



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

September 1, 2020

ISSUED BY: PATRICIA TANNER
PARALEGAL III
302-739-9224

SUBJECT: **AWARD NOTICE ADDENDUM #3**
CONTRACT NO. NAT-12-012-FOOD
MANAGEMENT AND OPERATION OF A CAFÉ AT THE INDIAN RIVER
MARINA DELAWARE SEASHORE STATE PARK

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KEY CONTRACT INFORMATION

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each contractor's contract shall be valid for five (5) years from March 1, 2013 and ending February 28, 2018. CONCESSIONAIRE and the DIVISION shall have the option to renew for an additional five (5) years based on successful completion of the terms and conditions.

The contract has been renewed for five (5) years. The contract shall expire on February 28, 2023. There are no additional renewal terms remaining.

2. VENDORS

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Vendor Name: Second String LLC Address: 39413 Inlet Road Rehoboth Beach, DE 19971 Primary Contact Name(s): George Bendler Richard Sade Phone: 302-227-7325 Email: gmbendler@gmail.com
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3. GENERAL CONDITIONS

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Changes – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.

4. CONTRACT FEE

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The CONCESSIONAIRE, as a fee for the contract and concession rights herein granted, agrees to pay to the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901, an annual contract fee as follows:

2013	\$5,000.00 and 1% of gross receipts
2014	\$5,000.00 and 2% of gross receipts
2015	\$5,000.00 and 3% of gross receipts
2016	\$5,000.00 and 8% of gross receipts
2017	\$5,000.00 and 8.5% of gross receipts
2018	\$5,000.00 and 8.5% of gross receipts
2019-2022	\$5,000.00 and:
	Sales under \$1,500,000 - 8.5% of gross receipts
	Sales between \$1,500,000 & \$2,000,000 – 7.5% of gross receipts
	Sales above \$2,000,000 – 6.5% of gross receipts

The CONCESSIONAIRE shall not be required to pay a fee for non-revenue generating transactions such as complimentary items, voided transactions, and over-rings. These transactions shall continue to be reported on the gross receipts report and will show a deduction for all non-revenue generating transactions.

The annual contract fee shall be due in two (2) equal monthly installments on July 15 and September 15 during the term of this license. The percentage of gross receipts shall be calculated annually, the CONCESSIONAIRE agrees to pay the additional amount based on the specified percentage of total gross receipts to the DIVISION on or before December 31 of each year.

The CONCESSIONAIRE agrees to submit a monthly receipts report, including a cash register "Z" tape or POS daily close out report covering each day's operation by the 15th day of the following month as specified under this agreement to the DIVISION.

The CONCESSIONAIRE agrees to submit a tabulated annual gross receipts report for the period of operation on or before December 31 of the each year to the DIVISION.

5. OPERATING SCHEDULE:

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The CONCESSIONAIRE upon execution of the contract agrees to provide a concession service in accordance with a **minimum** schedule that includes but is not limited to the following:

~~In-Season: ——— Memorial Day weekend through Labor Day including
————— Holidays, seven (7) days a week, 7 a.m. to 7 p.m. on
————— weekdays; and 7 a.m. to 9 p.m. on weekends.~~

~~Off-Season: April 1 through November 30 from 8 a.m. to 5 p.m.
beginning fall 2013 and contingent upon weather
conditions and business as determined by the Marina
Manager (excluding in-season schedule).~~

April 12 to April 30 Friday-Sunday, 11:00 A.M. to 5:00 P.M.
May 1 to September 30 Seven (7) days a week, 8:00 A.M. to 10:00 P.M.
(Monday, Thursday, Friday, Saturday and
Sunday); and 11:00 A.M. to 10:00 P.M. (Tuesday and
Wednesday – no breakfast for cleaning, etc.)
October 1 to October 13 Friday-Sunday, 11:00 A.M. to 5:00 P.M.

Early Closing: Every effort is required to provide consistent hours of operation. CONCESSIONAIRE shall contact the Marina Manager prior to closing business for the day to receive authorization for an early closing.

Maximum Hrs: For the safety of marina patrons entertainment and serving of alcoholic beverages and shall end no later than 10:00 P.M. The restaurant shall close no later than 11:00 P.M.

The DIVISION reserves the right to revoke the contract of the CONCESSIONAIRE if they do not adhere to the schedules of operations.

