



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

August 1, 2016

ISSUED BY: Ariel Hornik
Paralegal I
302-739-9220

SUBJECT: **AWARD NOTICE**
CONTRACT NO. NAT16003_BEACH RESTAURANT
BEACH RESTAURANT AND AMENITIES AT DELAWARE SEASHORE STATE
PARK SOUTH INLET (DAY USE AREA)

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each contractor's contract shall be valid for a **fifteen year period from August 1, 2016 to September 30, 2031**. Each contract may be renewed for two (2) five (5) year periods through negotiation between the Vendor and the Division of Parks and Recreation. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

2. VENDORS

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DSSP South Inlet (Day Use Area)

La Vida Hospitality, LLC
19406 Coastal Highway
Rehoboth Beach, DE 19971
Phone: 302-226-2037
Email: mrosenfeld@lavidahospitality.com

3. PRICING

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Prices will remain firm for the term of the contract.

DSSP South Inlet:

Year 2017	\$30,000 annual fee + 4% of gross receipts after \$750,000.00
Year 2018	\$30,000 annual fee + 5% of gross receipts after \$750,000.00
Year 2019	\$30,000 annual fee + 5.5% of gross receipts after \$750,000.00
Year 2020-2031	\$30,000 annual fee + 6% of gross receipts after

- All extension options shall be negotiated and mutually agreed upon by the parties to the Contract, to include negotiated payment terms.

ADDITIONAL TERMS AND CONDITIONS

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4. PAYMENT

The annual contract fee shall be due in two (2) installments on July 15th and September 15th annually during the term of this contract. The Vendor agrees to pay the percentage of total gross receipts to the Division on or before December 31st of each year.

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

5. REQUIREMENTS

a. Reporting:

The Vendor agrees to submit to: OBS_Parks@state.de.us, a Beach Restaurant and Amenities Contract report once a month, covering each day's operation under the Contract, plus a tabulated annual gross receipts report and annual financial reports for the period of operation on or before December 31st of each year. All annual gross receipt reports and financial reports must be "Reviewed" by a certified public accountant prior to submission and proof of "Review" must be included in Vendor submission.

b. Utilities:

Internet service, telephone, electric, water, propane, heat, and/or other utilities used in the South Inlet (Day Area) shall be solely at the Vendor's expense. The Vendor will be required to make independent arrangements for service with the local utility companies for services not provided by the park. Vendor shall have full access to the 400 amp electrical previously provide to the buildings on the building site. Vendor shall have the ability to obtain propane service to the site. Vendor shall be responsible for the cost and payment of all utilities, including water, sewer, electrical, gas, and any others, used by it within the operation of the beach restaurant and the catering and event deck. Vendor shall also be responsible for all connection or newly established connectivity costs.

The Vendor shall pay for water, waste water disposal and propane usage at the South Inlet (Day Area) and the Division will provide monthly billing.

Payments will be made directly to **Delaware Seashore State Park** for propane and water consumption. Late payments may be considered a performance deficiency under a Contract.

c. Taxes and Permits:

The Vendor shall pay all State and Federal taxes and/or license fees which may be imposed or legally chargeable, and, obtain all necessary permits and licenses, including but not limited to, a Delaware Business License, Public Health License, Liquor Licensing and other necessary permits at its own cost and expense as a result of operating the Beach Restaurant and Amenities as part of the services.

d. Security:

The Vendor shall be responsible for security of its equipment, software and any credit card services while contracting with the Division.

e. Inspection:

The Vendor will allow free access to the operation space as needed to authorize representatives of the Division and other county, state or federal officials having jurisdiction for inspection purposes. The Vendor shall further agree that if notified in writing by the Division or its authorized representatives that any part of the contracted premises or the facilities thereof for which the Vendor is responsible for services rendered are not in conformance with the Contract granted, then the Vendor shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the Division and the Vendor.

f. Accounting and Reports

The Vendor shall maintain proper and complete books and records of accounts of its operation under the Contract granted. Internal control procedures implemented by the Vendor shall be adequate to ensure that all revenue is accounted for and recorded. All receipts of any nature from the operation of the Contract provided by the Vendor shall be immediately and properly recorded. The Vendor shall permit the

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Division or its authorized representatives to examine and audit financial records relative to this Contract at any reasonable time during normal business hours, after giving the Vendor two (2) weeks' notice of the date and time of such examination and audit. The Vendor shall retain these financial records for a period of five (5) years beyond the termination of this Contract, unless earlier disposal is approved by the Division in writing.

g. Operating Schedule:

The beach restaurant will open for operations no later than May 15, 2017, and remain open until at least October 31st of each year. Should Vendor be unable, due to construction, permitting, or similar issues to open by the stated date, Vendor will provide a food truck or other means to provide food and beverages until such time as the beach restaurant shall be able to be opened. The beach restaurant shall open at an earlier date should the beach restaurant be ready for opening, but not prior to April 15, 2017. In all subsequent years of the lease, the beach restaurant shall operate from no later than May 1st until at least October 31st.

