by the Division of Purchases.

SECTION 6. NOTICE TO VENDORS

- A. In accordance with R. I. Gen. Laws § 37-2-54(c), "[n]o purchase or contract shall be binding on the state or any agency thereof unless approved by the department [of Administration] or made under general regulations which the chief purchasing officer may prescribe."
- B. Moreover, the Division of Purchases' Procurement Regulations provide, in pertinent part, as follows:
 - 1. § 8.7.1 All agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.
 - 2. § 8.7.2 Change Orders issued by the Office of Purchases shall be the only binding documents which may create a change in a purchase order.
 - 3. § 8.7.3 Personnel shall not commit the state to technical/contractual changes to purchase without first securing all necessary approvals.
 - 4. § 8.2.1.1.2 Any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state.

SECTION 7. PROPOSAL SUBMISSION

- A. Responses should be mailed or hand-delivered by the submission deadline in a sealed envelope marked, on the outside of the envelope: **RFQ# 7549422, EAST MATUNUCK FOOD, BEVERAGE AND SUNDRY CONCESSION** and the opening date and time, to:

RI Dept. of Administration
Division of Purchases, 2nd floor
One Capitol Hill
Providence, RI 02908-5855

- B. Interested Offerors may submit proposals to provide the services covered by this Request on or before the date and time listed on page one (1) of this solicitation. Responses received after this date and time, as registered by the office time clock in the reception area of the Division of Purchases, will not be accepted.

SECTION 8. RESPONSE CONTENTS

- A. Responses shall include the following in a sealed envelope:
1. One completed and signed three-page R.I.V.I.P generated bidder certification cover sheet downloaded from the RI Division of Purchases Internet home page at www.purchasing.ri.gov.
 2. One completed and signed W-9 Form downloaded from the RI Division of Purchases at <http://www.purchasing.ri.gov/bidinfo/geninfo/standard.aspx>, or accessed by clicking on Bidding Information, then General Information and then Standard Forms.
 3. Attachment A, Bid Proposal.
 4. Business Summary. Instructions attached as to what the State requires in the Business Summary.

SECTION 9. EVALUATION PROCESS

- A. Proposals must be submitted to State of Rhode Island Division of Purchasing and must completely address all of the requirements contained in this **RFQ** in order to be deemed responsive.
- B. Proposals that fail to address all of the requirements contained in this **RFQ** will be rejected without further evaluation.
- C. Qualified proposals will be evaluated by the Selection Committee according to the following criteria:
1. Bid Proposal
 2. Financial Good Standing with the STATE.
 3. Business Summary

4. Experience managing food, beverage and sundry concession service.

SECTION 10. INFORMATION REQUIRED FOR PROPOSAL SUBMISSION

A. BUSINESS SUMMARY

1. Name, address, telephone number, fax number and email address of firm.
2. Name, address, telephone number and email address of the individual(s) with the authority to negotiate and contractually bind the company.
3. State the name of the firm, under which it is incorporated and/or doing business. Also, include the number and qualifications and experience of staff to be employed under the AGREEMENT.
4. Provide a narrative of the history of your firm, including date of inception, scope of business activity, experience with related business ventures and your knowledge and experience pertaining to Rhode Island State law and regulations regarding operation and management of food concessions. A minimum of three (3) years' experience is required.
5. Provide an operations and management plan to address the following subjects
 - a. Staffing information; including position descriptions, work schedules, total amount of staff assigned and seasonal schedules for the concession services.
 - b. Timeline and schedule for setting up concessions operations.
 - c. Equipment you will provide for the operation and management of the concession services.
6. Within the last five (5) years has your organization, its officers, partners, employees, shareholders or principals been a party in any litigation or other legal proceedings as a defendant relating to the services provided by your entity? If so, provide an explanation and indicate the current status or disposition of any such situation.
7. State whether the firm, its officers, partners, principals, agents or employees, that are expected to perform services under this RFQ, have been disciplined, admonished, warned, have been convicted of any criminal or unlawful activity, other than a misdemeanor or had any license, registration, charter, certification or any similar authorization to engage in food, beverage or alcohol sales and service, revoked or suspended.
8. Has the firm been in bankruptcy, reorganization or receivership in the last five (5) years? If so, please explain current status.
9. Please identify any conflicts or potential conflicts of interest that your firm may have in providing concession services at a state facility.