ADDITIONAL TERMS AND CONDITIONS

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6. INTEREST PAYMENTS

Any payments from the CONCESSIONAIRE to the DIVISION which becomes due and which are not paid on or before the due date shall be subject to any interest penalty of twelve (12) percent per annum until paid, computed from the due date. When a late payment is received, the CONCESSIONAIRE shall be billed the amount of interest owed. This provision is in no way a waiver of the CONCESSIONAIRE'S obligation to make payments when they are due.

CONCESSIONAIRE shall submit all required and essential documents in a timely manner. A CONCESSIONAIRE shall be assessed a fee for the late submittal of documents, particularly, but not limited to, monthly and annual gross receipt reports, that are postmarked 30 days or more beyond the required dates of submittal, as stated in this contract. A \$50 administrative fee shall be charged for each monthly the documents have not been submitted.

7. CONCESSIONAIRE RESPONSIBILITIES

The CONCESSIONAIRE will be granted the right to provide a café, including some convenience items at the Indian River Marina that is approved by the DIVISION. The CONCESSIONAIRE'S responsibilities under this contract shall include the following:

- A. The CONCESSIONAIRE is required to furnish and install the necessary equipment, if not provided (drink dispensers, grill table, etc.) at the concession location for the preparation, display and storage of merchandise sales items in order to provide the specified café and convenience store services.
- B. All of the equipment and fixtures used in the concession operation shall be subject to approval by the DIVISION, the Division of Public Health and the State Fire Marshal, if applicable, as to their workability, appearance, appropriateness, and compliance with all applicable codes.
- C. The CONCESSIONAIRE must furnish and use a cash register or an approved point of sale system with accumulating total to record all customer sales and receipts collected.
- D. CONCESSIONAIRE may utilize an outdoor area at the facility approved by the marina for outdoor grilling.
- E. CONCESSIONAIRE shall provide new, commercial grade umbrellas for tables and chairs on the deck. All outdoor furniture must be aesthetically designed to fit into the Marina environment.
- F. CONCESSIONAIRE shall provide and maintain handicap accessibility seating areas for both the inside and outside of the café including the designated grass area extended from the deck.

- G. CONCESSIONAIRE shall be responsible for providing quality products and services at market prices to park visitors.
- H. CONCESSIONAIRE shall provide mutually agreed upon entertainment on weekends and holidays from Memorial Day through Labor Day.
- I. CONCESSIONAIRE shall provide alcoholic beverages during a period of time approved in writing by the marina.
- J. CONCESSIONAIRE shall provide daily cleaning and janitorial service of the sales area, outside deck and other building space and grounds assigned to the CONCESSIONAIRE.
- K. CONCESSIONAIRE is responsible for the repairs and maintenance of food service equipment provided by the DIVISION.
- L. CONCESSIONAIRE shall maintain all facilities and equipment supplied by the DIVISION and return said facilities and equipment to the DIVISION in good order, condition and repair, reasonable wear and tear expected
- M. CONCESSIONAIRE is responsible for the daily collection and deposit of litter, garbage, and refuse from the grounds and buildings assigned to or used by the CONCESSIONAIRE into the parks dumpster.
- N. CONCESSIONAIRE is responsible for the repairs and maintenance to interior and exterior building fixtures and utilities. (locks, light bulbs, water faucets, etc.).
- O. CONCESSIONAIRE shall publicly display in a conspicuous place at the concession area a neat and legible sign listing rates, prices and charges for all products and services.
- P. CONCESSIONAIRE shall be responsible to employ only competent, mature and orderly employees and their employees shall keep themselves neat and clean and be courteous to all guests and patrons of the park. CONCESSIONAIRE shall check all prospective employees they intend to hire at the contracted area against the Delaware or any other applicable sex offender registry. CONCESSIONAIRE shall notify the DIVISION if they desire to hire an individual who is on a registry. Written approval by the DIVISION shall be required before the CONCESSIONAIRE can employ said individual to work at the contracted area.
- Q. CONCESSIONAIRE shall establish and maintain books of account and records of all operations and establish systems of bookkeeping, records and accounting in a manner satisfactory to the DIVISION.
- R. CONCESSIONAIRE agrees to submit an annual financial statement, which includes listing of total gross receipts/sales for each calendar year. This annual statement shall be submitted to the DIVISION on or before April 15 for the preceding year's sales.
- S. **As part of their services, the CONCESSIONAIRE may provide mobile food truck, cart and delivery services to the Delaware Seashore State Park North**

Inlet Campground and the Indian River Marina area. The Division reserves the right to approve all mobile services, hours and location prior to the CONCESSIONAIRE initiating services.

