

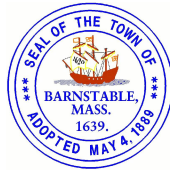
# **Town of Barnstable**

## **Request for Proposal for Real Property Lease**

**For the period from May 15, 2014 through and including September 14, 2016, with two (2) one (1) year options**

### **Snack Bar Concession for Kalmus Beach**

### **Recreation Division**



**Issued: January 9, 2014**

**Due date: February 21, 2014, 2:00 pm**

**Key Contact: Johanna Boucher, Purchasing Agent**

**Tel (508) 862-4741; Email [johanna.boucher@town.barnstable.ma.us](mailto:johanna.boucher@town.barnstable.ma.us)**

This document and any addenda thereto are issued electronically only. It is the responsibility of every bidder who receives this bid and all associated documents to check the Town of Barnstable Bid & RFP System ([www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)) for any addenda or modification to this solicitation, if they intend to respond. The Town of Barnstable accepts no liability to provide accommodation to bidders who submit a response based upon an out of date solicitation document. Bidders may not alter (manually or electronically) the bid language or any bid documents. Unauthorized modifications to the body of the bid, specifications, terms or conditions, or which change the intent of this bid are prohibited and may disqualify a response.

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## **I. INTRODUCTION AND BACKGROUND**

The Purchasing Agent for the Town of Barnstable on behalf of the Recreation Division is soliciting proposals for the following services under Chapter 30B, Section 16 of the Massachusetts General Laws:

**SNACK BAR CONCESSION SERVICE FOR THE 2014, 2015, and 2016 SUMMER SEASONS, from May 15, 2014 through September 14, 2016, with two (2) one (1) year options at the sole discretion of the Town.**

**(Operating from Memorial Weekend through Labor Day) for the following lease premises:**

### **Snack Bar Concession at Kalmus Beach**

Responses are due on February 21, 2014, 2 p.m. in the Purchasing Agent's Office, School Administration Building, 230 South Street, Hyannis, MA 02601. The Lease will be awarded within 30 days. Request for Proposal documents and required forms are available on the Town of Barnstable's website, Bid & RFP System at [www.town.barnstable.ma.us](http://www.town.barnstable.ma.us). Proposals will be opened and read in the office of the Purchasing Agent February 21, 2014, 2 pm and will be open to the public, however, final award determination will not be made until proposals have been evaluated. All responses must be received in a sealed envelope properly marked prior to the deadline.

The Purchasing Agent reserves the right to reject any or all proposals when it is deemed to be in the best interest of the Town. This solicitation is being conducted in accordance with the provisions of Massachusetts General Laws Chapter 30B, Section 16, as it relates to the disposition of Real Property, and all leases must be strictly awarded in accordance with the requirements of the Request for Proposal.

## **A. BACKGROUND**

### **The Town of Barnstable**

The Town of Barnstable is located on Cape Cod and was incorporated in 1639. The Town has an annual year-round population of over 48,000 and approximately 125,000 - 150,000 seasonal residents. The Town encompasses an area of 64.1 square miles and consists of seven distinct villages: Barnstable, Centerville, Cotuit, Hyannis, Marstons Mills, Osterville, and West Barnstable. It serves as the County Seat for Barnstable County. The Town of Barnstable is located approximately 65 miles southerly from Boston and approximately 75 miles easterly from Providence.

The Town of Barnstable serves as the commercial center for Cape Cod. It houses the main hospital, regional social service agencies, the superior court, and the regional shopping mall to name a few. The Town functions under a Council-Manager form of government, with a charter-supported strong Manager, and thirteen Town Councilors elected by precinct. The Barnstable Town Council is the legislative and policy-making branch of the Town government. The Town Manager develops policies and ordinances for adoption by the Town Council and the Council then enacts policies and ordinances, which it believes promote and enhance the general welfare of the Town.

The Town is committed to providing a variety of opportunities and choices for Barnstable citizens to achieve their human potential while preserving and protecting the integrity of the natural environment that will enhance the quality of life for the individuals, families and the community at large. The Town offers numerous recreational programs, varying season to season. Over 10,000 residents take advantage

of the activities, ranging from swimming, sailing lessons, summer day camps, sports programs and special needs programs.

The Town of Barnstable takes pride in its 18 public and private beaches and ponds. Each location possesses unique scenery, coastal waterfront and character. Most beaches and ponds enjoy a regular clientele comprised of residents and repeat visitors, due to the distinctive features of each site. The Town of Barnstable places great emphasis on maintaining the natural beauty and integrity of our beach and pond sites, helping to ensure that this location will be enjoyed by many more generations to come.

The Town recognizes the Snack Bar Concession operations to be an essential component of beach operation. The Town strives to offer a quality beach experience and utilize the site to its fullest potential. The qualified and experienced vendor of the Snack Bar Concession must provide quality, reasonably priced food products, friendly service to every visitor, and maintain a good working relationship with the Recreation Division and its staff. The lessee will be required to provide hot and cold foods and beverages, as well as snack items. The Town encourages creativity in providing a diverse menu.

## II. KEY DATES FOR THIS REQUEST FOR PROPOSAL

The purpose of this section is to communicate to the proposer that the Town has a realistic idea for the implementation of this agreement. These dates should be considered a necessary component for compliance for this RFP. All responsive proposers are expected to comply with the end date.

January 10, 2014	RFP available on the Town of Barnstable Bid & RFP System At <a href="http://www.town.barnstable.ma.us">www.town.barnstable.ma.us</a>
January 19, 2014	Legal Advertisement in the Central Register
January 22, 2014	RFP Advertised in the Cape Cod Times
January 29, 2014	Second Advertisement in the Cape Cod Times
February 21, 2014	Proposals Due - no later than 2:00 pm Purchasing Agent's Office 230 South Street, 3 <sup>rd</sup> Floor Hyannis, MA 02601
Within 30 Days	Proposal Accept/Contract issued
May 22, 2014	Equipped, supplied, and ready for operation for Memorial Weekend.

## II. PROPOSAL INSTRUCTIONS

### A. Definitions

For the purpose of these RFP documents, the following definitions apply:

**Authorized Agent of the Town** will be the Town Manager, the Barnstable Recreation Department Director, or designee.

**Premises** shall be that area as specified in the lease referring to the snack bar concession area.

The Barnstable Recreation Department, hereafter called Recreation Division, and the Town of Barnstable (the “lessor”) will lease the snack bar building at Kalmus Beach, hereinafter called the “premises”. The “premises” **DOES NOT** include any office/administrative area or toilet facilities that are utilized by the Recreation Department and the public. Said “premises” shall be used exclusively for the operation of a snack bar and the successful proposer will be granted the concession contract to operate the snack bar, and shall have the right to offer food and beverages for sale within the “premises”.

#### **B. Description of Services**

1. Concession service to include such items as hot and cold beverages, hot dogs, hamburgers, sandwiches, ice cream, and other appropriate snack or meal items.
2. Sample menu with proposed concession items and pricing must be submitted with proposal. Menu and pricing subject to approval by Director of Leisure Services
3. The Lessee must operate and maintain the food and beverage service in accordance with the lease.
4. All items sold, or offered for sale, must be stored and displayed inside the “premises”. (exceptions to # 4 must be put in writing to the Director for consideration).
5. The operator must maintain a consistently high standard of quality food and beverage service.
6. Said snack bar shall be operated in strict compliance with the Laws of the Commonwealth of Massachusetts, the ordinances of the Town of Barnstable, and the rules and regulations of the Recreation Department.
7. “Premises” shall be kept in compliance with Town Health & Safety regulations. It is the Proposers responsibility to familiarize themselves with all the Town’s regulations for operating a snack bar concession. Contract the Health Dept. for all information.
8. Sale of tobacco, alcohol, magazines, items intended for adults only, or items otherwise prohibited for sale by Massachusetts General Laws or regulations, is strictly prohibited.
9. The lessee shall obtain and pay for all licenses and permits necessary for the operation of said snack bar. Copies of which must be submitted prior to concession operation.

The Town of Barnstable reserves the right to cancel the lease at any time if the operation is improperly run, or if the quality of the food, service, and/or management is not satisfactory as determined by the Recreation Division.

#### **IV. LESSEE QUALIFICATIONS AND OBLIGATIONS**

- A. STANDARD OF OPERATIONS: It is expressly understood that the Lessee shall provide food and beverage service of high quality to the general public. Inasmuch as the food and beverage service is ancillary to the operation of beach, the business of the Lessee conducted on the Premises shall be conducted unobtrusively and on a plane of dignity in harmony with the operation of the beach in the Town of Barnstable, nor shall customers be importuned, nor shall the business be conducted in any manner that may be detrimental to the operation of the beaches, the ponds, and the Town of Barnstable.
- B. FLAT FEE PROPOSAL: Proposer must submit a flat fee proposal for the first lease year (2014 summer season). Minimum proposal for the first lease year is:

