



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

May 4, 2020

ISSUED BY: Patricia Tanner
Paralegal III
302-739-9220

SUBJECT: **AWARD NOTICE**
CONTRACT NO. NAT19009_NON-MOTORIZED FENWICK
NON-MOTORIZED WATERCRAFT RENTAL SERVICES AT FENWICK ISLAND

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each Vendor(s) contract shall be valid at a minimum from April 1, 2020 and will expire on March 31, 2023. Each contract may be renewed for renewed for one (1) two (2) year period through negotiation between Vendor and DNREC. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

2. VENDOR

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Coastal Kayak, Inc. 36187 Cookie Lane Frankford, DE 19945 Phone: 302-539-7999 Email: mitch@coastalkayak.com

3. PRICING

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The Vendor, 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, annual contract fees as follows:

\$100,000 revenue	\$10,000 annual fee and 14.5% of gross receipts
\$125,000 revenue	\$10,000 annual fee and 14.5% of gross receipts
\$150,000 revenue	\$10,000 annual fee and 14.5% of gross receipts
\$175,000 revenue	\$10,000 annual fee and 14.5% of gross receipts
\$200,000 revenue	\$10,000 annual fee and 14.0% of gross receipts
\$225,000 revenue	\$10,000 annual fee and 14.0% of gross receipts
\$250,000 revenue	\$10,000 annual fee and 14.0% of gross receipts
\$275,000 revenue	\$10,000 annual fee and 14.0% of gross receipts
\$300,000 revenue	\$10,000 annual fee and 14.0% of gross receipts

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

The Vendor agrees to submit to: [OBS Parks@delaware.gov](mailto:OBS_Parks@delaware.gov), a mandatory usage 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 31 of each year. All annual gross receipt reports must be "Reviewed" by a certified public accountant prior to submission and proof of "Review" must be included in Vendor submission.

Vendor will not pay the daily Park entrance fees for participation in the Non-Motorized Watercraft Rental Services; however, it is the expectation of the DNREC that all visitors to Delaware State Parks pay daily entrance fees or procure an annual park pass.

4. PRODUCTS AND SERVICES

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Vendor(s) shall offer for rent or sale Non-Motorized Watercraft Rental Services equipment which includes, but is not limited to, kayaks, stand-up paddle boards, and sailboats. The Vendor shall include, as part of their services, tours and instructional water sports programs, special activities and events and other group activities at the discretion of the Vendor and approved in writing by DNREC, for which e-mail is an acceptable means for written request and approval of items to be offered for sale. Additional items may be offered for rent or sale, (e.g. sun visors, hats, water shoes / sandals, sun products, etc.), water, sodas, non-alcoholic beverages and packaged snacks, upon advanced written approval by DNREC.

In accordance with DNREC’s “smoking in the workplace” Policy No. D-0309(A), no tobacco products shall be sold on the premises. Vapor products are also not acceptable. Additionally, Delaware State Parks prohibits the use of tobacco products in business and outdoor gathering areas

No Alcoholic beverages shall be sold or distributed at the operation locations without prior notice, proof of a valid license as required by the State of Delaware for sale, and approval by the Park Superintendent.

- A. Vendor shall offer hourly rentals of top-of-the-line single, tandem, and 2.5 person (suitable for two adults and a small child) kayaks. Different styles of kayaks include: sit-on-top, open cockpit, and touring/sea kayaks. Rates will be as follows:

	1/2 hr.	1 hr.	2 hrs.	1/2 day	Full day
Single	\$15	\$20	\$25	\$35	\$45
Tandem	\$20	\$25	\$35	\$45	\$55
2.5	\$23	\$28	\$38	\$48	\$58

Kayak rentals come with appropriately sized PFDs w/whistles, paddles, a short lesson (if desired), and a safety briefing.

- B. Vendor will offer hourly rentals of stable, durable, user-friendly paddle boards.