10. State whether the firm, its officers, partners, principals, agents or employees, that are expected to perform services under this **RFQ**, have within the last five (5) years, been awarded a contract by the STATE. If yes, please explain current status.
11. Please state whether, as of the date of the proposal, the firm, its officers, partners, principles, agents or employees, is in arrears to the STATE for any debts whatsoever (including, but not limited to back taxes).
12. Please provide a minimum of three (3) references to demonstrate the bidder's experience in successfully operating and managing a food, beverage and sundry concession facility.
13. Please provide a sample menu including all proposed food, beverage and sundry items. Also, include a price structure for food, beverage and sundry concession services for the term of this agreement.

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**ATTACHMENT A
BID PROPOSAL**

CONCESSIONAIRE NAME: _____

- A. The CONCESSIONAIRE proposes a yearly BID PROPOSAL as total compensation for operating the food and beverage concession at East Matunuck State Beach, on behalf of the DIVISION.
- B. A minimum annual bid of **\$20,000.00** is required by the CONCESSIONAIRE.

Year	Bid Proposed by the Vendor (Indicate Amount in Dollars)
2015	
2016	
2017	
2018	
Four Year Total	

Signature: _____ Date: _____

Name and Title of Authorized Signature: _____

SECTION 11. REVENUE PAYMENTS

- A. For the term of this AGREEMENT, the CONCESSIONAIRE will pay to the DIVISION the agreed to sum as consideration for the CONCESSION award and privilege granted herein.
- B. Fifty percent (50%) of the total agreed upon annual sum is due in three (3) installments per the following payment schedule:
1. May 15 \$
 2. July 15 \$
 3. August \$
- C. Checks are to be made payable to the State of Rhode Island and mailed to RI State Parks, 1100 Tower Hill Road, North Kingstown, RI 02852.
- D. The CONCESSIONAIRE will be responsible for payments equaling fifty percent (50%) of the total agreed upon annual sum for capital improvements as directed by the DIVISION.
1. The DIVISION will be responsible for identifying capital improvement projects and will apply RI State Purchasing guidelines for procuring competitive bids from qualified vendors. RI State purchasing guidelines will be applied at all times.
 2. The DIVISION will forward the CONCESSIONAIRE a request for payment payable to a specific vendor for processing by the DIVISION.
 3. The DIVISION will provide the CONCESSIONAIRE a detailed statement of all monies paid or owed on a monthly basis.
 4. Capital improvement payments are due by **September 30** on an annual basis.
 - a. EXCEPTION: The capital improvement payment owed during the last year of the signed AGREEMENT is due on **May 31, 2018**.

SECTION 12. OPERATING RESPONSIBILITIES

- A. PERSONNEL
1. The CONCESSIONAIRE will be responsible for hiring necessary personnel to conduct the operation of the concession stands. The CONCESSIONAIRE will comply with all federal, state and local laws related to minimum wage, social security, non-discrimination, unemployment compensation and workers' compensation.
 2. RI State residents will be given priority in the hiring process.

3. The employees are required to be neat in appearance and appropriately attired with name badges or other suitable means of identification.
4. The CONCESSIONAIRE will prohibit smoking by its employees on the PREMISES.
5. In accordance with Executive Order No. 91-14, employees of the CONCESSIONAIRE shall not be under the influence of illegal drugs, narcotics, other controlled substances or alcohol.