8. INSURANCE

Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	\$1,000,000 per person and \$3,000,000 per occurrence
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And at least one of the following, as outlined below:

b.	Medical or Professional Liability	\$1,000,000/\$3,000,000
c.	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
d.	Product Liability	\$1,000,000/\$3,000,000

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage’s, secure at its own expense the following coverage:

The successful vendor must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

9. UTILITIES

Electricity, telephone, propane gas and/or other utilities used for the operation will be solely at the CONCESSIONAIRE'S expense. The CONCESSIONAIRE will be required to make

independent arrangements for service with the area's utility companies with the exception of electric, propane gas, water and waste water disposal which are furnished by the DIVISION. Electrical and propane gas usage will be sub-metered. The DIVISION shall pay the utility and the CONCESSIONAIRE shall reimburse the DIVISION based on sub-metered readings. All reimbursements will be refunded within 30 days of CONCESSIONAIRE receiving invoice. Gas line connection from CONCESSIONAIRE's equipment to owner-supplied gas piping will be at the expense of the CONCESSIONAIRE.

10. ITEMS FOR SALE

The CONCESSIONAIRE may, as part of the contract hereunder, upon compliance with all provisions herein and in accordance with State Health regulations and other applicable laws, offer for sale the following items:

- A. A full menu fare including but not limited to fully prepared seafood dish's (excluding raw seafood sales for off premise consumption).
- B. Non-alcoholic and alcoholic beverages and any other refreshments necessary to carry on the business in accordance with the terms and conditions set forth herein.
- C. Grocery staples such as but not limited to fresh fruit, milk and eggs may be sold.
- D. The selection of all food and beverage products shall consider sound business model that includes a balanced diet (calories, fat, sugar and sodium), foods not containing harmful biological and chemical contaminants, supporting local businesses and farmers, cultural traditions, reduction of waste.
- E. Beverage vending machines located in a designated area on the exterior of the building shall contain beverages and food products as required in the DIVISION'S vending guidelines (attached).
- F. All food and beverages must be served in recyclable containers preferably made of paper or biodegradable products.
- G. Limited products may be sold for the promotion of the Hammerhead's brand at Indian River Marina's café.

Additional items may be offered for sale upon advanced written approval by the DIVISION. Any items using the name of the State Park, the marina or other property managed by the DIVISION shall be submitted for approval by the DIVISION prior to sale.

11. DISAPPROVAL OF ITEMS

The CONCESSIONAIRE agrees to withdraw from sale any item or service disapproved by the DIVISION. The Division and marina's logo shall not appear on products sold by the CONCESSIONAIRE unless those products are purchased directly from the DIVISION's retail procurement program.

12. QUALITY AND PRICING

The CONCESSIONAIRE warrants that all products and services offered by it to the public shall be of the highest quality and consistent with the quality specifications provided by the CONCESSIONAIRE pursuant to this section. The CONCESSIONAIRE shall have the right and privilege to charge such prices and rates as are reasonable and fair. All prices and price changes shall be subject to the prior written approval of the DIVISION.

The CONCESSIONAIRE shall submit a schedule of services to be offered at the beginning of each year and the fees charged for each service. The CONCESSIONAIRE agrees to offer only such services and merchandise at prices charged for similar classes of services and merchandise furnished outside the areas administered by the DIVISION under similar conditions.

If, in the sole opinion of the DIVISION, any goods or services offered by the CONCESSIONAIRE are inconsistent with the image or reputation of the DIVISION or the State of Delaware, or are otherwise deemed unsuitable for sale or are considered over - priced, the DIVISION shall request the CONCESSIONAIRE to immediately cease selling such goods or services or lower the price of said goods and services upon receipt of such in a written request from the DIVISION.

13. TAXES AND PERMITS

The CONCESSIONAIRE shall pay all State and Federal taxes and/or contract fees which may be imposed or legally chargeable, and obtain all necessary permits and licenses including, but not limited to a Business License, Public Health License and Liquor License issued by the State of Delaware and other necessary permits at its own cost and expense, as a result of operating the concession business conducted hereunder.

14. TRASH REMOVAL AND USE OF RECYCLABLE PRODUCTS

- A. The CONCESSIONAIRE shall provide trash cans inside the concession area and will be responsible for depositing the trash in the park's dumpster at the end of each day of operation.
- B. The CONCESSIONAIRE agrees to reimburse the DIVISION for 25% of the monthly billing for trash and recycling fees at the Indian River Marina as part of a shared resource.**
- C. The CONCESSIONAIRE will also be responsible for maintaining the concession areas in a clean and presentable condition.
- D. The CONCESSIONAIRE agrees to fulfill this responsibility in compliance with the spirit and intent of Executive Order 1 8, "Leading by Example Towards a Clean Energy Economy & Sustainable Natural Environment", as issued by Governor Markell on February 1 7, 2010 and which may be reviewed at http://governor.delaware.gov/orders/exec_order_1_8.shtml.