- C. TERM: The term of the lease shall be three (3) summer seasons, from May 15, 2014 through and including September 14, 2016, with two (2) one (1) year options, operating from Memorial Day weekend through Labor Day weekend, dependent upon the satisfactory operation of the facility as determined by the Recreation Division, first year proposal amount being increased by 5% for the second year, and 5% for the third year, above the second year amount, effective on the inception date of the lease.
- D. PROPOSAL DEPOSIT: **Proposer must submit a proposal deposit in an amount equal to ten percent (10%) of the respective proposal price for the first season (certified check or bank check) to accompany proposal when submitted.** Proposal deposit will be applied to lease price of successful proposer. Proposal deposit will be returned to unsuccessful proposers. The successful proposer will forfeit proposal deposit if the lease award is not consummated; i.e. proposer withdraws from proposal process following notification of acceptance and before lease is executed when they are fully committed.
- E. SECURITY DEPOSIT: Lessee will pay a **\$500.00** security deposit which will be kept by the Town in an interest bearing escrow account.
- F. EXPERIENCE: Proposer must provide a cover letter demonstrating the history of his/her experience with food preparation and service and/or small business or business management experience. It must clearly define and qualify the experience of all the principals and the company has in the food service business and/or business management. Proposer must have at least 3 years proven experience. Proposal must include a list of references for which the proposer has provided food services or business management services for the past five years, including name, address, and telephone number. Proposal must also include a business plan for the concession operation.
- G. FINANCIAL SOLVENCY: Proposer must demonstrate its financial solvency and capability to support the concession and that the proposer has the financial capacity to fulfill the lease. Proposer should submit a financial statement indicating assets and liabilities with the proposal submittal. Proposer should also provide a copies of the last two years income tax returns for all principals (or the business, if applicable) with the proposal submittal.
- If the proposer chooses not to submit financial information as requested above, the proposer must understand the Town needs to contract with financially viable companies. The proposer should therefore provide some information that indicates to the Town financial stability, financial capability and some sense of general worth. The Town reserves the right to request additional information from any proposer to determine financial strength and capability.
- H. FOOD MENU: Lessee must submit a complete, itemized food menu for concession service with a price list, with reasonable prices relative to the age group and clientele with their proposal. Subsequently, menu and price list must be submitted for approval by the Director of the Recreation Division prior to snack bar operation prior to opening each lease year. The lessee must submit any revisions of the menu items and/or prices to the Director of the Recreation Division prior to implementing the new menu.
- I. NON FOOD ITEMS: If the Lessee desires to sell other non-food items, a list with prices must be submitted to the Director of Leisure Services for review and approval each year. Lessee

shall only sell those items approved for sale or display by the Director of Leisure Services Department who shall not unreasonably withhold approval of appropriate items.

- J. HOURS OF OPERATION: The lessee shall provide the snack bar services at the premises during the term of the lease under the conditions established and specified by the Recreation Division

During the lease period, the minimum hours of operation shall be as follows:

<b>Monday through Friday</b>	<b>11:00 AM to 5:00 PM</b>
<b>Weekends &amp; Holidays</b>	<b>10:30 AM to 5:00 PM</b>

The Lessee may request additional hours or revisions to the hours of operation in writing to the Director of Leisure Services. Upon receipt the Director will review and discuss with the Lessee the reason the request. No changes may be made to the hours of operation unless previously approved by the Director.

The Recreation Division monitors these hours of operation and failure to comply with the schedule, excepting rain days, may affect future proposals and/or may cause termination of the lease.

Note: 4<sup>th</sup> of July Evening – the parking lot is closed at 4 pm due to the Fireworks Order of Conditions.

- K. UTILITIES: The lessee will pay for electrical service (separate meter), and telephone service, and shall be responsible for arranging their own electric and phone service with the appropriate provider, as applicable. The lessee must conform to the National Electrical Codes. Lessee will not make any structural changes to said snack bar space without approval of the Recreation Division and the Department of Public Works, Structures & Grounds Division. If the lessee wants any electrical or utility modifications, the lessee must make such a request for the Recreation Division who will, if approved, contact the Department of Public Works who would provide labor but not materials for such modifications

- L. EQUIPMENT: Vent hoods (Ansel system) are provided by the Town at Kalmus at no cost to the lessee and are maintained by the Town. The Lessee is responsible for cleaning the vent hood at the end of each season. A grill is also available at this location and may be used by the lessee which was new in 2011. Condition is “as is” and operation and maintenance is the responsibility of the Lessee. The Lessee shall provide his or her own equipment and installation/removal of necessary equipment, with the exception of the Ansel fire protection/grill hood system. (The Town is responsible for maintenance and inspection of the Ansel fire protection/grill hood system.) No equipment may be installed or located upon said premises without prior written approval of the Recreation Division. The title to remain the property of the Town of Barnstable for any additional attached fixtures approved within said premises.

Other equipment/supplies required for normal operation of the concession service are the responsibility of the Lessee.

- M. PERSONNEL: Lessee shall provide adequate trained personnel to furnish efficient courteous, quality service and meet health code requirements; said personnel to be neatly and uniformly dressed. Must submit written list of employees and written dress code statement. ServSafe certification shall be maintained in accordance with the town’s regulations.

N. MAINTENANCE: The Lessee agrees to maintain the leased premises in good condition, damage by fire and other casualty only excepted, and whenever necessary, to replace damaged Town property therein, acknowledging that the leased premises are now in good order. The Lessee shall not permit the premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste. Without in any way limiting the generality of the foregoing mentioned maintenance obligation, the Lessee shall, as a condition of this Lease, perform the following maintenance at the close of each business day:

- Empty all waste receptacles in and around the concession area into Town provided dumpster. Outside waste receptacles should be emptied during the day if they become full to prevent trash from blowing out of the receptacle.
- Clean and maintain the equipment, food preparation and distribution areas in a sanitary condition.
- Lessee is responsible for cleaning out the internal grease trap and the proper disposal of all cooking grease/oils.

**Daily general area cleaning is the responsibility of the lessee. This includes sweeping, spot cleaning and general maintenance directly in front of the snack bar area and within the “premises”. The premises should be kept clear and free of any trash or other debris. The picnic tables directly surrounding the concession are to be cleaned by the lessee, as needed, including any loose debris on the ground.** Outside trash containers and trash removal will be provided by the Town.

The Lessee agrees to maintain the grounds and structure of which the leased premises is a part in the same condition as it is at the commencement of the term or as it may be put in during the term of this Lease, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance is required because of the Lessee or those for whose conduct the Lessee is legally responsible.

O. SIGNAGE: Any advertising signage must be approved as to size, content and placement by the Director of Leisure Services and be in accordance with Town of Barnstable zoning laws.

P. COMMUNICATION: The lessee will report and communicate directly with the Director of Leisure Services any situation that pertains to the leased area and/or any effect it may have on the snack bar’s business operation. The lessee must designate a specific principal to communicate with the Director of Leisure Services.

Q. RIGHT FOR SERVICE: The lessee has exclusive right for food service at the contracted premises **excepting** that the Town of Barnstable reserves the right to contract additional food service vendors on site, if required, for occasional special events during each season. Additional vendors will only be contracted if lessee cannot meet Town’s specific needs. Furthermore, the Town of Barnstable has no control when patrons bring their own food or drink as all beaches and ponds are open to the public and residents.

R. LESSEE CONTACTS: The lessee shall provide the Director of Leisure Services with the telephone numbers for appropriate personnel to be notified in case of an emergency with any situation regarding the snack bar. The lessee shall also provide the Recreation Division office the direct phone number for the snack bar.

S. PERMITS & LICENSES: Lessee is required to maintain all proper health certificates and licenses and copies of such certificates and licenses must be on file in the Recreation Division office before commencing operation. The Lessee shall, at all times during the term of this lease,



hold all such licenses and permits necessary for the service of food and beverages to the general public. The Lessee shall be in default hereunder if any such license or permit is revoked or if the Lessee shall be unable to secure renewal of any such license or permit. Some information is included with this RFP pertaining to the Regulatory Department/Health requirements for the operation of a food concession; however, it is the proposers responsibility to make sure they fully understand the Towns requirements prior to submitting a bid. Please contact that department with any questions. Some requirements, such as the common victualler license requirement (\$100 fee), requires an application and hearing before the licensing authority.

T. SUBLEASING: Lessee will agree not to assign, sublet, or underrate the premises, or any part thereof, without prior written approval of the Recreation Division.

U. COMPLIANCE WITH LAWS: The Lessee acknowledges that no trade or occupation shall be conducted on the leased premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any law or any municipal bylaw or ordinance in force in the Town of Barnstable.

V. END OF SEASON CLEAN/UP AND SHUTDOWN

At the end of each season, within 30 days after Labor Day weekend, Lessee shall have the snack bar facility cleaned out, grease trap cleaned and grease properly disposed of and all food removed for winterization of the building. This includes emptying all freezers, refrigerators, and coolers and turning off all electrical appliances. Water is shut off by the Town and the facility closed for the winter season.

W. LESSOR AND TOWN OBLIGATIONS

1. If the Director of Leisure Services calls a "rain/weather day" which suspends collection of parking fees, and/or staffing of gates, the lessee will not be required to remain open. The lessee will be notified of such "rain day" by the Beach Supervisor or other full time Recreation Staff person.
2. The Recreation Division shall be submitted, financial statements reflecting income, expenses, and labor costs to be submitted by no later than December 31st of each lease year.
3. The Town of Barnstable, the Recreation Division and its employees are not liable for any loss, accident, damage, injury, or theft incurred by the lessee; lessee's employees; or lessee's business during the period of the lease.
4. The Town of Barnstable Recreation Division reserves the right to cancel the lease if the operator does not comply with the requirements of the lease in any way.
5. All specifications listed herein are to be appended to and made part of the Snack Bar Concession Lease Agreement resulting for this RFP.
6. Following the execution of this lease agreement, the Recreation Division will set a meeting with the awarded principals of the Snack Bar Concession to discuss the lease, including all specifications and concerns.
7. The Town of Barnstable Recreation Division or authorized agent may, at reasonable times, enter to view the Premises and may remove placards and signs not approved and affixed as herein provided, and to make repairs and alterations as needed.

8. The Town of Barnstable reserves the right to terminate the lease if it is determined that any information submitted in the proposal has been altered or falsely submitted.

## **VI. LEASE GENERAL REQUIREMENTS**

### **A. INSPECTION**

Prior to the due date of this RFP, the snack bar premises and/or location may be seen by appointment. To make an appointment, please contact the **Director of Leisure Services, Patti Machado at 141 Bassett Lane, Hyannis, MA 02601, 508-790-6345, X105**. If the lessee desires additional on-site storage space beyond the designated “snack bar” area, a request must be made in writing, setting out a specific area, to be reviewed and approved by the Director of Leisure Services. Item specific to Kalmus Beach - The so-called “pavilion” (covered deck area) in front of the snack bar location is a public area and cannot be restricted in any way for use by the general public.

Additionally, during the lease period, the snack bar premises may be subject to periodic inspections as well as the possibility for inspection of its records and such other matters covered by these specifications.