B. CUSTOMER SERVICE

1. Employees hired by the CONCESSIONAIRE will be the first contact the public encounters when arriving at the STATE beaches and they are representing not only the CONCESSIONAIRE, but also the DIVISION and as such, the CONCESSIONAIRE will ensure that all employees refrain from offensive and inappropriate conduct or language and they will treat all patrons professionally, equally and courteously.
 - a. Employees will greet all patrons with a friendly acknowledgment of "Welcome to [insert state name of state beach]."
 - b. Employees will not engage in ball playing, Frisbee throwing or any other form of action or conduct which would appear unprofessional.
2. Any time a complaint is filed by a patron, the CONCESSIONAIRE or the CONCESSIONAIRE's employees will:
 - a. Apologize to the patron sincerely and clearly.
 - b. If corrective action cannot be taken immediately tell the patron what action you will take and how those actions will rectify the problem.
 - c. Follow up with the patron to ensure the complaint was handled satisfactorily.
 - d. Refund purchase fee, if applicable.
 - e. All complaints and corrective action will be documented and submitted to the DIVISION on a weekly basis.
3. The CONCESSIONAIRE will provide continuing training and evaluation of all employees assigned to the CONCESSIONAIRE's business operations under the signed AGREEMENT to ensure an appropriate level of proficiency, a public service attitude and a good understanding and use of the principles of hospitality.

C. HOURS/DAYS OF OPERATION

1. The CONCESSIONAIRE will offer concession services to the public from 9:00 a.m. to 6:00 p.m. Monday through Sunday from approximately Memorial Day to Labor Day.
2. The CONCESSIONAIRE may have the option of extending its concession hours until 7:30 p.m. from Memorial Day to Labor Day with prior approval by the DIVISION and with the following requirements:
 - a. The CONCESSIONAIRE will be responsible for cleaning and maintaining the public family restrooms only during the extended time period.
 - b. The extended concession hours must be posted and be consistent throughout the season.
 - c. Failure to clean and maintain the public family restrooms or to provide consistent hours will result in the termination of the extended hour's option.
3. Concession hours must be posted in a location visible to the public and the concession must be opened for business during the hours posted.
4. The CONCESSIONAIRE will be allowed to occupy the concession premises from the hours of 6:00 a.m. to 6:00 p.m. twenty (20) days ***prior to the established beach season opening date*** for the sole purpose of preparing the concession space for the opening of the concession stand.
5. The CONCESSIONAIRE will be allowed to occupy the concession premises from the hours of 6:00 a.m. to 6:00 p.m. twenty (20) days ***after the established beach season closing date*** for the sole purpose of preparing the concession space for the closing of the concession stand.
6. The concession premises will not be occupied between the hours of 10:00 p.m. and 6:00 a.m. at any time, unless authorized by the DIVISION.

D. SHOULDER SEASON

1. The DIVISION may also be interested in providing parking, restroom access and concession services to the visiting public during the shoulder season.
2. The shoulder season is considered weekends only from May through Memorial Day and Labor Day through the end of October with weekdays also being an option if approved by the DIVISION.
3. If the CONCESSIONAIRE wishes to provide the shoulder season option to the visiting public, the following is required of the CONCESSIONAIRE:
 - a. The CONCESSIONAIRE must provide concession services.

- b. The CONCESSIONAIRE will be responsible for cleaning and maintaining the public family restrooms during the shoulder season.
- c. The shoulder season hours must be posted and be consistent.
- d. Failure to clean and maintain the public family restrooms or to provide consistent hours will result in the termination of the extended hour's option.

E. GARBAGE DISPOSAL AND RECYCLING

1. The CONCESSIONAIRE will be responsible for the cost of providing containers for trash and recycling to collect any refuse generated by the concession operations and by the patrons of the concession. The CONCESSIONAIRE will provide such additional trash containers as may be required to keep the immediate concession premises clean at all times.
2. The CONCESSIONAIRE will be responsible for the cost of the daily removal of trash and recycling from State Property. Recycling is mandatory and will be strictly enforced.
3. An area, consisting of a concrete pad large enough for a six (6) cubic yard dumpster, is available for use by the CONCESSIONAIRE only. The CONCESSIONAIRE is responsible for ordering the dumpster and all costs associated.