	1/2 hr.	1 hr.	2 hrs.	1/2 day	Full day
	\$15	\$20	\$30	\$40	\$55

Paddle board rentals come with appropriately sized PFDs w/whistles, paddles, a short lesson (if desired), and a safety briefing.

- C. Vendor will offer hourly rentals of small Hobie Wave Catamarans. These sailboats are stable, user-friendly, durable, and their shallow draft make them perfect for Little Assawoman Bay. All renters must be able to pass an oral test to demonstrate proficiency.

	1 hr.	2 hr.
	\$45	\$80

Sailboat rentals come with appropriately sized PFDs w/whistles and a safety briefing. Various sized dry bags are available to rent with equipment for \$1.

- D. Vendor will offer guided kayak and paddle board tours. Lead guides will be certified ACA instructors or assessed Trip Leaders. Guides carry first aid kits, tow belts, extra paddles, pumps and paddle floats, and cell phones with them at all times. Vendor follows guide to participant ratios to ensure customer enjoyment. For kayak tours, the customers will be paddling stable, comfortable, user-friendly open-cockpit or sit-on-top kayaks. Vendor guides use touring kayaks so that they can easily get to a customer if needed and perform rescues and tow paddlers when necessary. The paddle boards used for the guided tours are extremely stable and user-friendly.
1. **Assawoman Wildlife Area Tour** For this scenic tour we'll launch and land at the Assawoman Recreation Area. After a short crossing we'll follow the protected shoreline of the Assawoman Wildlife Area looking for Osprey, Great Blue Herons, Pileated Woodpeckers, Diamondback Terrapin, and the majestic Bald Eagles who nest and hunt in this area. We'll transport the kayaks to the launch with a trailer and remove the equipment following the tour. Approximate paddling time: 1.5-2 hours. Price: \$50 per person; \$40 for Children
 2. **Point of Cedars Photography Tour** In the spring and early summer hundreds of birds nest on this tiny island. To catch them starting their daily routines is a delight for photographers! Approximate paddling time: 1-2 hours. Price: \$45 per person.
 3. **Rookery Island Tour** Tiny Point of Cedars Island in the middle of Little Assawoman Bay is a refuge for nesting birds. We'll paddle out to this island, early in the morning, to witness the sights and sounds of our feathered, summer visitors. Approximate paddling time: 1-2 hours. Price: \$45 per person.
 4. **Guided Paddle Board Tour** For this scenic tour we'll launch and land at the Assawoman Recreation Area. After a short crossing we'll follow the protected shoreline of the Assawoman Wildlife Area looking for Osprey, Great Blue Herons, Pileated Woodpeckers, Diamondback Terrapin, and the majestic Bald Eagles who nest and hunt in this area. We'll transport the paddle boards to the launch and remove the equipment following the tour. Approximate paddling time: 1-1.5 hours. Price: \$55 per person.
 5. **Guided Sailing Nature Excursions** The wind on Little Assawoman Bay makes for great sailing conditions! We've discovered that sometimes people would like to get on the water but they don't know how to sail and they can't, or would prefer not to paddle. Our skippers sail the customers past rookeries in search of Bald Eagles all while giving them the history of the area. We'll use either the 14' Hobie Wave, 16' Hobie Getaway, or 16.5' Catalina Capri for the tours depending on the group. Approximate sailing time: 1.5-2 hours. Price: \$60 per person; \$50 for Children
- E. Vendor will offer beginner to intermediate kayaking and paddle board lessons/classes taught by ACA certified instructors. Beginners appreciate the shallow warm waters of Little Assawoman Bay and the ease of launching and landing from a beach.
1. **Kayak Strokes 101** teaches the basic strokes along with safety issues pertinent to new paddlers. 1.5-2 hours, \$50 per person
 2. **Quick Start your Kayak** teaches the students the pros and cons of different types of kayaks, goes over safety issues and equipment, and works on basic strokes. 1.5-2 hours, \$50 per person
 3. **Essentials of Coastal Kayaking** is a full day course teaching strokes and rescues as well as navigation, safety issues, and gear requirements. 6-7 hours, \$100 per person