The beach restaurant shall operate on weekends and weekdays during the summer beach season (Memorial Day to Labor Day) from 9:00 a.m. to 10:00 p.m. The beach restaurant shall be open 11:00 a.m. to 9:00 p.m. on all other dates. Alteration of operating hours must be approved by the Division in writing. Vendor shall provide the Division financial records detailing the decline in business or support documentation for change request in writing and requesting reduction of hours. The Division reserves the right to approve or deny the request in the best interest of the Division.

The additional deck to be constructed, which shall act as a catering and events venue, shall be operated on an "as booked" or an "as needed" basis.

The Division reserves the right to revoke the Contract of the Vendor if they do not adhere to the agreed-upon schedule of operations.

h. Trash Removal and Use of Recyclable Products:

The Vendor shall provide trash cans inside the operation area for the public's use and will be responsible for depositing the trash in a vendor-provided dumpster at the end of each day, conforming with all rules and regulations pertaining to sanitation and safety as written the Delaware Food Code and administered by the Delaware Division of Public Health. All rubbish, refuse garbage and debris collected by Vendor shall be deposited in containers provided by a local waste management service approved by the Division of Parks and Recreation. Vendor is responsible for arranging placement and removal of waste dumpster and any expenses incurred for waste management services.

The Division shall provide a location for a vendor-provided dumpster. Vendor must ensure that dumpster area is kept clean and that dumpster is serviced/trash removed a minimum of twice weekly during non-peak season and a minimum of three times weekly during peak season (June 1st to August 31st) to ensure that odors and debris are managed and are acceptable for park standards.

The Vendor shall patrol for litter and trash in and around the Beach Restaurant and Amenities area multiple times daily and as-needed to ensure that the state park remains in pristine condition. Failure to keep the Beach Restaurant and Amenities area in a high state of cleanliness shall be considered a significant performance deficiency under this Contract.

i. Emergencies:

The Vendor and the Division or their designated agent(s) shall be available by phone twenty-four (24) hours a day, seven (7) days a week for emergencies during the entire term of the Contract. Information on how to contact the Vendor or their designee has been provided as part of Vendor's proposal.

j. Parking:

Parking spaces for the Vendor and their employees will be assigned by the Park Superintendent. Fees for parking on the site shall be the same as those charged at all other sites operated by the Department. No surcharge or additional fee shall be charged regardless of the demands for parking on the site.

k. Beach Restaurant Franchise Limitations:

The Vendor shall have an exclusive franchise as the sole daily business vendor for providing Beach Restaurant and Amenities (not including rental of umbrellas or chairs which remains the responsibility of the Division and not including Division scheduled events and activities that may have other food, beverage, entertainment, and activity vendors (including Friends Groups)) at Delaware Seashore State Park South Inlet (Day Use Area) described in the RFP. The Division shall not take any action to interfere with the rights granted hereunder so long as the Vendor shall faithfully conform to all the provisions herein. As an exception, the Division reserves the right to schedule events and activities at Delaware Seashore State Park South Inlet (Day Use Area) with vendors of their choosing (event based, example: Boo-B-Que).

The Vendor may propose additional hospitality uses on the site. The Division reserves the right to approve or deny additional hospitality uses on the site.

l. Marketing and Promotion Plans; Signs and Advertising:

The Vendor is encouraged to work with the Division of Parks and Recreation on a marketing and promotion plan for each calendar year. The agreed upon marketing plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with individual state parks or facilities. Copies of the publications promoting the Beach Restaurant and Amenities shall be made available to the Park Management for distribution.

The Vendor agrees not to use signs or any other means of soliciting business without the approval of the Division and agrees not to advertise any contract between the State and Vendor in any manner or form on or about premises contracted to it, or elsewhere, or in any newspaper or otherwise, without such prior approval. Any printed advertising shall include the correct name and location of the operation (e.g. Delaware Seashore State Park South Inlet (Day Use Area)).