15. INSPECTION

The CONCESSIONAIRE shall allow free access to authorized representatives of the DIVISION and other county, state, or federal officials having jurisdiction for inspection purposes. The CONCESSIONAIRE shall further agree that if notified in writing by the

DIVISION of its authorized representatives that any part of the contracted premises or the facilities thereof for which the CONCESSIONAIRE is responsible for services rendered are not in conformance with the contract granted then the CONCESSIONAIRE shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the DIVISION and the CONCESSIONAIRE.

16. INDEMNIFICATION AND HOLD HARMLESS

The CONCESSIONAIRE expressly agrees to indemnify and hold the State of Delaware, the Department or any of its employees harmless from any and all claims arising out of any violations by the CONCESSIONAIRE of any law, rule, regulation or order, and from any and all claims for loss, damage or injury to persons or property of whatever kind or nature arising from the operation of this contract by the CONCESSIONAIRE or from the negligence or carelessness of employees of the CONCESSIONAIRE while on the job. The CONCESSIONAIRE expressly agrees to indemnify the State of Delaware, the Department or any of its employees to the extent of any recoveries against them individually and/or jointly arising from it.

17. DAMAGE TO PREMISES

In the event State property or facilities are damaged in any way whatsoever by reason of any act or omission of the CONCESSIONAIRE or its employees, the CONCESSIONAIRE shall repair at its own cost and expense the facility or property so damaged. Upon the failure of the CONCESSIONAIRE to make such repairs within five (5) working days or a reasonable time period agreed upon by the DIVISION and the CONCESSIONAIRE, the DIVISION will repair such damage at the cost and expense of the CONCESSIONAIRE and deliver a detailed invoice to CONCESSIONAIRE due and payable within thirty (30) days of the date of the invoice.

18. WAIVER OF DAMAGES

The CONCESSIONAIRE waives any and all claims for compensation of any loss or damage sustained by the CONCESSIONAIRE resulting from fire, water, natural disaster (e.g. hurricane, tornado, etc.), civil commotion or riots.

19. SMOKING PROHIBITED

Smoking is prohibited in State owned facilities pursuant to 16 Del. C. §2903. The CONCESSIONAIRE must also adhere to Division Policy No. 66 Tobacco Use Restrictions.

20. MODIFICATIONS TO PREMISES

If any alterations, modifications, additions or improvements of the contracted premises and facilities are desired by the successful applicant, a request first must be submitted to the DIVISION for approval and work shall not commence until receiving the DIVISION'S written approval and consent. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the CONCESSIONAIRE unless the DIVISION consents to share a portion of said costs or provide necessary materials and/or labor. All applications shall include a proposed layout of the operation and a detailed description of any alterations, modifications and construction which are contemplated to set up the operation.

The DIVISION shall become the sole owner of all alterations, modifications, additions or improvements of the contracted premises and facilities upon the expiration of the contract period.

21. PERSONNEL

The CONCESSIONAIRE will operate and manage said contract and employ such personnel satisfactory to the DIVISION. With the sale of alcohol, all employees shall be at least 18 years of age and carry a current alcoholic beverage server training certification. The CONCESSIONAIRE agrees to replace said personnel or any employee, whenever requested by the DIVISION upon satisfactory performance and due cause begin shown. The CONCESSIONAIRE agrees to have a sufficient number of personnel at such contracted area for the proper operation of this contract.

CONCESSIONAIRE shall check all prospective employees they intend to hire at the contracted area against the Delaware or any other applicable sex offender registry. CONCESSIONAIRE shall notify the DIVISION if they desire to hire an individual who is on a registry. Written approval by the DIVISION shall be required before the CONCESSIONAIRE can employ said individual to work at the contracted area.

22. STANDARDS OF EMPLOYEE PERFORMANCE

The CONCESSIONAIRE will employ only competent, mature and orderly employees and its employees will keep themselves neat and clean and will be courteous to all guests and patrons of the park. The CONCESSIONAIRE and its employees will not use improper language, behave in a boisterous manner or engage in any unlawful or unbecoming conduct during the course of their employment by the CONCESSIONAIRE. CONCESSIONAIRE shall assure all employees who serve alcohol have received and have kept current the Alcoholic Beverage Server Training Certification.