4. **Kayak Rescue Clinic** teaches paddlers how to get back into a touring kayak after a capsized. 2-2.5 hours, \$75 per person
 5. **Bracing and Edging your Kayak** is the class to take when looking to take your paddling skills to the next level. 2 hours, \$75 per person
 6. **Private Kayak Lessons** - \$60/hr
 7. **Intro to Stand Up Paddling** teaches the basics of paddle boarding and aims to get all students standing and stable by the end of the class! 1-1.5 hours, \$65 per person
 8. **Essentials of Stand Up Paddle Boarding** focuses on stances to be able to complete advanced maneuvers geared toward paddlers whose next challenge is the ocean. 2-3 hours, \$90 per person
 9. **Private Paddle Board Lessons** - \$75/hr
- F. Vendor will offer private sailing lessons on the stable, responsive Hobie Wave catamarans as well as our comfortable Capri monohull. Our instructors have years of sailing experience and have the teaching knowledge to put the students at ease immediately. We focus on the basics wanting students to feel confident in their ability to have a fun day on the water and get back to land safely. \$65/hr
- G. Sales Items: Vendor will offer a variety of Vendor merchandise, all with original designs. Various sizes of dry bags, straps, foam blocks, locks, paddles, eyeglass holders. Vendor will offer drinks (non-alcoholic) and pre-packaged snacks. Vendor will offer Kayaks and paddle boards.

ADDITIONAL TERMS AND CONDITIONS

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5. REQUIREMENTS

A. Interest Payments:

Any payments which become due from the Vendor to DNREC 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 penalty as applicable. This provision is in no way a waiver of the Vendor's obligation to make payments when they are due.

B. Utilities:

If provided at a Park location, electricity, internet service, telephone and/or other utilities used in the operation 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 unless the location has sub metered functionality managed by the Park. Water shall be provided by the Park at no cost as long as use is consistent with simple business operations such as rinsing of kayaks. High water use may be billable by the Division if determined it exceeds simple business operations.

C. Taxes and Permits:

Vendor(s) 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 and other necessary permits at its own cost and expense as a result of operating the business conducted as part of the services.

D. Security:

Vendor(s) shall be responsible for security of its equipment, software and any credit card services while contracting with DNREC.

E. Inspection:

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

F. Accounting and Reports

Vendor(s) 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 this Contract provided by the Vendor shall be immediately and properly recorded. Vendor(s) shall permit DNREC or its authorized representatives to examine and audit financial records relative to this Contract 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. Vendor(s) shall retain these financial records for a period of five (5) years beyond the termination of this Contract, unless earlier disposal is approved by DNREC in writing.

G. Operating Schedule:

Vendor agrees to operate the Non-Motorized Watercraft Rental Services in accordance with the specific Park location schedules as stated in the Scope of Work, Appendix A herein. The hours of operation may be changed with prior approval by the Park Management. In addition, **Vendor is required to promptly contact the Park Management prior to canceling service for the day and receive permission to cancel service.** DNREC may, in its sole discretion, close the operation services temporarily for repairs or special events as needed, or permanently with prior notice to the Vendor.

At a minimum, Vendor must be open 7 days a week during peak season and also provide services for non-seasonal periods.