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 Vendor.

Any signs authorized by the Division for specific Beach Restaurant events shall become the property of the Division, if not removed by the Vendor after reasonable notice from and at the direction of the Division.

It is mutually agreed by the Vendor and the Division that no permanent or temporary advertising, signage, or trademark visibility for the Vendor's Beach Restaurant and Amenities operation and any packaged products will be displayed or permitted anywhere in Delaware Seashore State Park without prior written approval from the Division, except that it is agreed that the Vendor shall be permitted to include its trademark and brand names on its equipment (e.g. amenities/items being sold, etc.).

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Vendor may offer Beach Restaurant services (e.g. discounts, free meals, etc.) without charge to state park visitors for promotional purposes, with the Division's prior approval and the cost of these free services to park visitors shall be included in Vendor's annual financial statement.

m. Payment Credit Card Industry (PCI) Requirements:

The Vendor agrees that it is their responsibility to become PCI compliant and maintain compliance. For more information related to PCI Security Standards, the following link is provided: https://www.pcisecuritystandards.org/security_standards/index.php

n. Quality and Pricing:

Vendor warrants that all products and services offered by it to the public shall be of the highest quality and consistent with quality specifications provided herein.

Vendor shall have the right and privilege to charge prices and rates as are reasonable and fair. All price changes shall be subject to the prior written approval of the Division.

Vendor shall submit a detailed price list to the Division prior to each season, with a schedule of products and services to be offered and the prices to be charged for each product or service. **Vendor agrees to offer only such products and services at such prices as have been approved by the Division.** In approving rates, primary consideration will be given to the prices charged for similar classes of products and services furnished outside the areas administered by the Division under similar conditions.

If, in the sole discretion of the Division, any products or services offered by the Vendor are inconsistent with the image or reputation of the Division or the State of Delaware, or are otherwise deemed unsuitable for sale on the contracted premises, the Division shall request the Vendor cease selling such products or services and the Vendor shall cease doing so immediately upon receipt of such written request from the Division.

o. Vendor Responsibilities:

Vendor will be granted the right to provide a Beach Restaurant and Amenities with delivery and/or mobile food truck services at Delaware Seashore State Park South Inlet (Day Use Area). This delivery service includes the DSSP South Inlet Campground and the beach. Vendor's responsibilities under a Contract with the Division shall include the following:

- Vendor will be required to furnish and install the necessary equipment, if not provided by the Division at the Day Use Area Beach Restaurant location, for the specified Beach Restaurant and Amenities services. The existing concession facility includes the equipment listed in Exhibit A, Scope of Work, below for Vendor to use (or replacement at vendor's expense).
- Vendor must furnish a cash register or Point of Sale System (preferable) with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports.
- All of the Vendor-owned equipment or any permanently installed 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 codes

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- All outdoor furniture must be aesthetically designed to fit into the beach restaurant environment (e.g. tables).
- Vendor shall be responsible for providing the following services:
 - Vendor (or Vendor's subcontractor service) shall provide daily cleaning and janitorial service of the sales area, and other building space assigned to Vendor. Vendor shall remain vigilant in removing trash and debris from Beach Restaurant and Amenities area.
 - Vendor shall repair and maintain all food service equipment owned by Vendor and notify Division when any Division-owned equipment requires maintenance or repairs.
 - Vendor (or Vendor's subcontractor) shall, on a daily basis, collect and deposit litter, garbage and other refuse from the grounds and buildings assigned or used by Vendor into Vendor's dumpsters rented or leased by Vendor as part of the Beach Restaurant and Amenities services and in the everyday course of business. The Park will not provide any trash removal services and it is the sole responsibility of the Vendor to ensure trash services are provided for daily and Holiday pickup requirements. Failure to adhere to this responsibility will result in additional expense to Vendor, in the event the Division is contacted to provide these emergency services on behalf of Vendor.
 - Vendor is responsible, at their expense, for the repairs and maintenance of interior building fixtures and utilities (e.g. door locks, light bulbs, water faucets, or clogged sinks, etc.).
 - Vendor is responsible, at their expense, for cleaning any Hood Exhaust and Fire Suppression System in the Beach Restaurant facility annually at the end of each season or earlier if requested by the Division.
 - Vendor shall provide maintenance of the Beach Restaurant and Amenities area, including cleaning of tables and chairs, removal of all debris to ensure chairs are accessible for handicap visitors, in compliance with Americans with Disabilities Act (ADA) laws and legislation.
 - Vendor and its employees shall at all times generate and maintain an inviting atmosphere inside and outside the Beach Restaurant and Amenities area for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this contract.
 - Vendor must publically display in a conspicuous place at the Beach Restaurant area a neat and legible sign listing hours of operation, rates, prices and charges for all products and services. Vendor shall affix a menu board and/or a standing dry erase outside the Beach Restaurant area depicting specials for the day.
 - Vendor shall be responsible for providing quality food products and services at a reasonable price, in addition to providing excellent customer service to Park visitors.
 - Vendor may provide Food Truck services to the Parks from Memorial Day to Labor Day.
 - At the end of the contract term or at the request of the Division, Vendor shall ensure that all facilities and equipment provided by the Division are power washed and returned to the Division in good order, reasonable wear and tear expected. Failure to