### **B. INSURANCE**

See attached lease document, section 20 and 21 for insurance requirements.

Current certificates of insurance shall be provided to the Town of Barnstable, Risk Manager, 230 South Street, Hyannis, MA 02601 and updated yearly prior to the start of the season

### **C. PAYMENT AND BILLING**

After the initial deposit and the lease award have been finalized, the remaining balance for each lease year must be remitted as follows: One third will be due upon execution of the lease, one third on July 15th and one third on August 15th.

Lessee will be billed by the Recreation Division within ten days prior to payment due date. Payment will be made in the form of check or money order, payable to the Town of Barnstable, at the Recreation Division office on, or prior to, the due date stated on the invoice. This procedure shall also apply to the second and third lease years.

Upon the non-payment of the whole or any part of the amounts agreed upon at the time such payments become due, the filing of a voluntary petition of bankruptcy, the making of any general assignment for the benefit of creditors, the occurrence of any act which operated to deprive the Lessee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the snack bar as granted herein; the abandonment and discontinuance of any of the covenants hereinbefore or hereinafter mentioned by him to be kept and performed, the Lessor may, at his election, cancel the lease with the Lessee and take possession of the premises.

### **D. LEASE**

This Request for Proposal, as well as the selected vendor’s proposal, and any addenda to that proposal, will become part of the final contractual documents. The proposed lease the Town will sign is attached as Appendix D – “Agreement of Lease”. It will be combined with the Request for Proposal and the awarded Proposal to make up one document.

The lease will be subject to **Force Majeure** considerations and in the event that either party hereto will be prevented from the performance of any act required there under by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party in performing any obligations will be excused for the period of the non-performance for no additional cost to the Town.

It is agreed, however, that since the performance of this lease is important to the successful operation of the beach and Recreation Programs, continued failure to perform for periods aggregating seven (7) business days or more, even for causes beyond the control of the lessor, will be deemed to render performance impossible, and the municipality will thereafter have the right to terminate this agreement in accordance with the provisions of the section entitled "Termination of Lease."

#### **E. FAILURE TO PERFORM**

The proposer awarded the lease must agree to perform the lease to the fullest extent possible. In the event the lessee cannot provide the services to the satisfaction of the Recreation Division, the lease may be terminated with proper documentation showing the nature and cause of the termination.

The basic needs for the service must be met. It is the intention of the Town to enter into agreement with a lessee who will personally fulfill all obligations of the lease subject to the terms as shown in these proposal documents.

#### **F. TERMINATION OF LEASE**

Any Lessee who does not meet the obligations outlined in the lease, may place the lease in jeopardy. If services of the proposer are subsequently deemed to be unsatisfactory to the Town and are in violation of these specifications, the Town will notify the said proposer in writing. If mutually agreeable arrangements cannot be achieved between the Town and the lessee, the lease will be terminated. Notice of termination will be in writing and notification will be sent by registered or certified mail. Termination will become effective three days after mailing said notification.

#### **G. SURRENDER**

The Lessee shall at the expiration or other termination of this lease remove all Lessee's goods and effects from the leased premises, including without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the Lessee, either inside or outside the leased premises. Lessee shall deliver to the Lessor the leased premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the leased premises, in good condition, damage by fire or other casualty only excepted. In the event of the Lessee's failure to remove any of the Lessee's property from the premises, Lessor is hereby authorized, without liability to Lessee for loss or damage thereto, and at the sole risk of Lessee, to remove and store any of the property at the Lessee's expense, or to retain same under Lessor's control or to sell at public or private sale, without notice any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

## VII. PROPOSAL REQUIREMENTS

### A. Minimum Requirements:

The Purchasing Agent shall reject proposals that do not meet the following minimum requirements:

1. Proposer must have at least 3 years proven food service and/or snack bar concession experience or business management experience.
2. Proposer must submit business plan for review with proposal.
3. The proposer will submit the proposal upon forms (proposal sheets) furnished by the awarding authority. All proposals will be in ink or typewritten and must be filled out completely. The prices will, without exception, include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the equipment and accessories supplied. If more than one concession location is being proposed, separate forms are required for each location.
4. Proposer must include bank or certified check for 10% of first year Flat Fee Proposal.
5. All proposals will be signed correctly in ink by the individual or in the case of a firm, partnership or corporation, by a person having the legal authority from said firm, partnership, or corporation to sign the proposal.
6. All proposals will be submitted to the Purchasing Agent, Town of Barnstable, Property Management Division, 230 South Street, 3<sup>rd</sup> Floor, Hyannis, MA 02601 on or before the date and time stated in the "Legal Notice". Each proposal will be in a sealed envelope, clearly marked on the outside of the envelope to indicate the contents, and the name and the address of the proposer.
7. Proposal forms will be completely filled in. Proposals which are incomplete, conditional or obscure, or which contain additions not called for, will be rejected. Use the pages of this document when submitting the proposal and submit the lease document intact.
8. Proposers may correct, modify or withdraw the original proposals on or before the date and time stated in the "Legal Notice". Corrections or modifications will be in sealed envelopes, clearly marked to indicate the contents, with the name and address of the proposal. A proposer who wishes to withdraw a proposal must make the request in writing.
9. Any proposal received after the date and time stated in the "Legal Notice" will not be opened. Unopened proposals will be returned to the proposer.
10. Proposals will be opened and read at the date and time stated in the "Legal Notice". All award data is available to the public after an award is made.
11. A proposer may withdraw a proposal after the opening of the proposal only if a mistake is clearly evident on the face of the proposal document, but the intended correct answer is not evident.
12. No award will be made to any proposer who can not satisfy the awarding authority that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to execute and complete the work successfully within the time named. The awarding authority's decision or judgment on these matters will be final, conclusive and binding. Conditional proposals will not be accepted.
13. At the time of the opening of proposals, each proposer will be presumed to have read and to be thoroughly familiar with the lease documents and the concession site. The failure or omission of any proposer to examine any form, instrument, or document will in no way relieve any proposer from any obligation in respect of his/her proposal.
14. Each proposer will acknowledge receipt of any and all addendum issued to the Request for Proposals by so indicating on the proposal sheet. Failure to do so will be cause to reject the proposal as being non-responsive.

15. The proposer must comply with all conditions and requirements set forth in the proposal document and further provided that the proposal, in the opinion of the awarding authority, is reasonable and is in the best interest of the Town of Barnstable to accept it. The Town reserves the right to reject any and all proposals.
16. If at any time the proposer is unable to furnish services as contracted by the awarding authority, the Town may obtain such services from such places as are available and the proposer will pay to the Town all expenses incurred above the lease price.
17. The lease length will be as per the lease documents provided in these proposal documents.
18. The proposer's attention is directed to the fact that all applicable State laws, Municipal ordinances, and the rules and regulations of all authorities having jurisdiction over proposal/purchase will apply to the lease throughout, and they will be deemed to be included in the lease the same as though herein written out in full.
19. Certificate of Non-Collusion - The proposer MUST sign and submit a Certificate of Non-Collusion with the Proposal Sheet.
20. State Taxes Certification Clause - The proposer MUST sign and submit a State Taxes Certification clause with the Proposal Sheet.

### **VIII. PROPOSAL EVALUATION**

The evaluation process will include each proposal being reviewed by an evaluation committee appointed by the Chief procurement Officer. Those proposals that meet all of the minimum requirements as outlined in this RFP, and are determined to be both responsive (those that offer all of the services requested in the RFP and contain all of the required information and forms properly completed) and those that are responsible (those with the capability, integrity, and reliability to perform under the contract) will be further reviewed using the comparative criteria outlined in this section. The pricing will be included as part of the evaluation criteria.

The committee will use the comparative criterion for each separate rating area, and based upon those criteria, will assign an overall rating to each proposal as permitted under Chapter 30B. Each of the criterion may contain ratings of

- Unacceptable
- Acceptable
- Not Advantageous
- Advantageous
- Highly Advantageous

The Town reserves the right to award the contract to the responsive and responsible proposer which best meets the Town's needs, taking into account proposal quality and proposal price. If the highest priced proposal is not selected and has received at minimum a rating of advantageous, the Evaluation Committee shall explain in writing the reasons for the award in writing, specifying in reasonable detail the basis for determining that the Town should award the contract to a different proposal.

***Minimum Evaluation Criteria -- Failure to meet the following minimum evaluation criteria may result in immediate rejection of the proposal.***

1. **Minimum Requirements**: Vendors must meet the minimum requirements as specified in Section VII-A.

***Comparative Evaluation Criteria***

2. **Experience**

Applicant should demonstrate in the proposal the history of their experience. Clearly define and qualify the experience you have and how it would relate to this opportunity.

a. Snack bar and/or food service experience

**Not Advantageous** – Less than three (3) years experience managing and providing food and/or snack bar service.

**Advantageous** – Three (3) to five (5) years experience in managing and providing food and/or snack bar service.

**Highly Advantageous** – More than five (5) years work experience in managing and providing food and/or snack bar service.

b. Business management experience

**Not Advantageous** – Less than three (3) years of business management experience

**Advantageous** – Three (3) to five (5) years of business management experience

**Highly Advantageous** – More than five (5) years of business management experience.

3. **Financial Capability**

**Unacceptable** – Applicant did not submit required deposit check with proposal.

**Not Advantageous** – Applicant did not demonstrate an ability to be financially capable of running the snack bar service.

**Advantageous** - Applicant submitted sufficient financial data to demonstrate financial ability to run snack service.

**Highly Advantageous** - Applicant with clear and complete financial reports demonstrating their ability to support the running of the snack bar without highly leveraging themselves.

4. **Response to menus and snack listings including consideration of prices for items offered.**

**Not Advantageous** - Proposal is vague; Town is unable to determine if it is consistent with expressed needs or project intent, menus and snack lists are incomplete and/or pricing is unreasonably high.

**Advantageous** - Proposal was adequate, generally appears consistent with project intent and responded to needs expressed by the Town in all areas, menus and snack lists are included, with requested items as a minimum. Menu pricing is reasonable.

