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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
REQUEST FOR PROPOSALS FOR
FIXED FOOD CONCESSIONS, STATEWIDE
RFP # DCR 2024 - 400**

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I. INTRODUCTION

The Massachusetts Department of Conservation and Recreation (hereinafter “DCR”), in accordance with Mass. Gen. Laws c. 132A §§ 2D and 7, c. 92, §§ 33, 37; the rules and regulations promulgated thereunder, including those under Titles 302 and 304 of the Code of Massachusetts Regulations, as amended, and all other applicable and enabling powers, is offering the opportunity to, and seeking proposals from, qualified individuals, corporations or other business entities, whether for-profit or non-profit (hereinafter “Proposer(s)”) for **Fixed Food Concession(s)** at one or more of the indicated locations, as set forth in this RFP and in any subsequent permits. Proposers may submit proposals for one or more locations.

II. GENERAL INFORMATION AND DESCRIPTION OF THE PREMISES

General Information

All questions concerning this RFP, the concession locations, etc., should be addressed to dcr.permits@mass.gov. The various locations will be hereinafter referred to as the “Location” or the “Premises.” Minimum proposal requirements, if any, for each Location are listed below.

Proposers will be required to assess their need for equipment, as well as the proper maintenance, storage and removal of such equipment, considering other uses and users of the park and buildings. Proposers should consider the security of such equipment and stored items. DCR will not be responsible for damaged or stolen merchandise or equipment. DCR provides only the location and does not guarantee the status or usability of any existing building or storage areas. No equipment (e.g., cash registers, counters, screens, signs) is provided by DCR.

Proposers shall comply with all reasonable requests of authorized DCR staff concerning concession operations, including, but not limited to, access by delivery or other vehicles, onsite storage, and trash receptacle placement. All proposals shall be deemed to have been made with full knowledge and understanding of the existing Premises conditions. Proposers are required to obtain their own market and valuation information and should not only rely on prior sales information.

The terms for the use authorized herein may be for a period of five (5) consecutive seasons or years for concessions, commencing in 2024. The successful Proposer(s) shall be required to execute a revocable license in the form of a permit attached as Exhibit E. Permits issued by the Commissioner of DCR to Permittees are not leases or commercial rental agreements.

The successful Proposer shall, at a minimum, provide to the public an organized, accountable, efficient, safe, clean and professionally staffed and maintained operation offering a fixed food concessions (except for the vending machine location) for the public, during a minimum operating season starting from Memorial Day through Labor Day during each season or year of the agreed upon term. Operation may commence upon receipt of a fully executed Permit listed as Exhibit E and submission of all required items to DCR (proof of insurance, first year permit fee, etc.). Additional sales or service to the public within DCR Parks will require additional written approvals from DCR and such other licensing authorities as may be required by law. Renovation and installation of necessary equipment will be subject to additional approvals from DCR and other applicable authorities (e.g., state and local building authorities) and will be the responsibility of the Permittee to design, fund and complete. The Location is offered “as is.” Permittee may not always be the exclusive provider for park users or for DCR Special Events held at the

nearest park. Any special events hosted by the Permittee under this RFP for third party groups shall be additionally permitted through DCR's External Affairs Department, Special Use (Special Event) Permitting unit.

Customer Service Expectations

DCR is offering the existing Location with a flexible operation schedule depending upon the operation. Partial daily schedules are not acceptable without a business justification, pre-approval in writing, and notice to the public. The concession operating season is Memorial Day through Labor Day with reliable, knowledgeable staff members who will serve a diverse clientele with unfailing courtesy at all times. Proposers shall call on appropriate DCR staff, Park Rangers or law enforcement personnel to deal with any inappropriate behavior or activity in the park and shall not handle such matters themselves. Failure to follow this requirement may result in termination of a Proposer's license. Proposers shall not offer discounts or free items to any DCR staff, manager or contractor. Failure to follow this requirement may result in termination of a Proposer's license. Food safety and health compliance is the responsibility of the Proposer at all times. Local food, state building and other authorized inspectors must be allowed to inspect concession operations at all times.

Locations

Houghton's Pond Café, Blue Hills Reservation, Milton, MA

Site Visit Contact: Kevin Drake 857-207-1381 e-mail: kevin.drake@mass.gov

Minimum Fee: (\$2,500.00 per year)

Offering 7,000 acres of open space, the Blue Hills Reservation is a green oasis in an urban environment. Twenty-four acres in size and up to 42 feet in depth, Houghton's Pond is a spring-fed kettle hole pond formed by receding glaciers approximately 10,000 years ago. The Massachusett Tribe fished the pond and hunted the surrounding lands. From the colonial period through the late 1800s, several generations of the Houghton family farmed the area. Today, the Houghton's Pond Recreational Area offers a variety of recreational activities, including swimming, fishing, picnicking, and hiking, as well as a playground, concession pavilion, and Visitor's Center. Restrooms and a first aid station are open during the summer at the bathhouse. The swimming area is supervised by DCR lifeguards in July and August, 10:00 a.m. to 6:00 p.m., seven (7) days a week.

The Premises consists of a stand-alone concession building located between the shoreline of the pond and the playground and parking lot areas along Hillside Street. The building is supplied with electricity and water utility hookups (water service and use is paid by permittee directly to the Town of Milton or Canton), sinks, grease traps, storage areas downstairs, sliding screen windows, and a staff restroom. The permittee is responsible for the maintenance and cleaning of all grease traps and any air vents and the interior of the building. DCR encourages proposers to offer swim diapers for sale to park visitors. DCR will not expend funds for the installation of any permittee equipment. Installation of affixed equipment may require additional approvals by DCR Region and Engineering.

Permittees do not have an exclusive right to sell food within the park. There are small barbecue pits provided throughout the park and visitors have been known to set up in unapproved locations when the park is crowded. Several events are held either by DCR or other permittees such as advocacy groups (e.g., The Friends of Blue Hills) and large community groups at the park. These other permittees may be allowed to offer, bring, or cater food to their group participants. The permittee may use an approved cart

in approved areas for delivering food to groups at the ball fields, or events held at the park, or to individuals. Cart access is restricted to paved vehicle roadways. Carts may not go onto gravel paths, fields, trails, etc.