F. CONCESSION PREMISE

1. The concession premise ("PREMISE") consists of the concession stand and storage area located within the beach pavilion at East Matunuck State Beach and is approximately 280 square feet.
2. The CONCESSIONAIRE will not use or allow the PREMISES to be used, in whole or in part, during the term of the AGREEMENT, for any use in violation of any present or future laws, ordinances, rules and regulations at any time. These ordinances, rules and regulations include those which relate to sanitation, public health and safety.
3. The PREMISE and the space occupied by the CONCESSIONAIRE may be inspected at any time during the operating hours by the DIVISION or by any other state, county or municipal officer or agency having authority or jurisdiction for inspection of such concession operations. The CONCESSIONAIRE will immediately undertake the correction of any deficiency cited by such inspections.

G. SATELLITE CONCESSION

1. The CONCESSIONAIRE will be allowed to establish one (1) Mobile Food Cart ("CART"). A CART is defined as a non-motorized push cart that sells prepackaged or ready to eat food or drink.
 - a. The CART must be stored either within the storage area or removed from State property at the end of each day.
 - b. The CART will be permitted on a concrete area between the first and second parking lot only. The CONCESSIONAIRE will have the opportunity to view the specific CART location during the mandatory pre-bid conference.

H. MAINTENANCE OF CONCESSION PREMISES

1. The CONCESSIONAIRE will be responsible for cleaning all service areas inside the concessions facility and any area within a 50 foot radius around the concession stand.
2. The DIVISION will be responsible for the painting of the interior and exterior of the building.
3. The CONCESSIONAIRE will be responsible for the cost of all structural or other improvements, equipment and interior design and décor constructed or installed by the CONCESSIONAIRE. These improvements include, but are not limited to:
 - a. Improvements or changes to the Ansul System to accommodate CONCESSIONAIRE's grills, fryolators or any other equipment.
 - b. New piping or nozzle relocation
 - c. Adding propane
 - d. Adding additional electrical service
4. Prior to construction for any improvements, the CONCESSIONAIRE at its own expense, will procure all building, fire, safety, aesthetic, environmental and other permits and approvals necessary for the construction of the structural and other improvements, installation of the equipment and the interior design and décor. All permits and approvals must be submitted to the DIVISION. Improvement will not begin prior to CONCESSIONAIRE obtaining said permits and approvals.
 - a. All improvements will conform to and comply with the applicable ordinances, building codes, rules and regulations of the STATE OF RHODE ISLAND and such other authorities that may have jurisdiction over the facility areas or CONCESSIONAIRE's operations

- b. All improvements must have prior written approval from the DIVISION. Written approval by the DIVISION of any improvements as provided does not constitute a representation or warranty as to such conformity or compliance by the DIVISION. Responsibility of conformity and compliance will remain with the CONCESSIONAIRE at all times.

I. MAINTENANCE OF CONCESSION EQUIPMENT

1. The CONCESSIONAIRE will be responsible, at its own expense, for purchasing, installing and maintaining any equipment required for concession operations and said equipment shall remain its personal property.
2. As a courtesy, the DIVISION has supplied the following concession equipment:
 - a. Cooking Hood 4' x 8' with Filters
 - b. Ansul System
 - c. Three Bay Prep Sink
 - d. Grease Trap
3. The CONCESSIONAIRE will be responsible for the cleaning, maintenance, repair or replacement of all equipment provided by the DIVISION listed above.
4. The DIVISION will be responsible for the hiring and cost associated with the annual inspection of the Ansul system.
5. The CONCESSIONAIRE will be responsible for cleaning of the cooking hood and filters on a weekly basis. The CONCESSIONAIRE will also be responsible for the cost of the filters being replaced on an annual basis.
6. All fire extinguishers required by building code will be provided and maintained by the DIVISION. The DIVISION will be responsible for the hiring and cost associated with the annual inspection of the fire extinguishers. The CONCESSIONAIRE shall ensure proper use of the fire extinguishers and will notify the DIVISION, in writing, if the fire extinguishers are used at any time during the season.

J. UTILITIES

1. The CONCESSIONAIRE will be responsible for the cost of the electricity, propane and water. Separate meters and secondary meters have been installed and will be read before the CONCESSIONAIRE takes possession. The CONCESSIONAIRE will be notified in writing

of said reading for secondary meters and the DIVISION will invoice the CONCESSIONAIRE at the end of each year for all utilities utilized through secondary metering.