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

The non-motorized rental services Vendor will be open no later than May 2nd and remain open until at least October 4th of each year. The non-motorized rental services Vendor shall operate as follows, although the non-motorized rental services Vendor may remain open earlier than 9:00 A.M. during busy times of the season on days with good weather:

1. **Pre-Season:** (weather permitting); Weekends beginning the first weekend in May (hours vary)
2. **Season:** Beginning on the Thursday prior to Memorial Day and extending through Labor Day: 9 am—6 pm seven days a week
3. **Post-Season:** (weather permitting)
 - Tuesday after Labor Day through the Sunday after Labor Day: 9 am—5 pm
 - Beginning the 2nd week after Labor Day CK will be closed two days a week. This will be tapered off until Vendor is only open on weekends. The last weekend is typically the first or second weekend in October

H. Trash Removal and Use of Recyclable Products:

Trash receptacles are available for Vendor's operation at each Park location and for the public's use. Vendor(s) will be responsible for depositing the trash, as a result of its operations, in a designated Park-provided dumpster at the end of each day or as-needed to ensure that the area remains pristine and inviting to park patrons and customers.

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 is to be provided as part of Vendor's proposal (Attachment 4).

J. Parking

Parking spaces for the Vendor and their employees will be assigned by the Park Superintendent.

K. Franchise Limitations:

Vendor(s) shall faithfully conform to all the provisions of this contract for as long as any Non-Motorized Watercraft Rental Services are provided as heretofore described at each of the Delaware State Parks. Awarded Vendor shall have exclusivity for commercial Non-Motorized Watercraft Rental Services at Fenwick Island State Park with exception to Division programming and events and the general public's use. No outfitters or other commercial business shall operate in these areas other than the Vendor for normal daily operations without express permission by DNREC. DNREC reserves the right to operate Park Programming, to include non-motorized watercraft services, tours and interpretation programs. In addition, DNREC also reserves the right to schedule events that may include non-motorized watercraft services. For all instances, the Vendor shall be notified by DNREC of all activities. If DNREC authorizes limited outfitter activity in any of the sites, the Awarded Vendor shall be notified prior to activity.

L. Marketing and Promotion Plans; Signs and Advertising:

1. Vendor is encouraged to work with DNREC on a marketing and promotion plan for each calendar year, beginning summer season, 2020. 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 Non-Motorized Watercraft Rental Services at each State Park location shall be made available to the Park Management for distribution.

2. Vendor agrees not to use signs or any other means of soliciting business without the approval of DNREC 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. XYZ Paddle Boards at Fenwick Island State Park).
3. At no time shall Vendor post or advertise media containing negative or controversial information that could be damaging to the Division or the State of Delaware.
4. DNREC, 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 DNREC or they include its trademark and brand names on its equipment (e.g. amenities/items being sold, etc.). Authorized agents prior to the erection, display or use of signs. DNREC also reserves the right to designate the type, size, wording, color and number of signs requested by the Vendor.
5. Any signs authorized by DNREC for specific events shall become the property of DNREC, if not removed by the Vendor after reasonable notice from and at the direction of DNREC.
6. It is mutually agreed by Vendor and DNREC that no permanent or temporary advertising, signage, or trademark visibility for Vendor's Non-Motorized Watercraft Rental program and any tour or instructional information, equipment rental or for sale products will be displayed or permitted anywhere in the designated Park locations without prior written approval from DNREC, except that it is agreed that the Vendor shall be permitted to include its trademark and brand names on its equipment (e.g. kayaks, canoes, visors, clothing or other Vendor-owned products, etc.).
7. Vendor may offer educational programs or activities without charge to state park visitors for promotional purposes, with DNREC's prior approval, and **the cost of these free services to park visitors shall be included in Vendor's annual financial statement as non-revenue generating services.**

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:

1. Vendor warrants that the Non-Motorized Watercraft Rental services, including any instructional, certified or educational programs offered by it to the public, shall be of the highest quality and consistent with quality specifications as provided by the Vendor pursuant to this section.
2. 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 DNREC.
3. Vendor shall submit a price list to DNREC each season, before the beginning of the operation, 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 and any retail items for rent or sale at such prices as have been approved by DNREC. 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 DNREC under similar conditions.