Ponkapoag Golf Course Clubhouse, Blue Hills Reservation, Canton, MA

Site Visit Contact: Jim Burke 617-821-5101 e-mail: Jim.burke@mass.gov

Minimum Fee: There is a minimum proposal amount of One Thousand (\$1,000.00) Dollars per year. If a seasonal beer and wine license is obtained, the minimum fee will rise to Two Thousand Five Hundred (\$2,500.00) Dollars per year.

In addition to the annual fee, a (\$1.00) One dollar fee will be paid to DCR per alcoholic beverage sold.

The Ponkapoag Golf Course was built in 1936 and is a renowned, Donald Ross-designed, 36 hole facility. It is located at 2167 Washington St., Canton, MA 02021. Currently 36 holes are open for play. The #1 Course at Ponkapoag is a par-72 course stretching to over 6,700 yards from the back (blue) tees and the #2 Course measures just under 6,200 yards. This course has hosted junior golf camps, the New England Junior Open, and USGA Handicap Inner Club.

The Clubhouse hosts leagues, a pro/lesson shop area, the tee office and management office. It is open for seasonal activities generally from April to October each year. The concession premises consists of a concession kitchen area with a walk in cold storage, stainless steel sinks, hookups for grills, ovens, stoves; toasters, ansul suppression system, ventilators, room for smaller refrigerators, drink dispenser systems, and freezers, shelving, etc. There is some storage available in the lower part of the building. There is a back deck area that can support a tent. No equipment or furniture (i.e. chairs and tables) are provided by DCR. The permittee will be responsible for all utilities, the cleaning and maintenance of all systems, the kitchen areas, and the eating areas. Maintenance and cleaning of grease traps and air vents must be assumed by the proposer and professionally cleaned and maintained. Permittee is responsible for all local food, drink, health and safety approvals, licenses and compliance at all times. Permittee may enter into food, drink and equipment supplier contracts but minimal advertising by those suppliers is requested.

Beer and Wine may be sold in a controlled manner pending a proper license issued by the local authorities and ABCC and after receiving a waiver of DCR regulations from the Commissioner. Permittee must obtain and maintain additional and specific liability insurance for such beverages. There may be additional service restrictions or requirements imposed by DCR.

Bernie King Pavilion, Nantasket Beach, Hull, MA

Site Visit Contact: Kevin Conway 617-549-1271 e-mail: kevin.d.conway@mass.gov

Minimum Fee: (\$20,000.00 per year)

Nantasket Beach has been a popular summer destination for city dwellers since the middle of the 19th century. The reservation encompasses 26 acres along one and a third miles of oceanfront. The historic Paragon Carousel evokes memories of the area's amusement park history. Band concerts and public dance lessons are popular summertime events. The reservation is available year-round, from dawn to dusk. Lifeguards are on duty from late June to early September.

The food concession facility is located in the North Section of the Bernie King Pavilion, with an area of approximately 27' x 46' or 1,242 square feet in size. The concession is an enclosed snack bar and includes an area with sinks and a room for other related service equipment. The permittee shall provide all the necessary service equipment for the concession operation. The snack bar also includes a restroom for permittee's employees. The concession area is adjacent to two courtyards of approximately 9,000 square feet in size. A 1,440 square foot section of the courtyards is covered overhead for the placement of tables and chairs. DCR provides a number of tables, chairs, and trash barrels for use in the courtyards for customers of the concession; however, the permittee is encouraged to provide additional tables, chairs, and gull/bird-proof covered type of trash barrels, and to keep the area completely free of loose trash.

Vending Machines Horseneck Beach Campground, Westport, MA

Site Visit Contact: Jeffrey P. McGee phone 857-763-0078 or 508-636-8816; e-mail:

Jeffrey.McGee@mass.gov

Minimum Fee: (\$500.00 per year for up to (2) two vending machines)

Up to (2) two possible vending machines (1 for camping products and 1 for food & beverage)

The reservation is home to nearly 800 acres of protected land, including gorgeous salt marshes along the East Branch of the Westport River. Visitors can launch a kayak from nearby Emma Tripp Landing to discover miles of tidal inlets that cut through the marsh. They can explore the history and ecology of the area at the Horseneck Point Life-Saving Station and Gooseberry Island, which occupy the southeastern end of the reservation.

The campground offers 100 brand new fully asphalted back-in campsites, a comfort station with flush toilets and hot showers, a dumping station, playground, basketball and volleyball courts, and access to a beautiful, unguarded cobblestone beach. Each campsite is equipped with a picnic table and a fire ring. The campground is open for camping 7 days a week, mid-April through the end of October, and open for camping Thursday, Friday, and Saturdays through November.

Horseneck Beach Concession, Westport, MA

Site Visit Contact: Chris Spillane 617-727-5118 e-mail: chris.spillane@mass.gov

Minimum Fee: (\$2,000.00 per year)

This site is for a mobile food truck or proper food trailer. There is no concession building on this site.

Horseneck Beach State Reservation (HBSR) in Westport is one of DCR's most popular facilities with **12,000 visitors a day** in the height of the summer season welcoming over a half million visitors per year, largely during the peak summer season, to experience the beach and enjoy the recreational opportunities provided. Nearby Demarest Lloyd Memorial State Park (DLSP) in Dartmouth is a smaller, quieter facility that provides a protected swimming area and extensive picnic grounds, both of which are popular with families from all over the region. The opportunities provided by each facility are due to its wealth of natural and cultural resources- resources that DCR works hard to protect.

III. PROPOSAL PROCESS

Overview

A site visit prior to submission of a proposal is required. Proposers must contact the Site Visit Contact for each Location above to schedule a site visit. If a Proposer requires assistance in scheduling a site visit, please contact dcr.permits@mass.gov. Proposers' questions must be submitted in writing. Answers to the questions will be distributed to DCR's interested parties' list. Proposals must be submitted electronically to DCR at dcr.permits@mass.gov by 4:00 PM on March 6, 2024. Proposals received will be evaluated by a panel of DCR staff. Interviews may be held or questions to Proposers may be posed in person, by phone or electronically to Proposers by the DCR evaluation team. The panel will recommend to the Commissioner acceptance of one or more proposals based upon the results of its evaluation of competitive and qualifying proposals. Upon final approval of the Commissioner, Proposers will be required to send in initial fees or portions thereof, certificates of insurance, and other documents. Upon receipt of all required items a permit (see Exhibit E) will be issued to each selected Proposer and must be signed by the Proposer. Should the winning Proposer(s) fail to meet the requirements of the RFP or any other related DCR requirements, DCR may make an award to the next available proposer or withdraw the opportunity altogether. The decision of the Commissioner is final.

