

Attachment- Draft Permit Agreement

(SUBJECT TO CHANGE BY DCR for Exhibit only-Do not fill out as a part of the RFP)

Mobile Food Concession Permit

PERMITTEE

- a. Official Name of Permittee: _____

- b. Permittee Address: _____

- c. Permittee Type: ☐ Corporation ☐ LLC ☐ Sole Proprietor; Individual
 ☐ Other: _____
 ☐ For Profit ☐ Non-Profit
- d. Facility Name: _____

Facility Address: _____

TERM

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

FEE

- a. Permittee shall pay _____ (\$ _____) each season by April 1st.
- 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. Payments shall be sent directly to the address on the invoice or, if no invoice is received, to:

Commonwealth of MA-DCR
RE: Mobile Food Concession-**LOCATION**
PO Box 411108
Boston, MA 02241-1108

Please direct any questions or concerns regarding payment to Revenue Director: Office:
617-626-1322.

- d. Any nonpayment shall be a material breach and cause for termination of this Permit, pursuit of remedies by the Commonwealth of Massachusetts and DCR consistent with the Termination provisions herein.

This Permit is hereby issued by the Commonwealth of Massachusetts, acting by and through its Department of Conservation and Recreation (hereinafter “DCR”), having a principal place of business at 251 Causeway Street, Suite 600, Boston, Massachusetts 02114, to the Permittee above. The 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 the 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 as described in Exhibit ____, attached hereto and incorporated by reference (hereinafter the “Premises”), is in the care, custody and control of the Commonwealth of Massachusetts, Department of Conservation and Recreation, and

WHEREAS the Permittee desires to use the Premises for the concession purposes described in Exhibit ____, attached hereto and incorporated by reference, and

NOW, THEREFORE, DCR hereby grants to the Permittee, non-exclusive use of the Premises subject to the conditions herein, for such concession purposes within this Permit.

1. OPERATING SEASON

The Permittee shall operate the Premises

2. 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 the DCR, its officers, employees or agents with respect to these conditions. The Permittee expressly agrees that the DCR has no obligation to make any alterations, repairs, additions, or improvements to the Premises, unless otherwise specified herein.
- b. Other than required major repairs for occupancy (i.e., repairs to flooring, stairs, walls, roofs, other major and/or essential equipment) by the Massachusetts Department of Public Safety or local building inspectors, the Permittee expressly agrees that the DCR has no obligation to make any ordinary and everyday 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 determined by the Facility 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, in accordance with all applicable laws and regulations, and to the satisfaction of the Facility 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 any time without prior notice.

3. COMPLIANCE WITH LAWS

- a. The Permittee shall comply with all federal, state, local and other governmental statutes, regulations and ordinances affecting the Premises and the Permittee's activities thereon and shall cause its employees, contractors and agents to do the same, including, but not limited to, ensuring that all such employees, contractors and agents that shall be serving food to the public be "Serve Safe" certified and trained in allergen awareness.
- b. The Permittee shall arrange for inspections by local health officials, utilities engineers, building inspectors and others as may be required.
- c. If the Permittee is notified by any regulatory agency having authority over the Premises that the Permittee's operations are in violation of an applicable rule, regulation or statute, the Permittee shall take immediate action to cure said violations. If the Permittee fails to take prompt remedial measures, the DCR may suspend or terminate the Permittee's operations on all or any part of the Premises.

4. PROGRAMMING, PRODUCTS & SERVICES; PRICING

- a. The Permittee shall provide, to DCR Long Term Permits and Leases, 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.
- b. The DCR shall have the right to object to products or the character of service or particular scope of deliverance. If the Permittee wishes to provide any new product, service or new particular scope or type of deliverance, it shall submit a non-electronic written request for prior approval from the DCR Commissioner. In approving or denying said request, the DCR shall take into consideration the public's best interest. Rate sheets and pricing changes should be furnished to DCR Long Term Permits and Leases prior to the beginning of each fiscal year.
- c. The Permittee shall recognize the interest of the DCR in assuring that consistently high-quality services and merchandise are available to the public at reasonable prices. Pricing shall not exceed average prices for like goods and services and is subject to the approval and oversight of the DCR.
- d. 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 DCR for prior approval. Permittee shall post notice of any changes to fees, rates, charges and discounts for patrons and provide DCR with such information prior to instituting new fees, rates, or charges.

