



INFORMAL SOLICITATION #2012-6533-4624

June 13, 2012

City of Newport News

DEPT OF PURCHASING, OFFICE OF THE PURCHASING DIRECTOR

2400 Washington Avenue

Newport News, VA 23607

Phone: (757) 926-3783 Fax: (757) 926-8038

www.nngov.com/purchasing

CONCESSION SERVICES AT HUNTINGTON PARK

Proposals subject to the conditions and instructions contained herein, will be received at the above office of the Purchasing Director, 4th Floor, City Hall, 2400 Washington Avenue, Newport News, VA, 23607, until the time and date shown below (local prevailing time), for furnishing the items or services described in the proposal.

Scope of Work: **TO PROVIDE CONCESSION SERVICES AT HUNTINGTON PARK**

SITE VISIT: **FRIDAY, JUNE 22, 2012 @ 9:30 A.M. @
5500 WEST MERCURY BLVD, NEWPORT NEWS, VA**

Bid Due Date: **June 22, 2012 @ Close of Business**

Contract Officer: Wanda Farmer

Wanda Farmer, Senior Buyer, (wfarmer@nngov.com) and copy Vicki Gwynn, Assistant Buyer, (vgwynn@nngov.com)

ONE ORIGINAL AND TWO (2) COPIES OF YOUR SUBMITTAL ARE REQUESTED

In compliance with this Solicitation , and subject to all the conditions thereof, the undersigned offers, to furnish the items or services requested and certify he has read, understands, and agrees to all terms, conditions, and requirements of this Solicitation and is authorized to contract on behalf of the firm named below.

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX No.: _____

E-mail: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

(This Form Must Be Signed. Signature must be original, not photocopied)

Conditions and Instructions

Rev. 05-29-2012

1. All proposals shall be submitted on and in accordance with this form. If more space is required to furnish a description of the commodities and/or services offered or delivery terms, the offeror may attach a letter hereto that will be made a part of the proposal. In case of conflict, the proposal may be deemed non-responsive. The City's published specifications shall supersede any additional writings submitted with the proposal. Such writings should be clearly marked and noted on the exception page.
2. All proposals shall be submitted sealed, plainly marked showing the solicitation number, date and time. The entire solicitation document is to be returned when submitting a proposal, unless otherwise directed by the document. Failure to return all pages may result in a determination that the submittal is non-responsive.
3. It will be the responsibility of the offeror to see that its proposal is in this office by the specified time and date.
4. Prices, if requested, should be stated in units of quantity specified, less federal, state, and local taxes.
5. The offeror certifies that this proposal is made without prior understanding, agreement or accord with any other person or firm submitting an offer for the same product or service and that this proposal is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. Any false statement hereunder may constitute a felony and can result in a fine and imprisonment as well as civil damages.
6. In event of breach by the offeror, the City reserves the right to procure the commodities and/or services from other sources, and hold the offeror liable for any excess cost occasioned thereby. If, however, public necessity requires use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a proper reduction in price.
7. Availability of Funds: A contract shall be deemed executory only to the extent of appropriations available to each Department for the purchase of such articles or services. The City's extended obligations on those contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.
8. **Hold Harmless and Indemnification:** The offeror shall defend, indemnify and hold the City, and City's employees, agents, and volunteers, harmless, from and against any and all damage claim, liability, cost, or expense (including, without limitation, attorney's fees and court costs) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against the offeror, its employees, agents, and volunteers, or incurred by or claimed against the City, City's employees, agents, and volunteers, arising out of, or in connection with, the performance of all services hereunder by the offeror. This indemnification and hold

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harmless includes, but is not limited to, any financial or other loss including, but not limited to, any adverse regulatory, agency or administrative sanctions or civil penalties, incurred by the City due to the negligent, fraudulent or criminal acts of the offeror or any of the offeror's officers, shareholders, employees, agents, contractors, subcontractors, or any other person or entity acting on behalf of the offeror. Unless otherwise provided by law, the offeror indemnification obligations hereunder shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the offeror under worker's compensation acts, disability benefit acts, other employee benefit acts, or benefits payable under any insurance policy. This paragraph shall survive the termination of the contract including any renewal or extension thereof.