Site Visits

A visit to the Premises is MANDATORY. Proposers must arrange a date and time for a visit with DCR staff by contacting the Site Visit Contact for each Location above. If a Proposer requires assistance in scheduling a site visit, please contact dcr.permits@mass.gov. All Proposers must prove and certify that they have visited the site by obtaining and submitting with their proposal a DCR staff signature on the Site Visit Sign-off form in Attachment D attached to this RFP. All proposals shall be deemed to be made with full knowledge and understanding of the existing Premises conditions. Site Visits should be completed before questions from proposers are due.

Questions During the Proposal Period

All Proposer questions must be submitted in writing. Written questions must be received by the date listed in the RFP Schedule and sent:

By E-mail: dcr.permits@mass.gov

To ensure fair public notice to all prospective Proposers, DCR staff will reply to all questions and inquiries in writing and distribute the responses to DCR's interested parties' list. No answers to procedural or substantive questions will be provided in person or by telephone.

Proposer Qualifications and Mandated Items

All Proposers must meet the criteria set forth in the sections below to submit a proposal for evaluation. The Proposal Submission Form attached must also be submitted with each proposal for consideration. A proposal submitted without these items and information or submitted late will not be considered, **and may be automatically rejected.**

Presentations and Interviews

Following a review of the submitted mandated items and proposals that are timely and otherwise properly submitted, DCR may conduct interviews with proposers or send questions. Interviews may be held by teleconference (via phone and/or internet) but in-person is preferred. The purpose of any interview or question will be to clarify proposals and evaluate the qualities, expertise and operational concepts of the Proposer's proposal. No additional proposal material will be accepted at interviews.

RFP Proposal Schedule – SUBJECT TO CHANGE

Proposers are encouraged to frequently (every day, several times until an award list is posted) check their emails for amendments, questions and answers, and changes to the RFP documents or schedule.

Pre-Proposal Site Visits	All visits must be completed by March 4, 2024
Written questions must be received (No more than 4 per proposer)	By 4 p.m. February 14, 2024
Answers to questions will be distributed	February 21, 2024
Proposal packages due electronically to dcr.permits@mass.gov	By 4 p.m. March 6, 2024
Interviews, if any, will be held	Week of March 11-15, 2024
Proposal Evaluation Period ends and Recommendation to Commissioner	By March 15, 2024
NOTE: Deposits and Insurance Certificates will be due within ten (10) business days after notice to apparent winning proposers	TBD
Award Notice(s) Issued	TBD
Finalized Permit and Placard will be issued	TBD

Correcting, Modifying or Withdrawing Proposals

Proposal documents may be corrected, modified or withdrawn at any time prior to the proposal due date, when the proposal packages will be opened at DCR. Modifications should be submitted electronically in the same manner as the original proposal package.

IV. SUBMISSION REQUIREMENTS FOR PROPOSAL

All Proposers must submit a Proposal Submission Form attached to this RFP as Attachment D, along with all other required proposal documents and information. All proposals shall be in English, in writing, in a legible format and shall present in clear and sufficient detail the information requested in the following sections of this RFP:

- A. Description of Entity and Related Experience;
- B. Documentation and Description of Services to be Provided;
- C. Financial, Rate and Budget Information; and
- D. Compensation to DCR.

Proposers should provide information responsive to the sub-sections below to obtain points. Proposers will be evaluated on the quality of the information provided.

A. Description of Entity and Related Experience

1. A complete written description of the Proposer's related experience.
2. A list of the names and addresses of all principals or managers who have more than a one percent (1%) financial interest in the business entity. Please include the resumes or CVs of all principals and managers. Principals and managers should provide demonstrated proof of experience of at least three (3) years in the operation and management of this type of property and business.
3. An "organizational chart," preferably in a "tree" form detailing the chain of command of the management and operating personnel of the entity and the proposed operation at the Premises and a list and explanation of job descriptions for all anticipated operating personnel; a list of proposed staff positions at this location including experience of staff and history with the entity, if applicable. No names of actual staff are required at this time.
4. Proposer may not have any unresolved outstanding payments due to the Commonwealth and DCR.

B. Documentation and Description of Services to be Provided

1. Any additional information concerning the services to be offered, including all service operations (e.g. sub-licensees, modes of service, associated services, merchandise, sales, event programming, or other revenue-generating operations) planned in the future for the Premises.
2. Proposer must show it has sufficient equipment and/or contracts to obtain and maintain all the equipment and run the proposed concession on the entire Premises or that it must show it can purchase the equipment needed.
3. Proposer must show that it has reliable and professional accounting support either internally or externally. Correspondence from an entity's accountant, CPA, or bookkeeping company may be sufficient to show such support.
4. A completed and signed Certificate of Compliance with State Tax Laws and with Unemployment Compensation Contribution Requirements (Attachment B hereto); and
5. A completed and signed Massachusetts Form W-9 (use only the form attached to this RFP as Attachment C); and
6. Documentation from an insurance company or properly licensed broker, authorized to conduct business within the Commonwealth (per the Massachusetts Division of Insurance), specifying that the Proposer is qualified to meet and obtain the insurance according to the requirements specified herein (see Exhibit E (Draft Permit Agreement) attached to this RFP); and
7. Proof and acknowledgement of a Site Visit and completion of the Proposal Submission Form attached to this RFP; and.
8. Planned hours of operation and staffing for normal everyday operations and for special events; and
9. Complete written description of maintenance, general operations, safety, staffing, training, and financial management plans including:
 - a. The proposed use of the Premises using sketches or diagrams or photos and including any structural additions, layout changes, signage, and cleaning plans, including any parking area uses or improvements, as well as proposed season of operation, proposed hours of operation.
 - b. Proposer's planned marketing, outreach, discount programs, if any, etc.
 - c. Proposer's sales and accounting plans for the Premises including:
 - i. Sales plan, including detailed price lists, for the Premises; and

- ii. A plan for the prevention of fraud, waste, theft, and abuse by staff, patrons or other third parties.
- d. A description of equipment or contracts for any equipment (food, beverage dispensers, refrigerators, etc.) to be operated on the Premises and any proposed operational system, including repair or service contracts for Proposer’s equipment, if any.
- e. Hourly/daily staffing contingency coverage plans, including emergency plans for handling customer safety, accidents, other incidents, damage claims, communications, etc.
- f. Safety and security plans for the Premises, patrons and staff, other park visitors, and the general public, emergency and daily operations protocols, etc.