5. EQUIPMENT MAINTENANCE AND REPAIR; LEASED EQUIPMENT

- a. Any and 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, at its sole expense.
- 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

the DCR at the Permittee's sole expense.

- c. The Permittee shall identify and notify DCR of any leased equipment to be used on the Premises prior to the execution of the Permit or whenever acquired by Permittee. The Permittee shall be solely responsible for any obligations under any leases. Equipment shall be described in detail that includes brand name, type of equipment and serial number, if applicable. At the termination of this Permit, it will be Permittee's responsibility to fulfill any remaining obligations under the lease arrangement.
- d. Vending machines shall not be allowed on the property without written approval from DCR and any and all agreements between the Permittee and any vending machine operator shall be provided to DCR Long Term Permits and Leases. If allowed, they 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.
- e. Any equipment that is affixed in a permanent manner to a wall, ceiling, or in or on the grounds of the Premises (e.g. plumbing fixtures, sinks, hard-wired appliances, built-in refrigeration equipment, or exhaust, fume, and fire suppression systems, poles, awnings, fences, etc.) shall become the property of the Commonwealth unless otherwise agreed in writing by the Parties.

6. PERMITTEE'S STAFF

- a. The Permittee shall staff the Premises with qualified, competent staff and/or volunteers, in sufficient numbers to provide an efficient service to the public. The Permittee's employees shall be able to communicate clearly and effectively with the public. Permittee shall be responsible for ensuring that its employees are authorized to work in the Commonwealth. The Permittee shall be responsible for performing any background checks such as Criminal Offender Record Information and Sex Offender Registry Information checks for its employees. DCR will not collect this information.
- b. The Permittee shall ensure that its employees are aware of and comply with Permittee's standard operating procedures and risk management guidelines. Said operating procedures shall include, but not be limited to, requiring that at least one senior management employee is physically present at the Premises during Permittee's operations.

7. CONSTRUCTION ON THE PREMISES

- a. Any proposed improvements, modifications, or build-out of the Premises shall be subject to written pre-approval by the DCR Commissioner. Prior to the commencement of any renovation, rehabilitation or construction work on or to the Premises, including improvements, modifications or build-outs, the Permittee shall apply for and obtain an approved DCR Construction and Access Permit (hereinafter "CAP"), submitting with the application all relevant plans, specifications, etc. about the proposed work and any additional information requested by DCR Planning and Engineering staff.
- b. All design and construction costs incurred (including but not limited to local, state and federal permit application fees, actual construction work, labor, materials, landscaping, architectural fees, etc.) are the sole responsibility of the Permittee. Note that prevailing wages and contractors insurance may be required depending on the nature of the work.

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 confirmation in writing from DCR Parks and Long Term Permits and Leases departments.

- c. All improvements to the Premises shall immediately become the property of the DCR with the exception of personal property or equipment of the Permittee which can be removed without damage to any structure on the Premises.
- d. Any damage to any structure on the Premises or surrounding area caused by the installation or removal of an improvement by the Permittee shall be repaired to a condition satisfactory to the DCR at the Permittee's sole expense.

8. ADVERTISING; MARKETING

- a. All on-site signage is subject to prior written approval of DCR Office of External Affairs.
- b. Permittee's advertising and marketing (signs, circulars, brochures, letterhead, print, radio, television and internet and oral (e.g. voice mail recordings) representations) shall:
 - i. Refer to the Premises as the "Fixed Food Concession-Constitution Beach"; and
 - ii. Acknowledge that the Premises are Commonwealth of Massachusetts parklands under the care and control of the DCR regarding use and management of the area and facilities; and
 - iii. Not misrepresent in any respect the facilities provided or the status or condition of the Premises.
 - iv. Use approved graphics provided by DCR External Affairs.
- c. The Permittee shall withdraw any advertising or desist from any promotional activity, upon request from the DCR, should the DCR determine that such advertising or promotional activity is inappropriate.
- d. The DCR retains the right to refer to the facilities on the Premises in any advertising or promotional activity as its own. At the request of the DCR, the Permittee shall provide a bulletin board or other area for DCR information.
- e. Advertising on vending machines or other leased equipment shall be kept to a minimum and require pre-approval by DCR's External Affairs Department.
- f. The Permittee shall post the names and prices of products sold on the Premises on printed signs or within the machines. Handwritten signs shall be kept to a minimum and used for specials or daily changeable notices.