4. If, in the sole opinion of DNREC, any products or services offered by the Vendor are inconsistent with the image or reputation of DNREC or the State of Delaware, or are otherwise deemed unsuitable for sale on the contracted premises, DNREC 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 DNREC.

O. Vendor Responsibilities:

Vendor will be granted the right to provide Non-Motorized Watercraft Rental Services at the Park locations specified herein. Vendor's responsibilities under a Contract with DNREC shall include the following:

1. Daily cleaning of the sales area and building space of the Vendor.
2. Repairs and maintenance to interior and exterior of building, fixtures and utilities.
3. Daily removal of rubbish, refuse, garbage and debris collected by the Vendor.
4. Mowing of grass between highway and parking lot.
5. Winterizing the concession area at the end of each season, i.e. removing vending machines, watercraft, debris, etc.
6. A small chase/rescue boat with outboard motor must be available at the facility at all times. Vendor may use one Jet Ski at the operation as a chase vessel.
7. Vendor's Tour Guides and Instructors must be eighteen (18) years of age or older.
8. Vendor Tour Guides and Instructors shall be ACA – American Canoe Association (or equivalent) certified during the term of the Contract.
9. Vendor and its employees shall be certified in adult and child CPR as well as first aid.
10. Vendor and its employees shall be knowledgeable in signaling devices, such as required by the Coast Guard including a whistle, flag, smoke, and/or daytime flares.
11. Vendor shall carry either a VHF marine radio or cell phone when providing the Non-Motorized Watercraft Services.
12. Vendor shall carry a tow rope equipped with a quick release mechanism.
13. Vendor will be required to furnish all necessary Non-Motorized Watercraft Rental equipment.
14. All of the Vendor-owned equipment shall be serviceable and in compliance with Federal, State, and Municipal Codes and Regulations.
15. Vendor shall, at its own expense, provide its own tools, equipment, machinery, supplies, or any other materials required to manage and operate the Non-Motorized Watercraft Rental Services.

16. Vendor must furnish a cash register and/or Point of Sale System with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports.
17. Vendor shall have all customers sign a safety and informational waiver noting the inherent risks of Non-Motorized Watercraft Rental and safety precautions/procedures.
18. Vendor agrees to abide by DNREC of Delaware Parks and Recreation's vehicular rules and regulations, (as provided on the state's official website: www.destateparks.com/rules), including but not limited to the following:
 - a. Vehicles (including golf carts, mopeds, all-terrain vehicles, etc.):
 1. All golf cart, mopeds, all-terrain vehicles must be DOT approved and must be approved by the Park Superintendent for use at the Park and designated concession site. DNREC reserves the right to deny these types of Vehicles for any reason and at any time.
 2. Vehicles will only be permitted on approved roads within each of the Park location(s) or areas specifically designated by DNREC for such purpose.
 3. Vehicles are not allowed on paved pedestrian trails/paths or paved walkways.
 4. Vehicles are not permitted to cut across lawns, dunes or gardens.
 - b. Parking:
 1. Vendor, their employees, subcontractors and customers shall park their vehicles only in the designated parking lot or area.
 2. No parking is permitted under the trees, on the lawn, on dunes, or any landscaped area of the Park.
19. Vendor shall be responsible for providing the following services:
 - a. Vendor, their employees and volunteers shall wear staff clothing that identifies them as the Non-Motorized Watercraft Rental employee, guide or instructor.
 - b. Vendor shall repair and maintain all equipment and watercraft owned by Vendor. Equipment shall be clean, painted or polished, safe for use by Vendor customers and in maintained in proper serviceable condition at all times.
 - c. Vendor shall, on a daily and as-needed basis, collect and deposit litter, garbage and other refuse from the grounds assigned or used by Vendor into Division-owned dumpsters as part of the Non-Motorized Watercraft Rental services and in the everyday course of business. The Park will provide a trash receptacle at the designated Park location(s) and it is the sole responsibility of the Vendor to ensure trash is removed daily and during any holiday pickup requirements. Failure to adhere to this responsibility will result in additional expense to Vendor, in the event DNREC is contacted to provide these emergency services on behalf of Vendor.
 - d. Vendor shall provide maintenance of the operation area, including removal of all debris to ensure accessible for handicap visitors, in compliance with Americans with Disabilities Act (ADA) laws and legislation.