C. Financial and Budget Information

- 1. A pro forma statement of operation revenue estimates, expenses and costs, and profit. Proposers shall prepare and submit a pro forma statement for operation of the Premises that includes:
 - a. Projected revenues estimated yearly for up to five (5) seasons, commencing in 2024;
 - b. A statement of projected expenses and costs;
- 2. Documentation that demonstrates the financial ability of the Proposer to operate the proposed concession such as financial reserves, a line of credit, or otherwise.

D. Compensation to DCR

- 1. Proposals which do not meet any specified minimum fee requirements will automatically be disqualified and rejected. Proposers should not overestimate the amount of compensation to DCR in their proposal.
- 2. Proposer must provide the proposed compensation to DCR in the form attached as Attachment D.
- 3. Proposers who only meet the minimum fee requirements shall be given 15 points for this criterion. Additional points up to 30 are given for Proposals above the minimum fee threshold.

E. Evaluation Criteria and Rule for Award

DCR will select the responsive and responsible Proposer(s) submitting the most advantageous proposal(s), taking into consideration all quality requirements and comparative criteria as set forth in this RFP including compensation offered. The numerical point system described below will be used by DCR evaluators in reviewing comparative criteria among the proposals.

Qualifications and Mandates	Per Section IV A and B above	NO POINTS; All Items must be Provided
Other Criteria		Range of Points
Description of Entity and Experience	Per Section IV A above	0-15
Description of Services	Per Section IV B above	0-40
Financial and Budget Information	Per Section IV C above	0-15
Compensation	Per Section IV D above	0-30
Interviews	Per Section I above	NO POINTS
Total Possible Points		100

V. Submission Checklist

- 1) Proposal (Containing the information in Requirements A-D);
- 2) Signed Certificate of Tax Compliance (Attachment B);
- 3) Signed W9 (Attachment C);
- 4) Signed Proposal Submission Form and Site Visit Sign Off (Attachment D)

Proposals must be forwarded to:

dcr.permits@mass.gov

Proposals must be received at the above email address no later than 4:00 p.m. sharp on March 6, 2024

ATTACHMENT A – PREMISES MAPS AND PHOTOS

Houghton's Pond, Milton, MA



Ponkapoag Golf Course, Canton, MA







Horseneck Campground, Westport, MA





Horseneck Beach Concession, Westport, MA

The removable food concession stand operation shall be located on the west side of the new Beach Services Building which is located in the main beach plaza and is approximately 150 feet behind the old concession stand/shade shelter.



Attachment B - Certificate of Tax Compliance

CERTIFICATE OF COMPLIANCE WITH STATE TAX LAWS AND WITH UNEMPLOYMENT COMPENSATION CONTRIBUTION REQUIREMENTS

Pursuant to Mass. Gen. Laws c. 62C, §49A and c. 151A §19A, I, _____
_____, authorized signatory for
_____ whose principal place of business is at

do hereby certify, under penalties of perjury, that _____
has, filed all state tax returns and paid all taxes as required by law and has complied with all state laws
pertaining to contributions to the unemployment compensation fund and to payments in lieu of
contributions.

The Business Organization Social Security Number or Federal Identification Number is
_____.

Signed under the penalties of perjury this _____ day of _____ 2024.

Signature: _____

Name and Title: _____

Attachment C - MASSACHUSETTS FORM W-9
See [macomptroller.org/wp-content/uploads/instructions w-9.pdf](http://macomptroller.org/wp-content/uploads/instructions-w-9.pdf)

Attachment D - Proposal Submission Form and Site Visit Sign Off

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CONSERVATION AND RECREATION
REQUEST FOR PROPOSALS FOR
FIXED FOOD CONCESSIONS, STATEWIDE**

**PROPOSAL SUBMISSION FORM - SITE VISIT SIGN OFF
(one per location)**

TO: Department of Conservation and Recreation
Office of Long Term Permits & Leases, ATTN: Manager
10 Park Plaza, Suite 6620, Boston, MA 02116
RE: DCR RFP 2024-400

I, _____ (Proposer) acknowledge receipt of the DCR's Request for Proposals for Request for Proposals for operation of fixed food concessions at the locations listed below and submit the following proposal in response thereto:

A. Compensation

LOCATION:

<i>Operating Year/Season</i>	<i>Proposed Compensation to DCR</i>
2024	
2025	
2026	
2027	
2028	

Are there any additional consideration, requirements, improvements during permitted term to be considered? If so, attach additional sheet with further detailed information.

C. The Proposer acknowledges that it has read, understood, and agrees to be bound by, all of the foregoing terms and conditions set forth in this RFP and any amendments, in its entirety.

Name of Business _____ Date _____
Signature of individual submitting proposal _____
Printed Name and Title: _____

D. Site Visit Verification

A Site Visit prior to proposal submission is mandatory. Proposers must arrange a site visit with the Site Visit Contact for each Location identified in the RFP. All proposals shall be deemed to have been made with full knowledge and understanding of the existing Location conditions.

SITE VISIT VERIFICATION

I, _____, Proposer, visited
_____ on
_____, 2024.