**Highly Advantageous** - Proposal was very thorough, clearly is consistent with project intent, and is fully responsive to needs expressed by the Town in all areas menus and snack lists are included, and demonstrate creativity and support for the enjoyment of beach patrons.

5. **Health Inspection History**

Not Applicable – Health inspection history not applicable to business management experience.

**Not Advantageous** – Health inspection history applicable but not provided, or provided and average score is less than 90.

**Advantageous** – Health inspection history provided with minor infractions rectified within required timeframe.

**Highly Advantageous** - Health inspection history provided with no infractions.

6. **Business Plan Submitted**

Not Advantageous – No business plan submitted

Advantageous – Adequate business plan submitted

Highly Advantageous – Comprehensive business plan submitted

7. **General impression of proposal**

**Not Advantageous** - Response does not compel reviewer to believe the proposal reflects that provider is able to perform in a manner acceptable to the Town.

**Advantageous** - Response is informative, meets criteria for responsiveness. Reviewer feels proposal reflects that provider is able to perform in a manner acceptable to the Town but was not overly impressed by proposal's expression of ability.

**Highly Advantageous** - Response is concise, informative, and highly detailed. Proposal reflects that provider is able to perform in a manner acceptable to the Town. Team is completely convinced about the provider's ability to provide and administer the services as required by the Town.

## **IX. AWARDING OF CONCESSIONS**

The Concession Rights will be awarded to the proposer found to be in the best interest of the Town. Upon receipt of the proposal packages, complete with all required documentation, the proposals will be rated as responsive (those that offer all of the services requested in the bid and contain all of the required information and forms properly completed) and responsible (those with the capability, integrity, and reliability to perform under the contract).

Those proposals that meet all of the minimum requirements as outlined in these documents and are determined to be responsive and responsible, will be evaluated through comparative criteria including their price offerings. The Concession will be awarded by the Town Manager to the responsive and responsible bidder who offers the proposal, which, overall, is in the best interest of the Town. In the event that the proposal selected for recommendation to the Town manager does not offer the highest amount of money to the Town, a written explanation will be forwarded to the Town Manager through the Chief Procurement Officer with a detailed explanation for the recommendation.

## **X. PROPOSAL SUBMISSION REQUIREMENTS**

Responses are due on 2/14/14, 2 pm in the Purchasing Agent's Office, School Administration Building, 230 South Street, Hyannis, MA 02601. Proposals must be received in the Property Management Office, School Administration building, no later than 2:00 pm, 2/14/14 office open Monday through Friday from 8:00 a.m. to 4:00 p.m., excluding holidays). Envelopes must be clearly marked **Kalmus Beach Concession**. Proposal shall be in SEALED envelopes, clearly marked on the outside of the envelope to indicate the contents, and the name and address of the proposer.

## **XI. CONTACT INFORMATION**

Clarification and interpretations of this Request for Proposal must be requested in writing. Responses shall be likewise furnished. Please contact the Town of Barnstable for clarification of this Request for Proposal. Direct all inquiries regarding the plan to:

Johanna Boucher  
Town of Barnstable  
Purchasing Agent  
230 South Street  
Hyannis, MA 02601  
Tel (508) 862-4741  
Fax (508) 862-4779  
Email: [Johanna.boucher@town.barnstable.ma.us](mailto:Johanna.boucher@town.barnstable.ma.us)



**KALMUS BEACH CONCESSION  
PROPOSAL SUBMITTAL**

**Concession RFP**

**Appendix A**

Pricing Structure – Fixed Costs.

Year 1	Period May 15, 2014 to September 14, 2014	_____	(Note: Minimum Bid for Year 1 is \$4,000)
Year 2	Period May 15, 2015 to September 14 2015	_____	(First year price plus 5% minimum)
Year 3	Period May 15, 2016 to September 14, 2016	_____	(Second year price plus 5% minimum)

Total for the (3) three summer season lease term from 5/15/14 – 9/14/16  
(Operating from Memorial Weekend through Labor Day Weekend)

**OPTION YEARS**

Year 1	Period May 15, 2017 to September 14 2017	_____	(Third year price plus 5% minimum)
Year 2	Period May 15, 2018 to September 14, 2018	_____	(Option Year 1 price plus 5% minimum)

All payments to be made by the LESSEE to the LESSOR as rent hereunder shall be made by the LESSEE to the LESSOR under the following terms:

After the initial deposit and the lease award have been finalized, the remaining balance for each lease year must be remitted as follows: One third will be due upon execution of the lease, one third on July 15th and one third on August 15th.

The undersigned agrees to abide by the terms and conditions of this pricing sheet and fully understands the obligations they are making to the Town of Barnstable by signing this form.

Company \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date

Appendix B

**TOWN OF BARNSTABLE**

**Kalmus Beach Snack Bar Concession**

**STATE TAXES CERTIFICATION CLAUSE**

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes under law. I have addressed any tax liability and am in the process of setting up a plan to satisfy said liability.

\_\_\_\_\_  
\* **Signature of individual or  
Corporate Name (Mandatory)**

BY: \_\_\_\_\_  
**Corporate Officer  
(Mandatory, if applicable)**

\_\_\_\_\_  
**\*\*Social Security # or Federal Identification #**

\* Approval of a contract or other Contract will not be granted unless this certification clause is signed by the applicant.

\*\* Your Social Security Number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other Contract issued, renewed, or extended. This RFP is made under the authority of Mass. G.L. 62C s. 49.A.

\*\*\*\*\*

**CERTIFICATE OF NON COLLUSION**

**The undersigned certifies under penalties of perjury that this bid or Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.**

Company \_\_\_\_\_ Signature \_\_\_\_\_

Address \_\_\_\_\_ Name (print) \_\_\_\_\_

\_\_\_\_\_ Title \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

-

## APPENDIX C

### PROPOSAL SUBMITTAL CHECKLIST

- ❑ Complete and sign Certificate of Non-Collusion
- ❑ Complete and sign the State Taxes Certification Clause
- ❑ Submit Certificates of Insurance (or letter from agent/insurance company confirming insurability to required limits stated herein).
- ❑ Submit **complete, itemized food menu** for concession service with respective price list that shall be accurate for the first year of said term.
- ❑ Include cover letter and references indicating three (3) years proven experience in food service operation.
- ❑ Include past 6 most recent health inspections for previous snack bar concessions (if applicable).
- ❑ Submit professional resumes of principals providing information regarding food service operation experience.
- ❑ Submit proof of financial solvency.
- ❑ Submit a proposal deposit in an amount equal to ten percent (10%) of the respective proposal for the first year (certified check or bank check) to accompany proposal when submitted.
- ❑ Submit staffing plan that demonstrates that lessee will have experienced, full-season staff available to operate the concession.
- ❑ Submit ServSafe certification(s) and/or plans to obtain.
- ❑ Submit written dress code requirements of all staff/employees during hours of operation.
- ❑ Submit a list of non-food items to be offered for sale.
- ❑ MAKE SURE YOU ARE AWARE OF TOWN OF BARNSTABLE HEALTH AND REGULATORY REQUIREMENTS FOR A FOOD CONCESSION BEFORE SUBMITTING PROPOSAL.

AGREEMENT OF LEASE

This AGREEMENT OF LEASE, made and entered into on this day of \_\_\_\_\_ 2014, by and between the TOWN OF BARNSTABLE, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, by its TOWN MANAGER, with offices at 367 Main Street, New Town Hall, Hyannis, Massachusetts 02601, hereinafter called the LESSOR, and \_\_\_\_\_ hereinafter called the LESSEE,

WHEREAS, the LESSOR, as owner of the Kalmus Beach Snack Bar Concession, Town of Barnstable (Hyannis), Massachusetts, is seeking a LESSEE to operate a food and snack bar service at said beach/pond that can serve the patrons of that location in a pleasing, efficient manner; and,

WHEREAS, the LESSEE is desirous of leasing Kalmus Beach Snack Bar Concession to operate said space as a food and snack bar establishment for a thirty-six (36) month period for 3 summer seasons, commencing May 15, 2014 through September 14, 2016, with two (2) one (1) year options at the sole discretion of the LESSOR and the LESSOR is willing to lease said property to said LESSEE;

NOW THEREFORE, the parties agree as follows:

1. PREMISES

1.1: The snack bar area, to be referred to as the PREMISES hereinafter, is located Kalmus Beach Snack Bar Concession, Barnstable, Massachusetts, and is further defined in in the Request for Proposals dated DATE as issued by the Town of Barnstable’s Purchasing Agent. This Request for Proposals is incorporated into this lease by attachment.

1.2: This lease does not include any of the area adjacent to the designated concession area.

2. TERM

2.1: The term of this lease shall be for thirty-six (36) months, commencing May 15, 2014 and terminating on September 14, 2016, with two (2) one (1) year options operating concession services on PREMISES for three (3) summer seasons from Memorial Day Weekend through Labor Day Weekend each year.

3. RENT

3.1: The LESSEE agrees to pay the LESSOR the sum of

\_\_\_\_\_ Dollars for the entire thirty-six (36) month term of the lease, payable as follows:

**PAYMENT SCHEDULE:**

**First Year**

Proposal Amount	\$
Security Deposit due	
Upon execution of this lease	\$ 500.00
Deposit Paid __/__/2014	\$
Balance due 5/15/14	\$
Due 7/15/2014	\$
Due 8/15/2014	\$

**Second Year**

Due 5/15/2015	\$
Due 7/15/2015	\$
Due 8/15/2015	\$

**Third Year**

Due 5/15/2016	\$
Due 7/15/2016	\$
Due 8/15/2016	\$

**Option Year 1**

Due 5/15/2017	\$
Due 7/15/2017	\$
Due 8/15/2017	\$

**Option Year 2**

Due 5/15/2018	\$
Due 7/15/2018	\$
Due 8/15/2018	\$

**TOTAL LEASE:** \$

**3.2:** One third of the first season's payment less 10% deposit already paid plus \$500.00 Security Deposit will be due May 15th; one-third on July 15th and one-third on August 15th.