2. The DIVISION will be responsible for winterization by ensuring the water is turned off and drained at the end of each season to prevent freezing. A DIVISION representative will inspect and assist with the winterization each year to certify compliance.

K. MENU/SUNDRIES

1. The CONCESSIONAIRE will be responsible in providing patrons with quality cooked and packaged food and beverages at competitive prices.
2. The CONCESSIONAIRE will strive to provide fresh and locally grown foods and RI harvested seafood.
3. The CONCESSIONAIRE will also be allowed to provide sundries. Sundries are defined as miscellaneous small beach related items and beach services such as chair rentals, to be approved by the DIVISION in advance before offered to the public. The approval process will take into consideration the positive or negative impact of such services to other users of the beach.
4. The CONCESSIONAIRE will provide the DIVISION, at least thirty (30) days prior to any product sales for review and approval, a list confirming the menu items to be offered for sale and prices to be charged for each item, indicating any changes, if any. Any changes will be compared to the CONCESSIONAIRE's proposal and will be subject to the approval of the DIVISION.
 - a. The final approved food, beverages, sundries and pricing list will be attached to the signed AGREEMENT as the Approved Menu.
 - b. The CONCESSIONAIRE may add or delete items within the Approved Menu only with prior written approval by the DIVISION.
 - c. When changes are approved, the new Approved Menu will replace and supersede the old Approved Menu. Each of these actions may be taken without the requirement of a formal amendment to the signed AGREEMENT.
5. No glass containers of any kind shall be used in the dispensing of food and/or beverages.
6. Alcohol and tobacco sales are not permitted on the premises.
7. Advertising signs of any particular brand commodity is not allowed.

8. Vending machines are not allowed. A vending machine is any machine used to disperse a product to a consumer when a coin, bill, token or any other form of payment has been inserted or scanned.
9. The CONCESSIONAIRE must meet all state and local regulations in regard to food preparation and distribution. The CONCESSIONAIRE must also display the required certifications for food and beverage services.

L. SIGNAGE

1. The CONCESSIONAIRE will be responsible for clearly indicating prices via a menu, menu board or individually marked items.
2. With prior approval by the DIVISION, some prepackaged items may be individually priced if such pricing is readily visible to customers prior to the purchase.
3. Location of signage must be approved by the DIVISION before posting.

M. FOOD SAFETY

1. The CONCESSIONAIRE will be responsible for obtaining a Food Safety Manager Certification prior to opening of the concession operations.
 - a. Recertification is required every three (3) years or as required by the RI Department of Health.
2. The CONCESSIONAIRE will be responsible for obtaining a Pre-Operational Inspection from the RI Department of Health prior to opening of the concession operations.

N. ANNUAL REPORT

1. The CONCESSIONAIRE will be responsible for transmitting a Statement of GROSS REVENUE for the CONCESSION operations as specified in the AGREEMENT, on or before December 31 or each calendar year during the term of the AGREEMENT.
2. The Statement must be prepared by a Certified Public Accountant (CPA) and will not include statements of omission or non-disclosure.

O. ADDITIONAL INSURANCE REQUIREMENTS

1. **Garage Keeper's Insurance** premium with minimum limits of liability of \$1,000,000.00 for each occurrence and \$1,000,000.00 in aggregate.
2. **Employee Dishonesty Insurance** with minimum limits of \$50,000.00 per each occurrence.

SECTION 13. DEFAULT, REMEDIES AND TERMINATION

A. DEFAULT

1. The occurrence of any of the following will constitute a default:
 - a. Failure to submit payment in a timely manner when due and such failure is not cured within ten (10) days after written notice by the DIVISION.
 - b. Cancellation of insurance without DIVISION consent and not reestablished promptly after written notice by the DIVISION.
 - c. Bankruptcy or insolvency of the CONCESSIONAIRE for which no notice of opportunity to cure will be given by the State.
 - d. Any unapproved transfers without written permission of the DIVISION.
 - e. Failure of the CONCESSIONAIRE to open to the public for business in a timely manner.
 - f. Illegal use of the FACILITIES.
 - g. If the DIVISION discovers the CONCESSIONAIRE made a material misrepresentation to the DIVISION that induced the DIVISION to enter into the signed AGREEMENT.
 - h. Failure of CONCESSIONAIRE to keep, perform and observe any other promise or violates any term, covenant or condition of the signed AGREEMENT.