DCR Staff: _____
Name Signature

Date: _____

Attachment E- Draft Permit Agreement
(Subject to Change by DCR)
(For reference do not send back in your proposal)

FIXED FOOD CONCESSIONS PERMIT

PERMITTEE

- a. Official Name of Permittee:
- b. Permittee Address:
- c. Permittee Type: Corporation LLC Sole Proprietor; Individual
 Other: Municipality
 For Profit Non-Profit

PREMISES

- a. Facility:
- b. Facility Address:

TERM

- a. Start Date:
- b. End Date:

FEE

- a. The Permittee shall pay XXXX Dollars (\$XX, 000.000) each season by May 1. **[Note: If the fee is substantial, LTPL may allow the Permittee to pay the Fee over the first three months of the season: May 1, June 1, and July 1.]**
- b. DCR shall endeavor to bill the Permittee by invoice for each payment and each invoice shall be paid within thirty (30) days of the invoice date. However, **whether or not an invoice is issued, the Permittee is liable for the payment of the fee.**
- c. Fee payments can be paid online at: MassPays.com/DCR or by money order, cashier's check, certified bank check, or personal check payable to the Commonwealth of Massachusetts sent to the following address:

Commonwealth of Mass – DCR
Re: Fixed Food Concession
PO Box 419254
Boston, MA 02241-9254

- d. Any nonpayment shall constitute a material breach and cause for termination of this Permit.

PERMIT TERMS AND CONDITIONS

This Permit is hereby issued by the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation (“DCR”), having a principal place of business at 10 Park Plaza, Suite 6620, Boston, Massachusetts, 02116 to the Permittee above. DCR and the Permittee are each referred to as a Party to this Permit and are collectively referred to as the Parties to this Permit.

WHEREAS, DCR has the authority to issue a Permit pursuant to Massachusetts General Laws Chapter 92 §§ 33 and 37, Chapter 132A §§ 2D & 7, and the rules and regulations promulgated thereunder, including Titles 302, 304 and 350 of the Code of Massachusetts Regulations and all other powers enabling, as applicable; and

WHEREAS, the Facility listed above and the area described in Exhibit A, attached hereto (hereinafter the “Premises”), is in the care, custody and control of DCR; and

WHEREAS, DCR publicly advertised a Request for Proposals (RFP _____) (“RFP”), to operate, manage and maintain a fixed food concession at the Facility; and

WHEREAS, the Permittee voluntarily responded to the RFP with a proposal seeking a permit for its fixed food concession activities; and

WHEREAS, the Permittee’s response, after careful consideration, was determined to be the best value to the Commonwealth and DCR; and

NOW, THEREFORE, DCR hereby grants to the Permittee non-exclusive use of the Premises for such concession purposes subject to the following terms and conditions:

1. OPERATING SEASON

- a. The Permittee may operate on the Premises between May 1 and Labor Day weekend (“Operating Season”). **[Note: The operating season may be extended to Columbus Day weekend at DCR’s discretion depending on DCR park operations.]** Between Memorial Day weekend and Labor Day weekend, Permittee shall operate concessions on the Premises at a minimum Monday-Sunday 10AM to 7PM. The Permittee may change this schedule due to inclement weather.
- b. DCR may schedule events on or near the Premises during the Operating Season. The sponsors of DCR events and/or special event personnel may offer concessions or samples during such events. The Permittee shall accommodate such events.

2. PROGRAMMING, PRODUCTS & SERVICES; PRICING

- a. The Permittee shall provide to DCR’s Office of Long Term Permits and Leases (“LTPL”) a full list of products and programs to be offered to the general public on the Premises, including but not limited to food, beverages, and other regularly scheduled offerings, including rate sheets by May 1 each season.
- b. DCR shall have the right to object to products or the character of services or a particular scope of deliverance. If the Permittee wishes to provide any new products, service or new particular scope

or type of deliverance, it shall submit a written request for prior approval from LTPL. In approving or denying said request, DCR shall take into consideration the public interest.

- c. The sale, distribution, advertisement, or display of alcoholic beverages, cannabis, cigarettes and other tobacco-related products, gambling or lottery games or tickets on the Premises is prohibited.
- d. The Permittee shall recognize the interest of DCR in assuring that consistently high-quality services and merchandize are available to the public at reasonable prices. Pricing shall not exceed average market prices for like goods and services and is subject to the approval and oversight of DCR.
- e. Fees, rates, additional charges, and discount details must be made clear to patrons in all signage. Any discount rate and validation agreements with third parties should be submitted to LTPL for prior approval. The Permittee shall post notice of any changes to fees, rates, charges, and discounts for patrons and provide LTPL with such information prior to instituting new fees, rates, or charges.
- f. The Permittee shall only use environmentally compatible, biodegradable serving products. The Permittee shall not serve, sell or distribute items that cause undue litter.
- g. Consistent with Massachusetts Executive Order No. 619, DCR encourages the Permittee to consider practices that will reduce the use of single-use plastic bottles such as the sale of beverages in environmentally preferable packaging (i.e., paper cartons or aluminum cans).
- h. Serving counters shall not be used for the open display of food and other products (excluding napkins, condiments, salt and pepper) and shall be kept clear and clean.
- i. At the request of DCR, the Permittee shall provide a bulletin board near the serving window and allocate space for advertising DCR facilities, programs, and events.
- j. No public address system amplified sound or signs, or amusement, video, electronic or coin-operated games or machines shall be permitted on the Premises without the prior approval of DCR.
- k. All deliveries shall be made in such a manner as to have the least practicable impact on the public.
- l. No entertainment (bands, movies, dances, fundraisers, etc.) event shall be held without prior written notice to LTPL, approval from DCR in writing and proof of proper permits from applicable local authorities.
- m. The Permittee shall not utilize public address systems or amplified sounds which are excessively loud or frequent. DCR reserves the right to direct the Permittee to lower or set off its sound less frequently. DCR has final approval of any sounds used on the Premises.

3. PERMITTEE EMPLOYEES

- a. The Permittee shall hire qualified, competent employees, in sufficient numbers to provide an efficient service to the public. The Permittee shall be responsible for all respective employee-related issues and compliance of employees with all safety procedures, requirements of applicable authorities and DCR park rules and regulations.
- b. All employees shall wear identifiable uniforms or articles of clothing and carry approved company identification to exhibit to the DCR Park Supervisor and members of the public.
- c. The Permittee shall keep up to date lists of all employees for each operating season.
- d. The Permittee shall provide the DCR Park Supervisor with multiple working cellular telephone contact numbers for the Permittee's authorized managers and staff. The Permittee shall notify LTPL of any changes in contact information.