9. The offeror agrees to defend and save the City, its agents, volunteers, officials, or employees, harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, or which the offeror is not the patentee, assignee, or licensee, to the same extent as provided in the above paragraph. .
10. All proposals must be signed with the firm name and by a responsible officer or employee having the authority to bind the firm. The offeror agrees that it will perform all services and provide all goods in strict conformance with the contract documents.
11. By signing this proposal, the offeror assigns to the City of Newport News any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to this offer. This provision is remedial in nature and is to be liberally construed by any court in favor of the City of Newport News.
12. Appeals Procedure: Upon request, administrative appeals information will be provided which shall be used for hearing protests of a decision to award or an award, appeals from refusals to allow withdrawal of proposals, appeals from disqualifications and determinations of non-responsibility and appeals from decisions or disputes arising during the performance of a contract. To be timely, all appeals shall be made within the time periods set forth in the City Code.
13. **Non-Discrimination:** During the performance of this contract, the successful offeror agrees as follows:
 - a. It will not discriminate against any employees or applicants for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal or state law relating to discrimination in employment, except where one or more of these are a bona fide occupational qualification reasonable necessary to the normal operations of the offeror. The offeror agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The offeror will be and state that he is an equal opportunity employer in all solicitations or advertisements for employees.

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- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs, (a), (b) and (c) in every subcontract or purchase order of over ten thousand dollars so that the provisions will be binding upon each subcontractor or vendor.

During the performance of this contract, the offeror agrees to (i) provide a drug-free workplace for the offeror's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the offeror's workplace and specifying the actions that will be taken against employees for violations of prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the offeror that the offeror maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- 14. This public body does not discriminate against faith-based organizations.**
- 15. Direct contact with City Departments, other than Purchasing, on the subject of this proposal is expressly forbidden except with the foreknowledge and permission of the contracting officer.**
- 16. Assignment of Contract:** A contract shall not be assignable by the offeror in whole or in part without the written consent of the City of Newport News.
- 17. Applicable Law and Courts:** Any purchase order/contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth located in Newport News, Virginia.
- 18. The contractor certifies that it does not and shall not during the performance of the contract for goods or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986, as amended.**
- 19. All bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall include the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, as amended, or as otherwise required by law shall**

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include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Number or Statement: _____

Any business entity that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, as amended, to be revoked or cancelled at any time during the term of the contract. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

20. If City Hall is closed for business at the time scheduled for the proposal opening, proposals will be accepted and opened on the next business day of the City, at the originally scheduled hour.
21. If you have obtained this solicitation from our web page or from a source other than directly from the City of Newport News, it is the offeror's responsibility to check with our office prior to submitting your offer to ensure that you have a complete, up-to-date package. The Purchasing Department takes no responsibility to ensure any interested offeror has obtained any outstanding addenda.
22. The original copy maintained at our offices, in the bid/proposal file folder, shall be considered the official copy. In the case of any inconsistency between bid/proposal documents submitted to the City, but not clearly listed on the exception page of the document as an exception by the offeror, the language of the official copy shall prevail. Furthermore, any exception or changes to the specifications made by the offeror may be cause to disqualify your proposal.

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23. **Contractor's License:** If any of the services promulgated under this solicitation consist of construction work, it is required under Title 54.1, Chapter 11, Code of Virginia for a contractor who performs or manages construction, removal, repair, or improvements when the total value referred to in a single contract or project is:

One hundred twenty thousand dollars (\$120,000) or more, or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is seven hundred fifty thousand dollars (\$750,000) or more shall show evidence of being licensed as a **Class A Contractor**.

Ten thousand dollars (\$10,000.00) or more, but less than one hundred twenty thousand dollars (\$120,000) or the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is one hundred and fifty thousand dollars (\$150,000) or more, but less than seven hundred fifty thousand dollars (\$750,000) shall show evidence of being licensed as a **Class B Contractor**.

Over one thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000) or the total value of all such construction, removal, repair, or improvements undertaken by such person within any twelve-month period is no more than one hundred and fifty thousand dollars (\$150,000) shall show evidence of being licensed as a **Class C Contractor**.

The City shall require master certification as a condition of licensure or certification of electrical, plumbing and heating, ventilation and air conditioning contractors.

A valid business license from the City may be required. The bidder shall complete whichever of the following notations as appropriate:

"Licensed Class A Virginia Contractor No. _____."

"Licensed Class B Virginia Contractor No. _____."

"Licensed Class C Virginia Contractor No. _____."

24. **Cancellation:** The City may cancel the contract at its convenience, without penalty, or any financial obligation, at any time by giving thirty (30) days written notice or may cancel the contract immediately for violations of safety or rules of ethics. The City may cancel a contract thirty (30) days after the City has given a written request for a cure for vendor non-performance if such cure has not occurred. Cancellation shall not release the vendor from legal remedies available to the City. If the contract is an extended term contract, after completion of the first contract period, either party may cancel the contract without penalty, or any financial obligation. Written notice of such termination shall be made a minimum of sixty (60) days prior to its effective date.