- e. Vendor and their employees shall at all times generate and maintain an inviting atmosphere within the designated location(s) for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this Contract.
- f. Vendor must publicly display in a conspicuous place at the designated Park location(s) a neat and legible sign listing all Non-Motorized Watercraft Rental hours of operation, rates, prices and charges for all products for rent or sale and tour, guide or instructional services.
- g. Vendor shall be responsible for providing quality water sports equipment, products, limited retail items and Non-Motorized Watercraft Rental services at a reasonable price, in addition to providing excellent customer service to Park visitors.
- h. 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.
- i. At the end of the contract term or at the request of DNREC, Vendor shall ensure that all facilities and/or equipment provided by DNREC are returned to DNREC in good order, reasonable wear and tear expected. Failure to return such facilities to its natural state or return equipment to DNREC at the end of the Contract term may result in DNREC billing Vendor, as applicable.
- j. Upon expiration of the Contract period, Vendor shall remove all equipment and inventory furnished by Vendor, provided all fees have been paid. Any equipment, inventory and/or personal property left on the premises beyond sixty (60) days from the expiration of the Contract shall become the property of DNREC.
- k. Vendor shall have a small watercraft available at the operation area at all times in the event of an emergency.
- l. Vendor shall not allow surfboards, kayaks, canoes or similar watercraft in designated guarded swimming areas unless approved by the Director or their designee.
- m. If DNREC does not provide storage for Vendor equipment, then Vendor shall be responsible for installing temporary storage at the beginning of the season. All temporary storage must be removed at the end of the season. All temporary and portable storage must be approved by DNREC.
- n. The Vendor shall collaborate with DNREC for guide services. DNREC is interested in guiding Vendor tours for a fee for interpretive and learning based tours.
- o. The Vendor shall offer a promotional incentive program in partnership with DNREC for events and activities with the goal of bringing patrons to Delaware State Parks.

P. Modifications to Park Facilities:

Vendor may make alterations, modifications, additions or improvements to the contracted premises and facilities with prior Division approval of the design, development, timeline and approved plans. **No work shall commence until Vendor receives DNREC's approval and consent in writing. All**

costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor, unless DNREC 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 DNREC'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 DNREC and Vendor, DNREC 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:

1. DNREC reserves the right to enlarge, close and/or reduce the size of any designated Park location(s) 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 DNREC.
2. DNREC shall be responsible for the major utility and structural repairs and exterior Maintenance of the Park facilities. In the event of an immediate repair need or request from the Vendor, DNREC shall be the sole determining authority of prioritizing, scheduling and repair. Division shall bill Vendor for the monthly electrical and water use charges (if services are available by DNREC) used in the performance of the operation services as more fully defined in the Specific Park locations identified herein.
3. DNREC may perform maintenance tasks which are the responsibility of the Vendor for which DNREC 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 DNREC prior to commencement of work.
4. DNREC shall provide the following services:
 - a. DNREC will continue to utilize and maintain a Waste Management dumpster located in the parking lot of the non-motorized watercraft rental operation.
 - b. DNREC shall be responsible for maintenance of the parking lot(s).

- c. DNREC shall be responsible for security and patrolling of the Park area during normal Park hours.
- d. DNREC shall be responsible for removal of daily entrance fees (if applicable).
- e. DNREC shall be responsible for grass mowing and maintain landscape of the Park area (if applicable).
- f. DNREC shall be responsible for major utility and structural repairs and exterior maintenance to division-owned buildings and facilities, including capital improvements, extensive renovations and exterior painting (if applicable).