4. CONDITION OF PREMISES

- a. The Permittee acknowledges that it has made an inspection of the Premises and that the Premises is in a satisfactory condition, suitable for the purposes of this Permit in its existing condition, and that it has not relied upon representations or statements of DCR, its officers, employees, or agents with respect to these conditions. The Permittee expressly agrees that DCR has no obligation to make any alterations, repairs, additions, or improvements to the Premises, except as noted herein.
- b. Other than required major repairs for occupancy by the Massachusetts Department of Public Safety or local building inspectors, the Permittee expressly agrees that DCR has no obligation to make any maintenance, alterations or repairs.
- c. The Permittee shall be responsible for all cleaning litter pick up, off-site trash removal within a reasonable radius of the Premises as determined by the DCR Park Supervisor, housekeeping and sanitation, related to its use and shall maintain high standards for these tasks at all times in all areas of the Premises to the reasonable satisfaction of the DCR Park Supervisor. The Permittee shall provide appropriately sized recycling bins for its staff and customers. DCR shall have the right to inspect the level, frequency and competency of housekeeping and sanitation being performed at, on and within the Premises at any time without prior notice.

5. CONSTRUCTION ON THE PREMISES

- a. Prior to undertaking any modifications, improvements, or construction work, the Permittee shall apply for a DCR Construction and Access Permit ("CAP") by submitting an application with detailed specifications and any other information. A copy of the CAP application is found at <https://www.mass.gov/how-to/applying-for-an-on-line-construction-access-permit-and-notifying-for-a-construction>.
- b. All costs incurred under this section (including but not limited to local, state, and federal permit or license application fees, construction, labor, and materials) are the sole responsibility of the Permittee. The Permittee shall pay prevailing wages and shall require all contractors to obtain insurance for construction work on the Premises.

- c. Ordinary and everyday maintenance, such as minor repairs to the wiring, plumbing, and structure, may be performed by the Permittee, utilizing properly licensed and insured contractors, after notice to, and approval in writing from DCR Engineering and the DCR Park Supervisor.
- d. All improvements and fixtures to the Premises shall immediately become the property of DCR, with the exception of personal property of the Permittee which can be removed without damage to the Premises.

6. UTILITIES

- a. The Permittee shall be responsible for all costs of water, sewage, electricity, fuel, oil, telephone, or any other utility used and consumed in connection with its operation at the Premises, as applicable, and in connection with any structures located thereon. Once invoices are received for the consumption of utilities, the Permittee shall make prompt payment to the provider of said utilities.
- b. In the event utility service is discontinued by a utility service provider and said disconnection adversely affects the operations on the Premises or the adjacent park, DCR shall have the right to terminate this Permit forthwith and, to the extent such utility disconnection was caused by the Permittee, DCR may seek remedies in accordance with this Permit or as otherwise provided by law.

7. EQUIPMENT MAINTENANCE AND REPAIR; LEASED EQUIPMENT

- a. All equipment and structures on the Premises used by the Permittee to perform the activities authorized by this Permit shall be maintained in good operable condition by the Permittee. All such equipment shall be cleaned, tested, and repaired by the Permittee, who shall bear all costs related to such repairs.
- b. Any damage to any structure on the Premises or surrounding area caused by the installation or removal of equipment by the Permittee shall be repaired to a condition satisfactory to DCR at the Permittee's sole expense.
- c. The Permittee shall identify and notify LTPL of any leased equipment to be used or affixed on the Premises prior to the execution of this Permit or whenever acquired by Permittee. Leased equipment shall be described in detail that includes brand name, type of equipment, and serial number, if applicable. The Permittee shall be solely responsible for any obligations under any leases.
- d. At the termination of this Permit, it will be the Permittee's responsibility to fulfill any remaining obligations under any lease arrangement and ensure removal of such items if they are not affixed and title will not be transferred to DCR.
- e. Vending machines shall not be allowed on the Premises without written approval from DCR's Commissioner and all agreements between the Permittee and any vending machine operator will be provided to LTPL. If allowed, the vending machines shall be operable whenever the Premises

are open to the public. The Permittee shall be solely responsible for the installation and maintenance (cleaning, filling, repairs, etc.) of the machines.

- f. Any equipment that is affixed in a permanent manner to a wall, ceiling, or in or on the grounds of the Premises, including but not limited to plumbing fixtures, sinks, hard-wired appliances, built-in refrigeration equipment, exhaust, fume and fire suppression systems, poles, awnings, fences, shall become the property of the Commonwealth unless otherwise agreed in writing by the Parties.

8. ADVERTISING; MARKETING

- a. The Permittee shall provide LTPL with all branding, marketing, and advertising items, materials and displays directly related to the activities authorized herein at least two weeks prior to their publication.
- b. The Permittee, in its advertisements, signs, circulars, brochures, letterheads, and like materials, as well as oral representations, shall not misrepresent in any respect the facilities provided or the status or the conditions of the Premises. The Permittee shall make apparent in any brochures and advertising regarding use and management of the area and facilities that the Premises constitute Commonwealth parklands under the care and control of DCR. DCR retains the right to refer to the facilities within the Premises in any advertising or promotional activity of its own.
- a. The Permittee shall at its sole expense post the names and prices for any products sold on the Premises on printed signs. Handwritten signs shall be kept to a minimum and used solely for specials or daily changeable notices.
- b. The Permittee shall withdraw any advertising or desist from any promotional activity, as directed by DCR, should DCR determine that such advertising or promotional activity is inappropriate.

9. ACCOUNTING AND FINANCIAL INFORMATION

- a. The Permittee shall make its accounting books and supporting records of its business activities, relating to licensed activities on the Premises, available for analysis and duplication by representatives of DCR or Commonwealth agencies authorized to review DCR activities upon request by DCR's CFO or the Manager of LTPL. DCR will provide reasonable notice to the Permittee when possible.

10. COMPLIANCE WITH LAWS

- a. At its sole cost and expense, the Permittee shall comply with and conform to all applicable federal, state, local and other governmental laws, rules, regulations, ordinances, orders, and policies affecting the Premises and the Permittee's activities thereon and shall cause its employees, contractors, and agents to do the same. The Permittee shall not do anything to cause DCR to be in violation of any applicable federal, state, local and other governmental laws, rules, regulations, orders, or policies.