25. These Conditions and Instructions are intended to apply to the resulting contract and shall supersede any conflicting terms offered. Any additional conditions, which an offeror requests or intends to be considered, must be submitted with the proposal for consideration and negotiation into a final contract document prior to an award.

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Contractual documents submitted by the successful firm after an award will not be accepted.

26. Failure of the offeror to perform the contract by reason of our non-acceptance of additional conditions submitted after the award, shall result in termination of the contract by the City, and may result in debarment of the offeror for a period of up to three (3) years. Such actions taken by the City shall not release the offeror from additional remedies available which are allowed by law.
27. **Records and Inspection:** The offeror shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The offeror's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the City and its employees, agents or authorized representatives after giving at least three (3) days notice to offeror by the City. The City shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the City to the offeror pursuant to this contract or any renewal or extension of this contract. The City's employees, agents or authorized representatives shall have access to the offeror's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits.
28. **Severability:** If any provision of this contract or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected hereby, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
29. **Rights and Remedies Not Waived:** In no event shall the making by the City of any payment to the offeror, or the waiver by the City of any provision under this contract including any obligation of the offeror, constitute or be construed as a waiver by the City of any other provision, obligation, breach of covenant, or any default which may exist under this contract on the part of the offeror, and the making of any such payment by the City while any such breach or default exists shall not impair or prejudice any rights or remedies available to the City.
30. **Independent Contractor:** The offeror and any employees, agents, or other persons or entities acting on behalf of the contractor shall act in an independent capacity and not as officers, employees, or agents of the City.
31. **Entire Agreement:** This contract and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. This contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.

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The performance of this contract, you are requested to individually report the total dollars for each business classification. Failure to report the dollars in the categories below may result in the application of stronger requirements being placed on bidders to assure that SBE, MBE and WBE firms receive benefits from City contracts.

Complete the following information and return the form with your package.

- 1) If you are a SBE, MBE or WBE, please check one of the following boxes:

SBE

MBE

WBE

- 2) In the spaces below, report the anticipated dollars that you intend to subcontract to each business type if a contract is awarded to your firm. (If you do not intend to sub-contract any work to others, even if you are a S/M/WBE, put zeros in the spaces below).

Total **SBE** Dollars to be Sub-contracted \$_____

Total **MBE** Dollars to be Sub-contracted \$_____

Total **WBE** Dollars to be Sub-contracted \$_____

- 3) If you are not a SBE, MBE, or WBE and you do not plan to utilize such firms in this contract, please state your reasons:

ANTI-COLLUSION CERTIFICATION

The offeror certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same product and that this offer is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. The offeror understands collusive bidding is a violation of Federal law and that any false statement hereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages. The offeror also understands that failure to sign this statement will make the offer non-responsive and unqualified for award.

Signed: _____ Date: _____

Name of Company: _____

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EXCEPTIONS:

Note: Offeror must sign the appropriate statement below, as applicable:

() Offeror understands and agrees to all terms, conditions, requirements, and specifications stated herein.
Firm: _____

Signature: _____

() Offeror takes exception to terms, conditions, requirements, or specifications stated herein (Offeror must itemize all exceptions below, and return with this Informal Solicitation submittal):

Firm: _____

Signature: _____

Offeror should note that any exceptions taken from the stated terms and or specifications may be cause for their submittal to be deemed "Non-responsive", risking the rejection of the submittal.

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GENERAL:

The City of Newport News is interested in receiving proposals from qualified offerors to license space from the City in an existing concession and restroom facility within Huntington Park, 5500 W. Mercury Boulevard, Newport News, VA. The concession stand operator will sell hot and cold food, beverages and other sundry items (bait, tackle, sunscreen, etc.). The facility is located at Huntington Park beach, which is available for launching boats, swimming, fishing, picnicking and other recreational activities. Much of the equipment associated with operating a concession operation is installed at the facility.

Interested parties are encouraged to make proposals which will enhance the scope of the present operation and maximize the revenue generating potential of Huntington Park.

The facility is currently closed for the winter season. For purposes of submitting a proposal, access to the building interior has not been scheduled. Exterior access is available, however please note that comments by City staff other than Purchasing shall not be considered binding on any contract resulting from this solicitation.