9. ACCOUNTING REPORTING

- a. All income of any nature related to the business of the Permittee at the Premises should be immediately and properly recorded using an auditable sales system (paper or electronic) provided by the Permittee. Permittee shall also maintain a journal or log which records the daily sales of all types taking place on the Premises and volume of patronage. Such reports shall be made available to DCR upon request.
- b. Permittee acknowledges that such information may become a public record and subject to public disclosure as well as subject to review by DCR and Commonwealth agencies

authorized to review DCR activities. The Permittee shall make all of the accounting books and supporting records of its business activities, relating to the management, operation and maintenance of the Premises, available for analysis and duplication by representatives of the DCR, or Commonwealth agencies authorized to review DCR activities upon request by DCR's Chief Financial Officer or Director of Contracts and Administration. Permittee shall comply with all audit-related requests and requirements of DCR, the Offices of the Inspector General, the State Auditor, the Attorney General, Commonwealth Administration and Finance, or any other authorized Commonwealth of Massachusetts agency.

- c. The Permittee shall pay all expenses incurred in providing the above described reports.

10. TAXES

The Permittee shall be responsible for prompt payment of any and all applicable federal, state and local taxes, including but not limited to the Massachusetts state meals tax, 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 Permittee is responsible shall be considered a material breach of this Permit.

11. OWNERSHIP; CORPORATE STATUS

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

12. INDEMNIFICATION

- a. The Permittee shall assume all risk in connection with any and 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 Permittee's activities. The Permittee shall at no time be considered an agent or representative of the 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 the 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 the 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 the 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 the 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 the 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.

13. INSURANCE

- a. The 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. The 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. Insurance for Commonwealth/DCR Property. The Permittee shall furnish proof of property damage (e.g., fire, vandalism, structure, etc.) insurance for the Premises and Commonwealth and DCR equipment in the minimum amount of Five Hundred Thousand (\$500,000.00) or such higher amounts of liability insurance coverage as DCR shall reasonably require from time to time. This insurance must be primary and noncontributory. DCR does not carry insurance
 - iii. Fire and Casualty Insurance. The Permittee shall carry fire and casualty liability insurance for its own equipment and inventory in the minimum amount of Fifty Thousand Dollars (\$50,000.00) or such higher amounts of liability insurance coverage as DCR shall reasonably require from time to time
 - iv. Additional insurance. The Permittee should carry any additional insurance that is prudent considering the operation and obligations of the Permittee (e.g. Motor Vehicle, Officers and Directors, Business Loss, Fraud, Vandalism, Molestation, Comprehensive Crime, Garage Keepers, Maintenance and Cure, Flood, Wind, Hail, etc.)
 - v. The Permittee shall if necessary 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: Fixed Food Concession-**Location**
10 Park Plaza, Suite 6620
Boston, MA 02114
E-mail: 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 the Permittee's duties under this Permit.

14. HAZARDS, HAZARDOUS SUBSTANCES; REPORTING SYSTEM

- a. The Permittee shall periodically inspect all areas used by the public in and around the Premises for the presence of unsafe or hazardous conditions (including but not limited to dangerous trees and hanging limbs) and shall promptly remedy such conditions when found and shall promptly report the conditions to the DCR. The Permittee shall develop an accident reporting system and shall ensure that all employees understand and comply with said system. A description of this accident emergency system shall be submitted for review and approval by the DCR. The Permittee shall make and preserve records of all accidents, emergencies and administration of medical aid on Premises.
- b. The Permittee shall provide proper signage identifying the company name, address, and contact information for inquiries and emergencies. Permittee shall provide updated company emergency contact information to DCR's Office of Long-Term Permits and Leases, the DCR Regional Director and District Manager.
- c. The Permittee shall not use, release, discharge or spill hazardous substances or chemicals or materials that cause undue harm to persons or the environment, including but not limited to oil, cleansers, pesticides, and contaminated food related items.
- d. 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. Material Safety Data Sheets and other label instructions shall be strictly followed in the preparation and application of pesticides and other hazardous substances and disposal of excess materials and containers. Any and all applications shall be duly licensed by the Commonwealth and any other applicable local, state or federal agency or entity. The burden of compliance and knowledge of all applicable laws lies with the Permittee as an operator of a business requiring such compliance.