- b. The Permittee shall arrange for inspections by utilities engineers, building inspectors and others as may be required.
- c. The Permittee shall be solely responsible for obtaining all permits and licenses required to operate and undertake the activities authorized herein, excepting those conducted as part of DCR responsibilities.
- d. The Permittee shall immediately provide notice to DCR of any notices from any state or local agency pertaining to a violation of any applicable rule, regulation, or statute. The Permittee shall take immediate action to cure said violations. If the Permittee fails to take prompt remedial measures, DCR may suspend or terminate the Permittee's operations on all or any part of the Premises.

11. EMERGENCIES

The Permittee shall make and preserve records of all accidents and emergencies on the Premises where law enforcement or emergency medical technicians are involved and shall promptly report such incidents to the DCR Park Supervisor.

12. HAZARDOUS SUBSTANCES; REPORTING SYSTEM

- a. Neither the Permittee, nor any of its agents, employees, or contractors shall use, generate, release, discharge, or dispose of hazardous materials including but not limited to oil, cleansers, pesticides, gas, or contaminated food or other items.
- b. "Hazardous materials" shall include, but not be limited to, substances defined as "hazardous materials," "oil," "hazardous substances," "hazardous waste," "toxic substances," "pollutants," or "contaminants" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq.; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 et seq.; and Resource Conservation and Recovery Act, 42 U.S.C. Sec 6903 et seq.; Massachusetts General Laws c. 21E, and all applicable federal and Massachusetts laws now or hereafter enacted and all other regulations and policies adopted or publications promulgated thereunder. The Permittee agrees that DCR shall not be considered or listed as a generator for any hazardous waste.
- c. Only those materials approved and registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be considered for use on the Premises. Label instructions shall be strictly followed in the preparation and application of pesticides and other hazardous substances and the disposal of excess materials and containers. All uses or applications of such materials shall be duly licensed by the Commonwealth and EPA and any other applicable agency or entity.
- d. The Permittee shall immediately report any release of hazardous materials or any condition that poses a threat to human health and safety or to the environment to the DCR Park Supervisor and LTPL and, as required, to the appropriate authorities (i.e., Mass Department of Environmental Protection, etc.). For further information see <https://www.mass.gov/regulations/310-CMR-30000->

[massachusetts-hazardous-waste-regulations-permitting-reporting.](#) and <https://www.mass.gov/toxics-chemicals->

13. INDEMINIFICATION

- a. The Permittee shall assume all risk in connection with all activities that it engages in on the Premises and shall be solely responsible and answerable in damages and any other equitable remedies for all accidents or injuries to all persons or property caused by the Permittee's activities. The Permittee shall at no time be considered an agent or representative of DCR or the Commonwealth. The Commonwealth shall not be liable for any costs incurred by the Permittee arising under the Permit.
- b. The Permittee shall be responsible for the protection of its own assets and property and those of DCR. The Commonwealth shall not be responsible for property of the Permittee or of the Permittee's contractors, agents, representatives, employees, guests, and invitees.
- c. The Permittee shall be responsible for its actions and the actions of its contractors, agents, representatives, employees, licensees, guests, and invitees. The Permittee shall indemnify, defend, and hold harmless the Commonwealth, including DCR, its agents, officers, and employees, for any and all injuries, losses, claims, actions, damages, liabilities, costs, or expenses, including without limitation attorneys' fees and costs (collectively, "claims") to the extent such claims arise out of any act, failure to act, or occupancy of the Premises and its appurtenances by the Permittee, its contractors, agents, representatives, employees, licensees, guests and invitees, unless said claims arise solely out of or are solely the result of the gross negligence or willful, wanton, or reckless conduct of DCR or its employees.
- d. The Permittee further expressly agrees not to make any claims against the Commonwealth or DCR for any injury, loss, or damage to persons, including bodily injury or death, or damage to property or in connection with compliance with any existing law arising out of the Permit or the occupancy or use of the Premises by Permittee, its contractors, agents, representatives, employees, licensees, guests and invitees, unless said claim solely arises out of or is the result of the willful, wanton, or reckless conduct of DCR and its employees.
- e. The indemnification obligations set forth in this Permit shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Permittee, its officers, employees, representatives, agents, contractors, subcontractors, servants, permittees, and invitees, or by any other person acting for or by permission of the Permittee. DCR shall have the right to review and approve how any claims against DCR in relation to this Permit are defended, including settlement thereof.
- f. The obligations of the Permittee under this section shall survive the revocation, expiration, or termination of this Permit with respect to claims which arose prior to such revocation, expiration or termination.

14. INSURANCE

- a. Permittee shall carry insurance at a minimum in the types and amounts as described in this section of the Permit at its own expense:
 - i. General Commercial/Public/Products Liability Insurance. Permittee shall carry appropriate public liability insurance as to third persons and claims based upon the services provided with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and a minimum of Two Million Dollars (\$2,000,000.00) in the aggregate, or such higher amounts of liability insurance coverage as DCR shall reasonably require from time to time. DCR does not carry insurance.
 - ii. Additional insurance. Permittee should carry any additional insurance that is prudent considering the operation and obligations of Permittee (e.g., Motor Vehicle, Officers and Directors, Business Loss, Fraud, Vandalism, Comprehensive Crime, Garage Keepers, Maintenance and Cure, Flood, Wind, Hail, etc.)
 - iii. Permittee shall purchase and provide proof of additional endorsements that: 1) name the Commonwealth of Massachusetts, Department of Conservation and Recreation as an additional named insured for liability on the commercial and all risk policies; and 2) provide 30 days' written notice to DCR prior to cancellation (10 days for non-payment).
- b. Certificates of Insurance issued by an insurer or insurers qualified to do business in the Commonwealth with a current A.M. Best's rating of no less than A, Class VI or higher or an equivalent Standard & Poor's rating of AA+/- or higher shall be provided to the following DCR offices prior to the execution of this Permit:

Commonwealth of Massachusetts
Department of Conservation and Recreation
ATTN: Long Term Permits and Leases
Re:
10 Park Plaza, Suite 6620
Boston, MA 02116
Tel: 617-626-1250

And electronic copy by email to:

dcr.permits@mass.gov

Certificates of Insurance must include a site reference. Failure to maintain said policies of insurance for the entire Term shall be deemed a material breach of Permittee's duties under this Permit.