23. MARKETING AND PROMOTION PLANS; SIGNS AND ADVERTISING

- A. The CONCESSIONAIRE is encouraged to work with the DIVISION on a marketing and promotion plan for each calendar year, beginning calendar year 2013. Such plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with individual state parks or facilities (The DIVISION is considered a "qualified organization" for purposes of receiving deductible charitable contributions).
- B. The CONCESSIONAIRE shall follow the guidelines and procedures established by the DIVISION when marketing through any form of social media.
- C. The Marina Manager shall have the authority to request meetings when needed to discuss mutually beneficial marketing efforts and to assist CONCESSIONAIRE in efforts to generate business through marketing and advertising.
- D. The CONCESSIONAIRE agrees not to use signs or any other means of soliciting business without the approval of the DIVISION and agrees not to advertise said contract in any manner or form on or about premises contracted to it, or elsewhere, or in any newspaper or otherwise, without such approval. Any printed

advertising shall include the correct name and location of the operation, i.e. Indian River Marina, Delaware Seashore State Park. The CONCESSIONAIRE agrees that a copy of the advertisement will be sent to the DIVISION prior to advertising.

- E. The DIVISION, through their authorized agents, reserves the right to prohibit the erection, display or use of signs which are not in keeping with the park area. Permission must be granted by the DIVISION or their authorized agents prior to the erection, display or use of signs. The DIVISION also reserves the right to designate the type, size, wording, color and number of signs requested by the CONCESSIONAIRE.
- F. It is mutually agreed by the CONCESSIONAIRE and the DIVISION that no permanent or temporary advertising, signage, or trademark visibility for the CONCESSIONAIRE's café services will be displayed or permitted anywhere in state parks without prior written approval from the DIVISION, except that it is agreed that the CONCESSIONAIRE shall be permitted to include its trademark and brand names on its equipment.

24. EXPIRATION

Upon expiration of the contract period, CONCESSIONAIRE shall remove all equipment and inventory furnished by them provided all contract fees have been paid. Any equipment, inventory and/or personal property left on the premises beyond thirty (30) days from the expiration shall become the property of the DIVISION.

25. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

CONCESSIONAIRE certifies that they comply with all federal, state and local laws applicable to its activities and obligations.

CONCESSIONAIRE shall keep itself fully informed of and shall observe and comply with all applicable existing federal and state laws and county and local ordinances, regulations and codes adopted during its performance of the work.

26. DIVISION RESPONSIBILITIES

The DIVISION shall provide a 1,400 square feet (35'x 40') building with an outside usable deck area of approximately 1,100 square feet and 64' x 69' grass area extended from the deck.

A. The DIVISION shall provide the following equipment in the concession building:

- | | |
|--------------------------------|--|
| 1. Misc. Shelving System | 12. Bane Marie Refrigerated Sandwich Prep System |
| 2. Walk-In Cooler | 13. Steam Table System |
| 3. Cooler Refrigeration System | 14. Beer Dispensing System |
| 4. Microwave Oven | 15. Outdoor Furniture |
| 5. Hot Dog Grill | 16. Booster Chairs/High Chairs |
| 6. Coffee Brewer | 17. Dual Heat Lamp |
| 7. Cup Dispenser | 18. Work Table |
| 8. Work Counter | 19. Dual Hot Cheese |
| 9. Hand Sink Dispenser | 20. Stand-up Freezer |
| 10. Soap and Towel Dispenser | 21. Mop Sink and Rack |
| 11. Three-Compartment Sink | |

B. The DIVISION shall provide limited electric service to the grass area.

C. The DIVISION is responsible for major utility and structural repairs, and exterior maintenance.

D. The DIVISION reserves the right upon notice to CONCESSIONAIRE to enlarge, close and/or reduce the size of any area for the purposes of improvement, repair, construction or any other legitimate purpose. It is understood that any of the above action shall not entitle the CONCESSIONAIRE to any reduction or suspension of the License fee unless otherwise approved by the DIVISION.

E. The DIVISION shall offer support and guidance to the CONCESSIONAIRE when needed to provide wholesome and healthy food and beverage products.

27. PARKING

Parking spaces for the concession operator and their employees will be assigned by the Marina Manager. The Marina Manager shall approve additional parking if it is found to be necessary.

For a complete list of contract specifications please refer to the original bid solicitation document(s). Any contract specific documentation will be accessible through the hyperlink(s) provided on this contract's details page.