15. ACCESS AND INSPECTION

The Commonwealth, its agents, employees, permittees, licensees, guests and invitees shall be given full and unrestricted access to and upon the Premises at all times during the Term of this Permit to inspect the Premises and to inspect the operations and equipment of the Permittee.

16. 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 DCR immediately and take appropriate action to re-establish them in accordance with specifications of the town or county surveyor, or the DCR, or any other authorized entity (e.g., Massachusetts Historical Commission).

17. TERMINATION

- a. 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 of performance on the part of the DCR. This Permit may then be terminated by DCR upon Seven (7) calendar days' notice in writing to the Permittee.
- b. The Permittee may be granted the right to cure any condition causing a material breach by commencing efforts to cure such condition within Five (5) business days of receipt of notice. If the condition cannot be cured within Five (5) business 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.
- c. Upon termination of this Permit, the Permittee shall cease all activities associated with this Permit, and shall promptly remove its property from the Premises. The Permittee shall return the Premises to its clean and undamaged conditions to the satisfaction of DCR.

18. PERMITTEE IS A LICENSEE

- a. The relationship of the Permittee to the Commonwealth of Massachusetts and the 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 the 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 the 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.

19. ASSIGNMENT AND SUBLETTING

- a. The Permittee shall not assign, sublicense, transfer or otherwise dispose of its responsibilities or of any right, interest or use of the Premises covered by this Permit without the prior non-electronic written consent of the Commissioner of DCR. Any such disposition without the written consent of the DCR shall constitute a material breach of

this Permit.

- b. The DCR shall not be obligated to recognize any right of any person or entity to any interest in this Permit or to any rights, equipment, structures, or property of the Permittee at the Premises. Any unapproved transfers or assignments of rights under this Permit are void *ab initio*. There are no third-party beneficiaries to this Permit.
- c. The Permittee may not enter into any agreement with any entity or person except employees of the Permittee to exercise substantial management responsibilities for operation of the Premises without the prior non-electronic written consent of the Commissioner of DCR.
- d. In the event of any unapproved or prohibited assignment, sub-license, transfer or encumbrance by the Permittee, or in the event of any default of its obligations to persons or entities which are not a Party to the Permit, such person or entity shall not be deemed to have acquired operating rights, privileges to operate at the Premises or to any real property of the DCR.

20. 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.

21. FORCE MAJEUR

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.

22. MERGER CLAUSE

The provisions of this Permit and any attachments 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.

23. FORUM

Any actions arising pursuant to or arising out of this Permit shall be governed by the laws of Massachusetts without regard to its conflict of laws principles. Should it become necessary to enforce the terms of this Permit in an administrative proceeding or in a court of competent jurisdiction, the Permittee shall pay all reasonable attorneys' fees of DCR.

24. 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.

25. EXHIBITS

All exhibits attached to this Permit are incorporated herein by reference and become part of this Permit. The exhibits are intended to be used to clarify the terms of this Permit. In the event

there is an irreconcilable conflict between the terms of this Permit and those contained in any exhibits, the terms contained in this Permit shall supersede.

26. MODIFICATION OR AMENDMENTS

Modifications or amendments to this Permit shall be in non-electronic writing and duly executed by both Parties hereto to be effective.

27. NOTICE

Any notice given pertaining to this Permit shall be sent in writing, by hand-delivery or first class mail, to the following representatives of the Parties:

If to DCR: DCR Commissioner
With Copies to:
DCR General Counsel, and
DCR Long Term Permits and Leases
10 Park Plaza, Suite 6620
Boston, MA 02114
Tel: 617-626-1320;
E-Mail: dcr.permits@mass.gov

PERMITTEE:

28. SIGNATORIES

By signing below, the signatories each acknowledge that they have read the foregoing conditions and provisions and that each is duly authorized to sign on behalf of and bind the respective entities set forth below.

DEPARTMENT OF CONSERVATION AND RECREATION _____ Nicole LaChapelle, Commissioner Date: _____	_____ _____ _____ _____ Name of Permittee _____ Permittee's Signature Date: _____
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EXHIBITS

Exhibit A – Premises Map and Photos