15. PERMITTEE IS A LICENSEE

- a. The relationship of the Permittee to the Commonwealth of Massachusetts and DCR is that of a licensee to a licensor. Nothing herein contained shall create or be construed or implied as an agency relationship or legal partnership between the Permittee and DCR.
- b. The Permittee covenants that it will conduct itself consistent with such status, that the Permittee shall not hold itself out as nor claim to be an officer or employee of the Commonwealth or DCR

and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Commonwealth including but not limited to, workers compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- c. As a licensee, the Permittee may enter and use the Premises solely for those purposes herein contained. Any use of the Premises by the Permittee that is inconsistent with the terms herein shall be deemed a material breach of the Permittee's rights and obligations under this Permit and shall constitute grounds for termination of this Permit. The Permittee acknowledges that this Permit does not confer any rights in real property (i.e., leasehold or easement) to the Permittee.

16. ACCESS

The Commonwealth, DCR and its agents, employees, contractors, and other licensees, shall have full and unrestricted access to enter the Premises at all times to review the operations, inspect equipment, and control use of the Premises and to inspect the cleanliness and general upkeep and maintenance of the buildings and grounds.

17. ASSIGNMENT

The Permittee shall not assign, sublicense, transfer, or otherwise dispose of its management responsibilities or of any right, interest, or use of the Premises covered by this Permit without the prior written consent of DCR. Any such disposition without the consent of DCR is void and shall constitute a material breach of this Permit which shall be cause for termination of the Permit by DCR.

18. MODIFICATIONS

The terms of this Permit may not be modified, except in writing by mutual agreement of and signed by both parties.

19. MERGER CLAUSE

The provisions of this Permit and any exhibits shall collectively constitute the entire agreement between the Parties for the use of the Premises. Any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of this Permit or any attachment are void and without effect.

20. ATTACHMENTS AND EXHIBITS

All attachments to this Permit are hereby incorporated by reference and become part of this Permit. Any failure to comply with the terms contained in any attachment by either Party constitutes a breach of this Permit. In the event there is an irreconcilable conflict between the terms of this Permit and those contained in any attachment, the terms contained in the Permit shall supersede.

21. WAIVER

No waiver of any term, condition or covenant of this Permit, by either Party at any time, shall be deemed a waiver at any time thereafter of the same provision or of any other provision contained herein or of the strict and prompt performance thereof.

22. FORCE MAJEURE

Neither Party shall be liable to perform its responsibilities under this Permit when such failure is due to war, riot, insurrection, and/or other catastrophe (excluding financial hardships) beyond the control of the Parties.

23. SEVERABILITY

If any provision of this Permit, or portion of such provision, is deemed invalid or unenforceable, the remainder of this Permit shall continue in full effect.

24. NOTICE

Any notice given pertaining to this Permit shall be sent in writing, by hand-delivery, first class mail, or by electronic mail (email transmission must include a delivery receipt) to the following representatives of the Parties unless otherwise provided herein:

If to DCR: Commissioner
 Department of Conservation and Recreation
 Massachusetts Transportation Building
 10 Park Plaza, Suite 6620
 Boston, MA 02116
 Tel: 617-626-1250

With a copy to: General Counsel
 Department of Conservation and Recreation
 Massachusetts Transportation Building
 10 Park Plaza, Suite 6620
 Boston, MA 02116
 Tel: 617-626-1250

And electronic copy by email to:
dcr.permits@state.ma.us

If to Permittee:

With a copy to:

25. TAXES

The Permittee shall be responsible for prompt payment of all applicable federal, state, and local taxes, personal property taxes, as levied on the operations conducted or equipment used under the exercise of this Permit. Failure to make timely payment of taxes or other amounts due for which the Permittee is responsible shall be considered a material breach of this Permit.

26. OWNERSHIP; CORPORATE STATUS

The Permittee shall promptly notify LTPL of any changes in ownership or corporate status, corporate name or any significant change in its officers, managers or partners. The Permittee shall maintain its corporate status with all applicable state and local authorities and agencies.

If the Permittee is acquired by a new or parent entity or is required by regulating authorities to assign this Permit, the Permittee shall request consent from DCR as soon as possible to continue this Permit.

27. MARKERS, MONUMENTS AND BARRIERS

The Permittee shall take reasonable precautions to protect any public land survey monuments, public land boundary markers, and private property barriers or corners, where marked. In the event that any such markers or monuments are disturbed or destroyed, the Permittee shall give notice to the DCR Park Supervisor and LTPL immediately and take appropriate action to re-establish them in accordance with specifications of the town or county surveyor, or DCR, or any other authorized entity (e.g., Massachusetts Historical Commission).

28. TERMINATION

- a. Provided that the Permittee is not in default of any obligations hereunder and has paid all fees and sums due and payable to DCR, the Permittee may terminate this Permit, without cause, upon sixty (60) calendar days' written notice to DCR.
- b. DCR may terminate this Permit, without cause, upon sixty (60) calendar days' written notice to the Permittee.
- c. In the event the Permittee fails to comply with any term of this Permit, such failure shall constitute a material breach, and shall automatically suspend any further duty or performance on the part of DCR. This Permit may then be terminated by DCR upon thirty (30) calendar days' notice in writing to Permittee.
- d. The Permittee may be granted the right to cure any condition causing a material breach by commencing efforts to cure such condition within seven (7) days of receipt of notice. If the condition cannot be cured within thirty (30) days, the Permittee must provide written notice to DCR requesting additional time. The grant of additional time is within the sole discretion of the DCR Commissioner.
- e. On or before the termination date of this Permit, the Permittee shall cease all activities associated with this Permit, and shall remove all personal property, without damage to the property of the Commonwealth, DCR or other permittees. Any personal property remaining on the Premises after such period may be deemed owned by DCR unless otherwise agreed to by the Permittee and DCR in writing.

29. REMOVAL OF PERSONAL PROPERTY UPON EXPIRATION

On or before the expiration date of this Permit, including any extensions thereof, the Permittee, at its sole cost and expense, shall removal all personal property, without damage to the property of the