B. REMEDIES

1. The DIVISION may elect to allow the AGREEMENT to continue in full force and effect without termination and to enforce all of the DIVISION's rights and remedies, including without limitation the right to collect compensation as it becomes due along with past due interest.

C. TERMINATION

1. Subject to the CONCESSIONAIRE's right to cure, the DIVISION may terminate the AGREEMENT and CONCESSIONAIRE's right to possession immediately upon the occurrence of a default. Notice of termination may be given before or within the applicable time to cure.
2. The DIVISION may cancel and terminate the AGREEMENT and repossess the PREMISE with or without process of the law and without liability.

3. The CONCESSIONAIRE will be liable for all amounts owed at the time of termination, including, but not limited to damages and costs, including attorney's fees caused by CONCESSIONAIRE's failure to perform its obligations.

SECTION 14. MISCELLANEOUS PROVISIONS

A. RIGHTS NOT EXCLUSIVE

1. The DIVISION reserves the right to allow others to conduct concession operations and/or sell goods or services in other locations on STATE property that are the same, similar or even identical to those sold by the CONCESSIONAIRE.
2. The CONCESSIONAIRE understands and agrees that its right to conduct concession operations and/or sell goods or services on STATE property is not exclusive and that the use of the property subject to the signed AGREEMENT is restricted by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state, or municipality having jurisdiction over the property.

B. FAILURE TO MAINTAIN

1. In the event the CONCESSIONAIRE fails to undertake prompt maintenance or repair as required per the AGREEMENT, the DIVISION may elect to have the maintenance or repair completed on behalf of the CONCESSIONAIRE.
 - a. The DIVISION will provide the CONCESSIONAIRE written notice and an opportunity to cure prior to undertaking any maintenance or repairs for which the VENDOR is responsible.
 - b. The CONCESSIONAIRE will be responsible for reimbursing the DIVISION for any maintenance or repair undertaken by the DIVISION in a timely manner.

C. GREEN INITIATIVES

1. The CONCESSIONAIRE will strive to operate in an environmentally sensitive manner and will abide by all local, STATE and federal regulations and statutes governing the protection of the environment.

D. SURRENDER OF FACILITIES

1. The CONCESSIONAIRE will deliver possession of the PREMISE and all improvements to the DIVISION on date of expiration or termination of the AGREEMENT promptly, in broom clean condition and good state of repair, ordinary wear and tear excepted.
 - a. Ordinary wear and tear does not include deterioration that could have been prevented by proper maintenance practices or by CONCESSIONAIRE performing all of CONCESSIONAIRE's obligations under the AGREEMENT.
2. Upon expiration or termination of the AGREEMENT the CONCESSIONAIRE will be required to remove or dispose of its own equipment, furnishings and expendables.
 - a. Improvements and all permanent fixtures will become the property of DIVISION and will not be removed by the CONCESSIONAIRE.
3. The CONCESSIONAIRE will be allowed a period of thirty (30) calendar days to complete said removal. If not removed within that period, said equipment, furnishings and expendables will become the property of the DIVISION.

E. SUBCONTRACTOR

1. The term "subcontractor" includes any entity or person offering goods or services on the PREMISES by written or oral agreement, license or other arrangement with the CONCESSIONAIRE.
2. The DIVISION reserves the right to disapprove any proposed subcontract or subcontractor. Failure to obtain pre-approval of a subcontractor may result in termination of the AGREEMENT.
3. The CONCESSIONAIRE agrees the DIVISION will not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract.
4. Failure by any subcontractor to perform or to pay CONCESSIONAIRE will not be grounds for excusing the CONCESSIONAIRE's obligations to the DIVISION during the term of the AGREEMENT.