**3.3** One third of the second season's payment will be due May15th; one-third on July 15th and one-third on August 15th.

**3.4** One third of the final seasons payment will be due May 15th; one-third on July 15th and one-third on August 15th.

**3.5** One third of the Option Year 1 payment will be due May 15th; one-third on July 15th and one-third on August 15th.

**3.6** One third of the Option Year 2 payment will be due May 15th; one-third on July 15th and one-third on August 15th.

**4. UTILITIES**

**4.1:** LESSEE agrees to arrange for their own service and pay their own charges for electricity (separate meter) and telephone incurred monthly on the PREMISES in connection with the snack bar concession during the (36) month terms of the lease.

**4.3:** The LESSEE acknowledges that the leased premises currently contain electrical supply. Should the LESSEE desire any additional electrical line supply, the LESSEE agrees to bear the full cost and expense of the installation of any such additional electrical line supply, subject to the prior written consent and approval of the LESSOR.

**4.4:** LESSEE agrees that the provision of the above utilities is subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service or supplies from the sources from which they are usually obtained for said building, or to any cause beyond the LESSOR'S control.

## **5. SECURITY DEPOSIT**

**5.1:** LESSEE shall tender the LESSOR a security deposit in the amount of Five Hundred (\$500.00) Dollars upon the execution of this lease, to be paid by a certified check.

**5.2:** Said security deposit shall be held by LESSOR in a separate interest-bearing account as security for the LESSEE'S performance under this lease. At the LESSOR'S sole option, said security deposit may be used by the LESSOR to fulfill any of LESSEE'S obligations under this lease which LESSEE fails or refuses to fulfill, without prejudicing any other remedies available to LESSOR under this lease or at law.

**5.3:** Said security deposit shall be refunded to the LESSEE with whatever interest that has accrued at the end of the lease, minus any and all deductions that LESSOR has made under paragraph 6.2 above and further subject to LESSEE'S full compliance with the terms, conditions, provisions and covenants of this lease agreement.

## **6. USE OF LEASED PREMISES.**

**6.1:** The LESSEE shall use the leased premises only for the purpose of operating a snack bar concession/business under the terms and conditions set forth herein.

**6.2:** The LESSEE agrees that no electronic games shall be installed upon the leased premises.

**6.3:** The leased premises shall be used and conducted in a dignified manner.

**6.4:** The LESSEE will not permit any disorderly conduct in the leased area.

**6.5:** LESSEE shall be solely responsible for any and all costs relating to the operation of the leased premises including, but not limited to, the costs of equipment, materials, supplies, repairs, taxes, licensing fees, attorney's fees, all food items, housekeeping supplies, utensils, pots & pans, insurances, office supplies, sanitation supplies, food service equipment rental, paper supplies, menu paper and printing, telephone service and printing costs.

**6.6:** Smoking shall be expressly prohibited on the leased premises.

## **7. COMPLIANCE WITH LAWS.**

**7.1:** The LESSEE agrees to conduct its operation hereunder in strict compliance with all laws, bylaws, ordinances, rules and regulations of all federal, state, regional and local authorities as from time-to-time are applicable and the LESSEE will procure and pay for all licenses, certificates and permits necessary for the conduct of its operations or construction hereunder and shall pay all charges assessed under federal, state, regional and local statutes, bylaws, ordinances, rules and regulations insofar as they are applicable.

**7.2:** Failure of LESSEE to procure and maintain all necessary licenses and permits to operate a food and snack bar service shall render this lease void.

**7.3:** The LESSEE acknowledges that no trade or occupation shall be conducted in the leased premises or use made thereof which will be unlawful, improper, noisy or offensive, or contrary to any state, federal, regional law or any municipal bylaw or ordinance in force in the town in which the premises are situated.

## **8. HOURS AND DAYS OF OPERATION,**

Unless subsequently agreed upon in writing by and between the parties, and subject to the terms and conditions of any licenses, which the LESSEE may hold, the LESSEE agrees to the following terms and conditions concerning days and hours of operation:

**8.1:** The minimum hours of operation during which the LESSEE agrees to serve food to the public are as follows:

**Monday through Sunday, Memorial Day Weekend through Labor Day Weekend.**

**Monday through Friday, 11:00 AM – 5:00 PM**

**Weekends and Holidays, 10:30 AM – 5:00 PM**

**8.2:** The LESSEE agrees that it shall make no changes in the minimum hours of operation without the written consent of the LESSOR. The above schedule may be revised by the Director of Leisure Services if it is in the Town's best interest. If the concessionaire desires to change the above schedule, request must be made in writing and approved by the Director of Leisure Services.

**8.3:** The LESSEE shall be open for business seven (7) days per week, except that said premises shall be closed upon the calling of a "rain day" by the Director of Leisure Services, unless otherwise directed by the LESSOR.

**8.4:** It is understood by and between the parties that the operation of the leased premises may be affected by weather conditions and that, by mutual agreement of the LESSEE and a duly authorized representative of the LESSOR, the LESSEE'S hours of operation on any given day may be less than, or greater than, that which is set forth above; subject to any restrictions as may be placed upon the LESSEE by local licensing authorities, which restrictions may, under no circumstances, be waived or altered by the parties hereto.

## **9. EQUIPMENT, FURNISHINGS AND FIXTURES**

**9.1:** Should the LESSEE determine that, in the conduct of its business under this lease, it shall need, require or desire to add new to replace worn out equipment within the kitchen, or any other portion of the leased premises, the LESSEE shall request the permission of



the LESSOR to place any such equipment on the demised premises, specifically noting the exact nature and size of the equipment desired together with the cost of installation and maintenance thereof. The cost shall be borne solely by the LESSEE.

**9.2:** In the event that any such equipment is damaged or destroyed, regardless of the cause therefore, it shall be the responsibility of the LESSEE to repair (and maintain) or replace such equipment. Any such equipment which the LESSEE replaces shall, if fixed likewise, become the property of the LESSOR upon its installation into or onto the demised premises.

**9.3:** It shall be the responsibility of the LESSEE to provide inventories of dinnerware and utensils, located in the snack bar when assuming occupation and use of the PREMISES

**9.4:** All equipment in the snack bar and related area shall remain the property of the LESSOR including any equipment purchased by the LESSEE, unless other wise directed by the LESSOR.

## **10. REPAIRS AND MAINTENANCE**

**10.1:** The LESSEE has inspected the leased premises, acknowledges that the premises are now in good order, and accepts them in the condition that they are now in.

**10.2:** The LESSEE shall, throughout the term of this lease, at its own cost and without any expense to the LESSOR, keep and maintain the interior of leased premises, as delineated in Paragraph 1 herein, in a good, sanitary and neat order, condition and repair, free of debris and any and all other foreign matters; and further, the LESSEE agrees that said area shall be cleared of any such foreign matters of debris immediately as such are, or may be, caused to exist and shall make any and all repairs necessary to keep said premises in a good and satisfactory condition.

**10.3:** The LESSEE shall not permit the leased premises to be damaged, stripped or defaced, nor suffer any waste.

**10.4:** The LESSEE shall not overload the electrical wiring serving the leased premises or within the leased premises and will install, at its own expense, but only after receiving the written approval of the LESSOR, any additional electrical wiring which may be required in connection with LESSEE'S business.

**10.5:** The LESSEE shall be responsible for repairing or obtaining repairs on any of their own restaurant equipment located on the leased premises.

**10.6:** It shall be the responsibility of the LESSOR for the repair and maintenance of all electrical and plumbing work that pertains to the function of the PREMISES.

**10.7:** Upon the written request of the LESSEE or upon the failure of the LESSEE to perform necessary repairs and maintenance, and at the sole discretion of the LESSOR, LESSOR may undertake repair or maintenance of the leased premises. In the event that LESSOR, at its sole discretion, elects to undertake any such repair or maintenance, LESSEE shall bear the full cost for said repair or maintenance, including, but not limited to, the cost for labor and materials. Failure of the LESSEE to pay for the full cost of said repair and maintenance within ten (10) days of being billed for same, shall constitute grounds for the termination of this lease agreement.

## **11. ALTERATIONS**

**11.1:** The LESSEE shall not make any structural alterations or additions to the leased premises, but may make non-structural alterations provided the LESSOR consents thereto in writing.

**11.2:** All such allowed non-structural alterations shall be at LESSEE'S expense and shall be of such quality at least equal to the present construction.

**11.3:** Any alterations or improvements made by the LESSEE shall become the permanent property of the LESSOR at the termination of occupancy as provided herein.

**11.4:** No signs shall be installed by LESSEE without the prior written consent of the LESSOR as to the size, type, design and location of said sign. If LESSEE either proceeds without the prior written consent of the LESSOR or installs a sign that does not conform with the specifications approved by the LESSOR, the LESSOR may enter the leased premises to remove any such unauthorized sign and to restore the premises to their former condition. The LESSOR shall bill the LESSEE for any and all costs incurred in so removing any such unauthorized sign.

**11.5:** The LESSEE shall not permit any mechanics, liens or similar liens, to remain upon the leased premises for labor and material furnished to the LESSEE or claimed to have been furnished to the LESSEE in connection with work of any character performed or claimed to have been performed at the direction of the LESSEE and shall cause any such lien to be released of record forthwith without cost to the LESSOR.

**11.6:** Prior to the commencement of any nonstructural alterations for which the LESSEE has received the LESSOR'S written approval, the LESSEE shall obtain the LESSOR'S consent as to the date and time of the proposed work to assure that such work does not interfere with any other of the LESSOR'S activities.

## **12. LIGHTING**

**12.1:** The LESSEE shall, at its sole expense, repair or replace as may be required, all electrical or incandescent light bulbs or fluorescent tubes or other lighting devices located within the leased premises.