T. Indemnification:

1. General Indemnification

By submitting a proposal, the proposing Vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Vendor's its agents and employees' performance work or services in connection with the contract.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the Vendor in writing and Vendor shall defend such claim, suit or action at Vendor's expense, and Vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the Vendor (collectively "Products") is or in Vendor's reasonable judgment is likely to be, held to constitute an infringing product, Vendor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s);
- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

U. Non-Performance:

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with General Provisions, Item titled as "TERMINATION OF INDIVIDUAL PURCHASE ORDERS" below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of

Award Notice

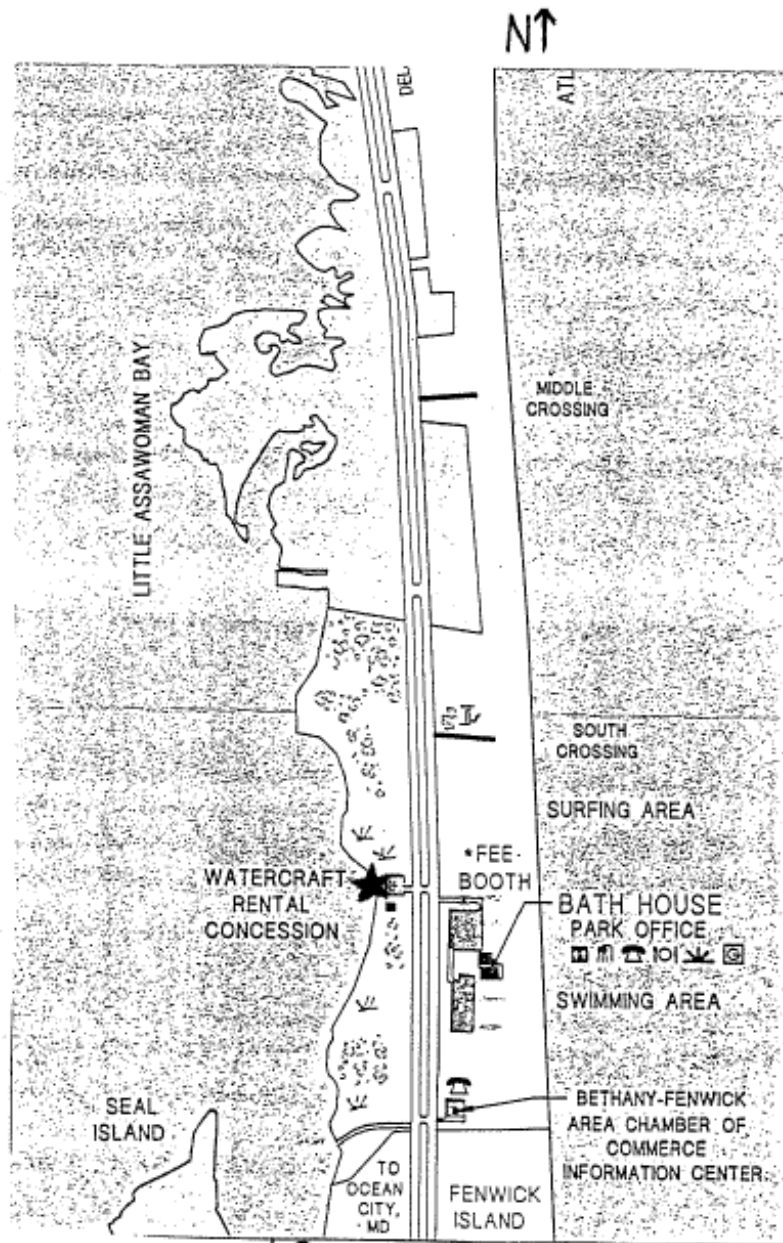
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the contract prices for reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State's invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

V. 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.

W. Site Map



NAT19009_NON MOTORIZED FENWICK
Area Map