F. INDEPENDENT CONTRACTOR

1. The CONCESSIONAIRE is performing as an independent contractor and not as an employee of the STATE, the DEPARTMENT or the DIVISION.

2. Neither the CONCESSIONAIRE nor its employees are entitled to accrue any benefits of STATE employment.

G. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

1. The CONCESSIONAIRE will be required to demonstrate the same commitment to equal opportunity as prevails under the federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830 and Title 28 Chapter 5.1 of the General Laws of Rhode Island.
2. Affirmative action plans will be submitted by the CONCESSIONAIRE for review by the State Equal Opportunity Office.
3. CONCESSIONAIRE's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established will be grounds for forfeiture and penalties as will be established, including by not limited to suspension.

H. FORCE MAJEURE

1. Neither the DIVISION nor the CONCESSIONAIRE will be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of the signed AGREEMENT due to causes beyond the control of either party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, landslides, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, or any other circumstance for which either party is not responsible and which is not in its power to control.

I. INDEMNIFICATION

1. To the full extent of Rhode Island law, the CONCESSIONAIRE agrees to indemnify, defend and hold harmless the STATE, the DEPARTMENT, the DIVISION, their officers, representatives, agents, servants, employees and successors from any liability, damages, claims and or losses arising from the performance of the CONCESSIONAIRE, its agents or employees, including all costs, expenses and attorney's fees which any manner result form or arise out of this agreement.
2. The CONCESSIONAIRE's obligations to indemnify, defend and hold harmless extend to the use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract to which the contractor is not the patentee, assignee or licensee.
3. The CONCESSIONAIRE will reimburse the STATE, the DEPARTMENT or the DIVISION for any and all damages to the real or personal property of the STATE, the DEPARTMENT or

the DIVISION, including costs associated with recreating data caused by the acts of the CONCESSIONAIRE, its agents or employees.

4. The CONCESSIONAIRE's duties under this section will remain fully in effect and binding in accordance with the terms and conditions of the AGREEMENT, without being lessened or compromised in any way, even where the CONCESSIONAIRE is alleged or is found to merely contributed in part to the acts giving rise to the claims and/or where the STATE, the DEPARTMENT or the DIVISION is alleged or is found to have contributed to the acts giving rise to the claims.

J. INTERPRETATION

1. The AGREEMENT and related contract documents will be subject to and governed by the laws of the State of Rhode Island, including all procurement statutes and regulations (available at www.purchasing.ri.gov), and applicable federal and local law, all of which are incorporated into this AGREEMENT by this reference. In the event of any conflict between the State of Rhode Island Procurement Regulations or any provision of the Rhode Island General Laws and the AGREEMENT or other contract documents, the State of Rhode Island Procurement Regulations and the Rhode Island General Laws will control.
2. The section headings appearing herein are for the convenience of the DIVISION and the CONCESSIONAIRE and will not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of the AGREEMENT.
3. If any provision of the AGREEMENT is determined to be void or unenforceable by any court of competent jurisdiction, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable.
 - a. All other provisions will remain in full force and effect.

K. AMENDMENTS

1. Any amendments, alterations, variations, changes, modifications or waivers of provisions of the AGREEMENT will be valid only when they have been reduced to writing, duly signed by the DIVISION and CONCESSIONAIRE attached to the original of the AGREEMENT.

L. TIME OF THE ESSENCE

1. Time is of the essence for all provisions of the AGREEMENT.

M. INCORPORATION OF DOCUMENTS

1. The AGREEMENT and incorporated documents will represent the entire integrated agreement of the parties and supersede all prior written or oral representations, discussions and agreements, except whereas provided herein.

N. AUTHORITY TO ENTER INTO AGREEMENT

1. The person signing the AGREEMENT represents and warrants that s/he possess the legal authority to enter into the AGREEMENT and will be the primary contact responsible for ensuring compliance with the terms and conditions of the AGREEMENT, unless otherwise stated in writing.