## **13. REFUSE DISPOSAL AND TEMPORARY STORAGE OF RECYCLABLES**

**13.1:** The LESSEE shall be responsible for emptying all waste receptacles in and around the PREMISES concession area. Outside trash receptacles will be provided by the LESSOR. The LESSEE shall maintain the area directly surrounding the customer area associated with the PREMISES including the area in front of the serving windows and the cement picnic area in a neat and clean condition, free of all debris and other foreign matter.

**13.2:** The LESSEE will be allowed to deposit its trash in the dumpster as indicated by the Director of Leisure Services Department or his designee. The LESSEE shall deposit said trash on a regular basis so that no refuse will be allowed to accumulate as to constitute a fire or health hazard within the leased premises or to create an unsightly appearance on or around the leased premises. The LESSEE shall provide the removal and disposal of the trash from the dumpster.

**13.3:** The LESSEE, unless otherwise directed by the LESSOR, shall provide appropriate receptacles for temporary storage of recyclable materials, including, but not limited to, cans and bottles. Said receptacles shall be appropriately designed and constructed to handle the types of recycled materials stored therein. Containers must be made of rodent-proof material, such as metal or plastic, and of sufficient strength to bear the weight of stored material without cracking or breaking and to resist puncturing by normal deposit of materials.

**13.3:** Receptacle construction and placement must pose no danger to the public, and shall comply with all building and fire codes. Receptacles shall be topple proof at full load. Prior to the installation of any such receptacles, LESSEE shall obtain prior written approval for the proposed design and location of said receptacles.

**13.5:** If applicable, the area surrounding the receptacles for temporary storage of recyclable materials shall be maintained in a clean and sanitary manner at all times. No recyclable materials shall be allowed to accumulate around any receptacle or to overflow from any receptacle.

**14. GLASS**

**14.1:** If applicable, the LESSEE shall be solely responsible for all glass in or within the PREMISES and for the entire LESSEE'S property located in or upon the leased PREMISES.

**14.2:** The LESSEE shall be responsible for the repair and replacement of any broken or cracked windows, caused by any act or omission of the LESSEE, its agents, servants or employees, within or on the demised premises, all at its own cost. The LESSEE shall also be responsible for assuring that all such windows are cleaned, both the interior and exterior side, on at least a weekly basis.

**15. LESSOR'S ACCESS**

**15.1:** The LESSOR or agents of the LESSOR may, at all reasonable times, enter upon the leased premises for the purpose of access to common areas in and around the leased premises.

**15.2:** The LESSOR or agents of the LESSOR may, at all reasonable times, enter to view and inspect the leased premises and make repairs and alterations as the LESSOR should elect to do and may show the leased premises to others.

**16. FOOD**

**16.1:** All meals prepared shall contribute to the patrons, welfare and shall be therapeutically and nutritionally appropriate, attractively presented, varied sufficiently to avoid boredom, and must be presented with sufficient alternatives to allow for individual differences in tastes.

**16.2:** All food purchased by the LESSEE for use at the leased premises shall meet the following minimum specifications:

Meat, lamb, beef, veal .....USDA Choice  
Pork.....US #1

Poultry, eggs, dairy products .....	Grade A
Canned vegetables .....	Choice
Frozen Vegetables .....	Grade A
Fresh produce.....	#1 Quality

All other food purchases must be of comparable quality.

**16.3:** The LESSEE is responsible for the receipt and storage, inventory control, and use of all food and other products consumed at the restaurant.

**16.4:** The prices and food offerings on the concession, attached hereto as **Menu Exhibit to Lease**, and incorporated by reference herein, shall not be changed by LESSEE without the written approval of the LESSOR. Any new menu so approved by the LESSOR shall be incorporated into this lease agreement through a written amendment to said agreement.

**16.5:** No food and beverage items may be provided or served in glass containers.

**16.6:** Any disposable products used on the leased premises shall be made from recyclable materials and shall be recyclable and biodegradable.

**16.7:** The Menu with prices, attached to this document (**Menu Exhibit to Lease**), will be reviewed each May. No prices may change without the approval of the LESSOR (Director of Leisure Services).

**17. ALCOHOLIC BEVERAGES**

**17.1:** The LESSEE shall assure that no alcoholic beverages are sold or stored in the PREMISES

**18. RECORDS AND REPORTS (To be negotiated with awarded concessionaire)**

**18.1:** The LESSEE shall and hereby agrees to keep in the leased premises during the term hereof, or at a location (made known to the LESSOR by the LESSEE), in the Town of Barnstable, for a period of three consecutive years following the end of each lease year, a permanent, complete and accurate record of all sales of merchandise and service and all revenue derived from business conducted in the leased premises for such lease year. LESSEE further agrees to keep, retain and preserve for at least one year after the expiration of this lease, all original sales records and sales slips or sales checks and other pertinent original sales records. All such records, including sales tax reports and business and occupation tax reports, shall be open to the inspection and audit of LESSOR and its agents at all reasonable times during ordinary business hours.

**18.2:** The term "gross sales" is the entire amount of the actual sales price, whether wholly or partly for cash or on credit, of all sales of merchandise and services and all other receipts of all business conducted in or from the leased premises, including all deposits not refunded to purchasers, orders taken in or from the leased premises although said orders may be filled elsewhere, and sales by any sub lessee, concessionaire or licensee in or from the leased premises, and all without credit to the LESSEE for uncollected or uncollectible credit accounts. There shall be excluded from "gross sales" any sums collected and paid out for any sales tax or tax based upon the sale or sales of merchandise and required by law, whether now or hereafter in force, to be paid by the LESSEE or collected from its customers, to the extent that such taxes have been added to and included in the gross sales price.

**18.3:** The LESSEE shall submit to the LESSOR in a reasonable amount of time, not to exceed ninety (90) days following the end of the first summer operating season, at the place then fixed for the payment of rent, a Review-type Financial Statement and a Certification that all taxes, notes and vendor invoices are current, prepared and signed by a certified public accountant and signed by LESSEE, showing in reasonably accurate detail the amount of gross sales during the preceding lease year and fractional lease year, if any, and shall submit, in a reasonable amount of time, not to exceed ninety (90) days following the expiration or termination of the term, a like statement covering the preceding fractional lease year, if any.

**18.4:** For the lease period, as indicated in this document, the LESSEE shall submit to the LESSOR on or before the tenth day of each and every calendar month (excepting the tenth day of the first month of the term hereof but including the tenth day of the month following the end of the term), at the place then fixed for the payment of rent, a written statement signed by LESSEE by a duly authorized officer or representative, showing in reasonably accurate detail the amount of gross sales during the preceding calendar month.

## **19. INDEMNIFICATION OF LESSOR**

**19.1:** The LESSOR shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by the LESSEE or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission or negligence of the LESSEE or of the LESSEE'S contractors, licensees, agents, servants, employees, occupants, sub-tenants, visitors, invitees, guests, or users of any portion of the premises, or shall result from or be caused by any accident, injury or damage or any other matter or thing whether of the same kind as or of a different kind than the matters or things set forth above, and the LESSEE shall indemnify and save harmless the LESSOR from and against all claims, liability, loss or damage whatsoever on account of any such loss, injury, death or damage during the term hereof in or about the leased premises.

**19.2:** The LESSOR shall not be liable to the LESSEE or to any other person for any injury, loss or damage to any person or property on or about the demised premises or the building of which the demised premises are a part or the approaches, sidewalks, patios or appurtenances thereto.

**19.3:** The LESSEE shall save the LESSOR, as owner of the demised premises, harmless and indemnified from and against all loss or damage occasioned by the use or misuse of water or any plumbing, heating or cleaning apparatus, gas or electric fixtures, leaking or bursting pipes or otherwise occasioned by any nuisance made or suffered by or from the demised premises.

**19.4:** This indemnity and hold harmless agreement shall include indemnity against all reasonable costs, expenses and liability incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, including reasonable attorneys' fees.

**19.5:** The LESSEE shall pay to the LESSOR, on demand, for any damage caused to any portion of the leased premises, or to any portion of the entire areas known as concession area name/location, incurred as a result of the LESSEE'S operation, and or occupancy, of the demised premises.

## 20. INSURANCE

- 1 **Indemnification** - Contractor will indemnify and hold harmless the Town of Barnstable and its employees against any and all claims for damages on account of bodily injury, including death, property damage, personal injury, and advertising injury by any act or omission due to negligence of the Contractor, subcontracts, its agents, or employees to any property of or under the control of the Town of Barnstable during the term or any extension of the resultant agreement, and in case of any action or actions or other legal proceedings shall be brought or instituted against the Town of Barnstable on account of any such claims, Contractor shall indemnify and hold harmless the Town of Barnstable. However, should the claim be due to the negligence of the Town of Barnstable and/or its employees, Contractor shall be held harmless, provided that nothing contained herein or elsewhere in this agreement constitutes an express or implied waiver of the Town of Barnstable's limited liability
  
2. **General Insurance** - The Lessee shall, before commencing performance of the contract, be responsible for providing and maintaining insurance coverage in force for the life of the contract of the kind and in adequate amounts to secure all of the obligations under the contract and with insurance companies acceptable to the Town of Barnstable. All such insurance carried should not be less than the kinds and amounts designated herein, and the Lessee agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Lessee to any such kinds and amounts of insurance coverage. Under all insurance coverage, required or not required by the Town, the Lessee shall indemnify, and hold harmless the Town of Barnstable, its elected or duly appointed offices, directors and employees against any claim based upon negligent, accidental or intentional acts or omissions of the Lessee, its employees or its agents in providing its services to employees of the municipality or their dependants pursuant to the agreement.

With the exception of Professional Services Liability for architects, designers and engineers, and Worker's Compensation, the Town of Barnstable and its employees must be named as an additional insured and a certificate of insurance will be provided indicating such for each of the insurance policies or surety bonds obtained pursuant to the requirements established by the issuance of the contract. Upon execution of the contract the Lessee will provide copies of certificates of insurance to the Town of Barnstable, Administration & Technical Support Division and Procurement & Risk Management.