return such facilities to its natural state or return equipment to the Division at the end of the contract term may result in the Division billing Vendor, as applicable.

- Vendor shall be responsible in employing only competent, mature and orderly employees and ensure their employees shall keep themselves neat and clean and be courteous to all visitors and patrons of the Park. Further, Vendor and its employees will not use improper language, behave in a boisterous manner nor engage in any unlawful or unbecoming conduct during the course of their employment by the Vendor. Any significant visitor complaints may be considered performance deficiencies under this Contract. Delaware State Parks are directly represented by the Vendor in their service offerings and the highest level of service to patrons is expected under this Contract.
- Vendor shall be fully responsible for its subcontractors and its agents during the term of this Contract.
- For any instance of inappropriate customer behavior the Vendor cannot manage effectively, the Vendor shall immediately report behavior to Park Enforcement.
- Vendor shall ensure that no alcoholic beverages leave the Beach Restaurant Area at any time, for any reason.

p. Modifications to Park Facilities:

Vendor may make alterations, modifications, additions or improvements to the contracted premises and Beach Restaurant facilities with prior Division approval of the design, development, timeline and approved plans. **No work shall commence until Vendor receives the Division's approval and consent in writing. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor, unless the Division consents to share a portion of said costs or provide necessary materials and/or labor.** Vendor shall submit a proposed layout of the operation and a description of any alterations or modifications which are contemplated to set up the operation. Vendor is responsible for obtaining any work permits, adhering to state and local ordinances, code and regulations at Vendor's expense. Additional requirements based on state and local ordinances, code and regulations may be required and shall be the responsibility of the Vendor. Vendor shall coordinate any subcontractor access to the Park with the Park Management. **Any award associated with capital investment/improvements shall result in the Division's ownership of all capital improvements executed during the life of the contract at the point of expiration and/or termination.**

q. Damage to Park Facilities:

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

r. Waiver of Damages:

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

s. Division Responsibilities

- The Division reserves the right 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 actions shall not entitle Vendor to any reduction or suspension of the Contract or fees unless otherwise approved by the Division.
- The Division shall be responsible for the major utility and structural repairs and exterior maintenance of the Park facilities. Division shall bill Vendor for the monthly propane and water use charges used in the performance of the operation services.
- The Division may perform maintenance tasks which are the responsibility of the Vendor for which the Division shall charge the Vendor a fee based upon actual costs for labor and materials. Requests for said maintenance tasks shall be submitted in writing by the Vendor and approved by the Division prior to commencement of work.
- The Division shall be responsible for the initial cleaning and inspection of the Beach Restaurant facility Ansul System (Hood Exhaust and Fire Suppression System). Thereafter, the Vendor shall be responsible for cleaning the Ansul System at the end of the season or earlier if requested by the Division. The Division shall have the Ansul System hood inspected approximately every six (6) months.
- The Division shall provide the following equipment for the Vendor's use:
 - Fryer/Grill Hood
 - Three-Compartment Sink
 - Hand Sink in cooking area
 - Hand Soap Dispenser
 - Paper Towel Dispenser
 - Wash Sink in storage room
 - Wire Shelving in cooking area

6. HOLD HARMLESS

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

7. NON-PERFORMANCE

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market

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products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

8. FORCE MAJEURE

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

9. AGENCY'S RESPONSIBILITIES

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. <http://gss.omb.delaware.gov/divisionwide/forms.shtml>.