Failure to provide and continue in force such insurance as aforesaid may be deemed a material breach of this contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole expense of the Lessee. Annually, at time of vendor's policy renewal, updated insurance certificates shall be sent to the Town of Barnstable.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Barnstable at least thirty (30) days prior to the intended effective date thereof, which date shall be expressed in said notice, and which shall be sent out by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustees in bankruptcy, receiver, assignee, and/or the successor in interest of the Lessee.

All insurance coverage shall be placed with such company as may be acceptable to the Town of Barnstable and shall constitute a material part of the contract documents.

**3. Comprehensive General Liability Insurance**

The Lessee shall carry Commercial General Liability Insurance with an each occurrence limit of liability no less than One Million Dollars (\$1,000,000.00) and a general aggregate limit of liability no less than Two Million Dollars (\$2,000,000.00 for all injury and damages to or destruction of property during the policy period.

**4. Automobile Liability and Property Damage Insurance**

The Lessee shall carry business Automobile Liability Insurance covering all owned vehicles with a combined single limit no less than One Million Dollars (\$1,000,000.00) to cover all damage caused by contracted employees of the awarded Lessee. Level of insurance must adequately cover the liability exposure of project site and is subject to Town of Barnstable Risk Manager approval.

**5. Workers' Compensation Insurance**

The Lessee shall carry Workers' Compensation Insurance as required by Massachusetts General Law, c. 152, and Section 25, with a minimum limit of Employer's Liability as per Massachusetts General Law requirements.

The aforementioned insurance coverages shall remain in full force and effect throughout the period of the contract. Lessee's insurance shall be primary insurance to all insurance carried by Owner. Current certificates of insurance shall be provided to the Town of Barnstable, Risk Manager, 230 South Street, Hyannis, MA 02601.

**21. FIRE INSURANCE**

**21.1:** The LESSEE shall not permit any use of the leased premises which will make voidable any insurance on the property of which the leased premises are a part, or on the contents of said property, or which shall be contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association, or any similar body succeeding to its powers. The LESSEE shall, on demand, immediately remove said cause or reimburse the LESSOR for all extra insurance premiums caused by the LESSEE'S use of the premises.

**21.2:** If the Lessee is occupying a Town owned premises and should a substantial portion of the leased premises, or the property of which they are a part, be substantially damaged by fire or other casualty, the Lessor may elect to terminate this Lease. When such fire or other casualty renders the leased premises substantially unsuitable for their intended use, the Lessee may elect to terminate this Lease; if: (a) the Lessor fails to give written notice within thirty days of its intention to restore the leased premises, or (b) the Lessor fails to restore the leased premises to a condition substantially suitable for their intended use within ninety days of said fire or casualty. A just and proportionate part of the rents hereby reserved shall be paid by the Lessee until the premises shall have been so rebuilt or restored.

**22. ASSIGNMENT-SUBLEASING**

**22.1:** The LESSEE shall not assign or sublet the whole or any part of the leased premises.

**22.2:** Any attempted assignment by LESSEE shall be void and shall, at the option of the LESSOR, terminate this lease.

**22.3:** Neither this lease nor the leasehold estate of LESSEE nor any interest of LESSEE hereunder in the leased premises or any buildings or improvement thereon shall be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of the LESSOR, terminate this lease.

## **23. FIRE, CASUALTY**

**23.1:** Should a substantial portion of the leased premises or of the property of which they are a part, be substantially damaged by fire or other casualty, the LESSOR may elect to terminate this lease.

**23.2:** When such fire or casualty renders the leased premises substantially unsuitable for their intended use, the LESSEE may elect to terminate this lease if:

- (a) The LESSOR fails to give written notice within thirty (30) days of intention to restore the leased premises; or,
- (b) The LESSOR fails to restore the leased premises to a condition substantially suitable for their intended use within ninety (90) days of said fire or casualty.

**23.3:** The LESSOR reserves, and the LESSEE grants to the LESSOR, all rights which the LESSEE may have for damages or injury to the leased premises, except for damage to the LESSEE'S fixtures, property or equipment.

## **24. BANKRUPTCY**

**24.1:** If a petition shall be filed by or against the LESSEE under the Federal Bankruptcy Act or acts amendatory thereof or supplemental thereto, or if any assignment shall be made of the LESSEE'S property for the benefit of creditors, or if a receiver, guardian, conservator or other similar officer shall be appointed to take charge of all, or any portion of the LESSEE'S property by a court of competent jurisdiction, then, in any such case, the LESSOR lawfully may, immediately, or at any time thereafter, without the need of demand or notice, enter into and upon the demised premises or any part thereof in the name of the whole, repossess the same and expel the LESSEE and remove LESSEE'S goods, equipment and effects without being guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of monthly payments or preceding breach of covenant, and upon such entry this lease shall be deemed terminated.

## **25. DEFAULT BY LESSEE**

**25.1:** In the event that the LESSEE shall default in the payment of any installment of rent or other sums herein provided for, and said default shall continue for ten (10) days, or if the LESSEE shall default in the observance or performance of any other of the LESSEE'S covenants, agreements or obligations hereunder, and such default shall continue for thirty (30) days, or if the LESSEE shall be declared bankrupt or insolvent according to the law, or shall enter an assignment for the benefit of creditors, then the LESSOR shall have the right thereafter



to enter and take complete possession of the leased premises pursuant to any process required by law and to terminate this lease and/or remove the property of the LESSEE, without prejudicing any other remedies available under this lease or at law, for arrears of rent or other damages.

**25.2:** The LESSEE shall indemnify the LESSOR against all loss of rent and other payments which the LESSOR may incur by reason of such termination during the residue of the term of this lease or any extension thereof.

**25.3:** If the LESSEE shall default in the observance or performance of any conditions or covenants on LESSEE'S part to be observed or performed under or by virtue of any of the provisions of this lease, the LESSOR, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the LESSEE. If the LESSOR makes any expenditures or incurs any obligations for the payment of money in connection therewith, including, but not limited to, reasonable attorneys, fees in instituting, prosecuting or defending any action or proceedings, such sums paid or obligations incurred, with interest at the rate of twelve (12) percent per annum and costs, shall be paid to the LESSOR by the LESSEE forthwith as additional rent.

**25.4:** Failure on the part of the LESSOR to complain of any action or nonaction on the part of the LESSEE, no matter how long the same may continue, shall never be deemed to be waiver by the LESSOR of any of its rights hereunder.

**25.5:** No waiver at any time of any of the provisions hereof by the LESSOR shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the LESSOR to or of any action by the LESSEE requiring the LESSOR'S consent or approval shall not be deemed to waive or render unnecessary the LESSOR'S consent or approval to or of any subsequent similar act by the LESSEE.

**25.6:** No payment by the LESSEE or acceptance by LESSOR of a lesser amount than shall be due from LESSEE to LESSOR shall be treated otherwise than as a payment on account. The acceptance by the LESSOR of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and the LESSOR may accept such check without prejudice to any other rights or remedies which LESSOR may have against the LESSEE.

## **26 YIELDING UP THE PREMISES**

**26.1:** Upon the expiration of this lease, the LESSEE shall yield up and deliver the leased premises and all keys, locks thereto, and other fixtures connected therewith, and all alterations and additions made to or upon the leased premises vacant and unencumbered, clean, neat, and in good a condition.

**26.2:** The LESSEE shall, at the expiration or other termination of the lease, remove all the LESSEE'S goods and effects from the leased premises (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the LESSEE, either inside or outside the leased premises).

**26.3:** In the event of the LESSEE'S failure to remove any of the LESSEE'S property from the premises, the LESSOR is hereby authorized, without liability to the LESSEE, for loss or damage thereto, and at the sole risk of the LESSEE, to remove and store any of the property at the LESSEE'S expense or to retain same under LESSOR'S control or to sell at public or private sale, without notice, any or all of the property not so removed and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to dispose of such property.

**27. NON-DISCRIMINATION**

**27.1:** The LESSEE covenants and agrees that it will not exercise or permit its officers, agent or employees to exercise any discrimination against any person because of race, sex, national origin, age, marital status, sexual orientation, disability or religion in the course of its use of the premises or its operations at the leased premises.

**28. NOTICES**

**28.1:** Any notice from the LESSOR to the LESSEE relating to the leased premises or to the occupancy thereof, shall be deemed duly served if left at the leased premises addressed to the LESSEE or, if mailed to the leased premises by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSEE. Any notice from the LESSEE to the LESSOR relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed to the LESSOR by registered or certified mail, return receipt requested, postage prepaid, addressed to the LESSOR at the Town of Barnstable, Office of the Director of Leisure Services Department, Phinney's Lane, Centerville, Massachusetts or to such other address as either party may specify to the other by notice given as provided herein.

**29. SEVERABILITY**

**29.1:** If any provisions of this lease shall to any extent be held invalid or unenforceable, the remainder of this lease shall not be deemed affected thereby.

**30. CONSTRUCTION OF LEASE**

**30.1:** This lease shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

**31. MODIFICATION OF LEASE**

**31.1:** This lease agreement in conjunction with the Request for Proposal dated DATE and the proposal made by the Lessee dated       , 2014 constitute the entire agreement between the parties and it may not be modified except in writing and signed by all parties. In the event of a conflict, the LEASE being the controlling document, followed by the Request for Proposal dated DATE, and finally the Lessee proposal dated       , 2014

**32. MISCELLANEOUS OBLIGATIONS OF LESSEE**

**32.1:** If the LESSEE'S operations hereunder cause or in any way bring about an increase in the LESSOR'S insurance premiums covering the premises, the LESSEE shall pay the resultant increase. Any amounts due the LESSOR under this paragraph shall constitute additional rent and shall be payable within thirty (30) days of notice to the LESSEE.

**32.2:** The LESSEE shall not, during the term of this lease, hire or employ on either a full-time or part-time basis, any employees of the LESSOR regardless of whether such employee of the LESSOR be full-time or part-time employees.

**32.3:** The LESSEE shall not, without the LESSOR'S prior written approval, refer to the LESSOR in any advertising, letterheads, bills, invoices or other printed matter.

**32.4:** The LESSEE shall be required during the term of this lease to take such reasonable security precautions with respect to its operations at the leased premises as LESSOR, in its discretion, might from time to time require.

Executed in quadruplicate as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2014.

**TOWN OF BARNSTABLE, LESSOR,                    LESSEE;**  
**By its TOWN MANAGER,**

\_\_\_\_\_  
**Thomas K. Lynch, Town Manager**

\_\_\_\_\_  
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ruth J. Weil, Town Attorney

## Appendix E

### **LEGAL NOTICE TOWN OF BARNSTALBE REQUEST FOR PROPOSAL KALMUS BEACH SNACK BAR CONCESSION**

The Purchasing Agent for the Town of Barnstable on behalf of the Recreation Division is soliciting proposals for the following services under Chapter 30B, Section 16 of the Massachusetts General Laws:

**SNACK BAR CONCESSION SERVICE FOR THE 2014, 2015, and 2016 SUMMER SEASONS, from May 15, 2014 through September 14, 2016, with two (2) one (1) year options at the sole discretion of the Town.**

**(Operating from Memorial Weekend through Labor Day) for the following lease premises:**

#### **Snack Bar Concession at Kalmus Beach**

Specifications and RFP forms are available on the Town of Barnstable website, Bid & RFP System at [www.town.barnstable.ma.us](http://www.town.barnstable.ma.us). Contact Johanna Boucher, Purchasing Agent, for assistance at 508-862-4741.

Responses are due on February 21, 2014, 2 p.m. in the Purchasing Agent's Office, School Administration Building, 230 South Street, Hyannis, MA 02601. The Lease will be awarded within 30 days. Request for Proposal documents and required forms are available on the Town of Barnstable's website, Bid & RFP System at [www.town.barnstable.ma.us](http://www.town.barnstable.ma.us). Proposals will be opened and read in the office of the Purchasing Agent February 21, 2014, 2 pm and will be open to the public, however, final award determination will not be made until proposals have been evaluated. All responses must be received in a sealed envelope properly marked "Kalmus Beach Concession Proposal" prior to the deadline.

The Purchasing Agent reserves the right to reject any or all proposals when it is deemed to be in the best interest of the Town.

## APPENDIX F

### Board of Health Requirements

It is the successful concessionaire's responsibility to assure compliance with all town, state and federal regulations as they relate to the operation of snack bar as awarded as a result of this request for proposal. The following information is provided for your information and is not represented to be a complete listing of all compliance requirements. It is the proposer's responsibility to assure that they meet all applicable requirements.

Please contact the Town of Barnstable, Health Department Office at 508-862-4644, for any questions regarding the requirements for certification and compliance to local, state, and federal regulations.

The Town of Barnstable Health Department enforces, at this time, the 1999 Food Code available on line at: <http://www.cfsan.fda.gov/~dms/fc99-toc.html>

Please see attached, Policies for Food Sanitation Certification Training and for Issuance of Non-criminal Ticket Citations, dated December 17, 2002 as issued by the Town of Barnstable, Board of Health. Each site shall be provided with two (2) servsafe certified persons, the primary and the alternate.

Please see attached, Town of Barnstable Code 322: Food Establishments (also available on line at: <http://www.town.barnstable.ma.us>



# Town of Barnstable Board of Health

200 Main Street, Hyannis MA 02601

Office: 508-862-4644  
FAX: 508-790-6304

March 2012, Revised  
Feb. 14, 2013,

Adopted by the Board of Health April 16, 2013

## Public and Environmental Health Program Policies, Procedures, and Guidelines



### Mobile Food Units, Including Boats, Self-Propelled Units and Trailers No. 2013-02

#### Equipment

The mobile food unit operator shall strictly comply with Section B paragraphs 1 through 14, contained within the State Sanitary Code, 105 CMR 590.009. In addition, the mobile food unit shall be equipped with the following:

- a. Mobile food operations shall be fully enclosed, with smooth easily cleanable floors \*, walls, and ceilings
- b. All mobile food operations selling or distributing ready-to-eat PHF's shall be equipped with mechanical refrigeration that can maintain PHF's at or below 41 degrees F.
- c. A convenient hand-washing sink (hot and cold running water under pressure, dispenser soap, paper towels) must be available inside the mobile food unit for employee handwashing whenever handling unpackaged foods.\*
- d. A double bay or triple bay sink shall be provided for cleaning and sanitizing utensils \*
- e. The door(s) shall remain closed during food service operations. Serving windows shall be equipped with electronic air curtains and/or with screens which are automatically or mechanically self-closing; or if mechanical air-conditioning is provided, all serving windows must be closed and equipped with automatic or mechanical self-closing devices.\*\*

\* The requirements to provide easily cleanable flooring in section "a" as well as items "c", "d," and "e" do not apply to the sale of pre-packaged food items (i.e. the sale of packaged ice-cream bars).

\*\* The requirement to provide air curtains and mechanically closing screen windows and doors may not be required on boats if it is demonstrated that all foods will be kept covered during food preparation and storage (e.g. below deck with the galley door closed).

#### Time Restriction

The operator of a mobile food unit shall not remain parked at any particular location (parcel) selling and distributing foods for an extended period of time. The maximum allowable time period for selling and distributing foods from a mobile food unit at any particular location (parcel) shall not exceed four hours. The Board of Health may vary this restriction for special events and celebrations such as carnivals for which a temporary food permit is issued; and/or for contracted services provided at town-owned properties (i.e. public beaches). \*\*

\*\* See BOH Parameters to Allow a Mobile Food Unit to Remain at a Fixed Location for More Than Four (4) Hours, dated June 18, 2012.

### **Fixed Licensed Food Establishment or Food Processing Plant**

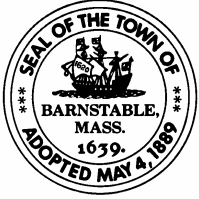
Mobile food operations shall operate from a fixed, licensed food establishment or food processing plant and shall report at least daily to such locations for all food, water and supplies and for all cleaning and service operations. Only commercial facilities shall qualify as fixed food establishments or food processing plants. Private homes and residential kitchens shall not be utilized for this purpose. Ships and large vessels may be exempt from this requirement only if it is demonstrated that the mobile food operation is of sufficient size to store and prepare all of the foods proposed on the menu, as well as provide all of the required equipment in full compliance with the State Sanitary Code, 105 CMR 5900.00 and local health regulations.

### **Certification**

The mobile food unit operator shall be certified in safe food handling practices (Serv-Safe or equivalent) and shall be food allergen awareness certified.

### **Exemptions: Ships and Vessels Inspected By Other Jurisdictions**

Ships and vessels inspected and licensed by another governmental State or Federal jurisdiction for the purposes of ensuring and verifying proper food handling, safety and sanitation (e.g. United States Public Health Service) shall be exempt from this policy, if copies of the mobile food establishment inspection reports are available immediately upon the request of a health inspector. The State Sanitary Code, 105 CMR 590.010(C) authorizes the Board of Health to accept inspection reports from that jurisdiction and to conduct joint inspections.



Wayne Miller, M.D.

# Town of Barnstable

## Board of Health

367 Main Street, Hyannis MA 02601

Office: 508-790-6265

Junichi Sawyangi  
Paul Canniff, DMD

### **Policies for Food Sanitation Certification Training and for Issuance of Non-criminal Ticket Citations**

On December 17, 2002, the Board of Health voted to revise the policies regarding food sanitation training as follows:

#### **All Food Service Establishments:**

A. Each food service permit holder shall be the primary person in charge (PPIC) or shall designate a PPIC and shall ensure that the PPIC is present at the food establishment during all hours of operation.

B. The PPIC shall designate at least one alternate person (APIC) to be in charge during times when the PPIC is not present.

C. The food establishment permit holder shall ensure that the PPIC and APIC(s) have shown proficiency of required food sanitation and safety information through passing a test that is part of an accredited training program recognized by the MA Department of Public Health and Board of Health (e.g. ServSafe Training) in accordance with the State Sanitary Code, Chapter X- Minimum Sanitation Standards for Food Establishments. Such training and testing shall be renewed at least once every five (5) years.

D. Copies of documentation of the required training certifications shall be provided to the Public Health Division (200 Main Street Hyannis MA 02601) with the name of the food establishment provided on the top of each document. The food establishment permit holder shall also prominently post documentation of the required training certifications adjacent to the food establishment permit.

#### **Repeat Critical Violations:**

Any operator of a food establishment who violates the same one or more critical violations of 105 CMR 590.000 (the State Sanitary Code for Food Establishments Article X) during two or more inspections within a twelve month period may be subject to the issuance of non-criminal ticket citations, at the discretion of the health inspector.

In addition, the Board of Health may require after a public hearing, every food handler to receive food sanitation training and/or require the operator to hire a consultant to conduct onsite training sessions at that particular establishment within a prescribed period of time.

#### **Repeat Non-Critical Violations:**

Any operator of a food establishment who continuously violates any non-critical provision of 105 CMR 590.000 (the State Sanitary Code for Food Establishments, Article X) during three or more



inspections during a twelve month period may be subject to the issuance of non-criminal ticket citations, at the discretion of the Health Inspector.

**Effective Date:** Section C of this policy shall become effective on December 31, 2003 in regards to the deadline for the APIC to receive his/her food sanitation training and certification. All other requirements of this policy shall become effective on January 1, 2003.

Definition: "Food handler employee" means an individual working with unpackaged food(s). It includes a wait-person who contacts unpackaged foods, regardless of whether or not gloves are worn.

[NOTICE: These policies shall not preclude the Board of Health from also revoking a food service permit, from suspending a food service permit, and/or from filing criminal charges against a food service establishment operator in accordance with 105 CMR 590.062, the State Sanitary Code for Food Establishments, Article X.]

**PER ORDER OF THE BOARD OF HEALTH**

\_\_\_\_\_  
Wayne Miller, M.D.  
M.S.P.H.

\_\_\_\_\_  
Susan G. Rask, R.S.

\_\_\_\_\_  
Sumner Kaufman,