REQUIRED SERVICES:

The Licensee shall perform all work as an independent proprietor licensing property from the city and shall provide a stock of goods for resale. The Licensee shall also be responsible for the upkeep of the premises to include daily clean-up of the beach and area in the immediate vicinity of the concession. [Immediate vicinity shall be defined as all areas within ten (10) yards perimeter around the building], cleaning the restrooms during concession hours, and cleaning the concession areas to City standards. This shall include picking up trash, emptying trash receptacles, cleaning restroom floors and fixtures and restocking paper supplies in the rest rooms.

CITY OBLIGATIONS:

The City shall repair, as needed, the exterior of the building and rest rooms. The Licensee shall allow access at any reasonable time, to examine or to make repairs, additions, or alterations necessary for safety, improvements or preservation of the facility. City staff will open, close and clean restroom facilities during non-operational hours of the concession. All paper supplies for the restrooms will be furnished by the city.

HOURS OF OPERATION:

The minimum hours of operation shall be 11:00 a.m. until 6:00 p.m., seven (7) days a week, from Memorial Day through Labor Day, and on the weekends (Saturday and Sunday) between May 1 and Memorial Day and between Labor Day and September 30. Additional hours may be added at the discretion of Licensee. The City's Director of Parks, Recreation and Tourism may approve Licensee's advance request to reduce the hours of operation on a day-by-day basis for good cause shown by Licensee.

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ALCOHOLIC BEVERAGES:

The serving of alcoholic beverages is prohibited. Alcoholic beverages may not be sold for on or off premises consumption.

TERM OF AGREEMENT:

The initial term of this License Agreement shall be for the period commencing approximately May 15, 2012 and terminating on March 31, 2013 unless sooner terminated as provided herein. At the termination of the initial term of this License Agreement, Licensee may, at the sole option of the City's purchasing department, renew this License Agreement for no more than three (3) additional one (1) year terms. In no event shall this License Agreement extend beyond January 1, 2016.

A sample format for the License Agreement is included in this document.

TERMINATION:

The City reserves the right to terminate the License Agreement upon thirty (30) days written notice in the event of default on the part of the Licensee. Furthermore, the City may cancel the License Agreement without cause, upon ninety (90) days written notice prior to the anniversary date of the Agreement. The City reserves all other rights and remedies allowed under the law.

LICENSES:

The Licensee shall obtain all required licenses and permits.

INVENTORIES:

The Licensee shall have exclusive right to operate the facility during the term of the License Agreement and any renewals thereof. The City will not permit other concession stands within the park boundaries. Exception is the Crab Shack restaurant, JRB Fishing Pier, private catering at picnics and events.

RECORD KEEPING:

Licensee shall make available access to all sales records of the Licensee in order to protect the City's interest in any revenue sharing offer. Records shall be maintained for the entire period of the License Agreement including any extensions. Complete copies shall be provided to the City for audit at the end of each season and at the termination of the License Agreement. These copies of the records shall become property of the city.

SECURITY DEPOSITS:

Upon award, the Licensee shall provide a security deposit of \$500.00 payable to the City. The amount shall be held by the City to guarantee performance by the Licensee of all terms and conditions of the License Agreement until termination of the License Agreement and all renewals thereof, including a period for completion and satisfaction of the final audit.

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NON PERFORMANCE:

The City reserves the right to terminate the License Agreement upon thirty (30) days written notice in the event of default on the part of the Licensee. Furthermore, the City may cancel the License Agreement without cause, upon ninety (90) days written notice prior to the anniversary date of the License Agreement. The City reserves all other rights and remedies allowed under the law.

ASSIGNMENTS:

The Licensee shall not assign the operation of the concession stand. No business shall be conducted outside the designated area unless prior written approval has been granted by the Director of Parks, Recreation and Tourism and then only within the boundaries of Huntington Park.

SUBMITTALS

Submit one (1) original (conspicuously marked "ORIGINAL", and two (2) copies of your proposal. Proposals shall be typed and bound in a single volume. Information shall consist of no more than 10 pages of text. Any pages of the original Solicitation document will not count towards the 10 pages. The following information documents shall be included in the proposal package to be considered responsive to the Informal Solicitation. Offeror shall complete all "blanks", sign and return the entire Informal Solicitation and shall provide responses to each item listed below:

1. Suggested Rental Rates and Arrangement(s) – Licensee agrees to pay the City a minimum monthly rent and/or a percentage of gross sales.
2. Suggested Sales Inventory/Services – This should include both the type of inventory which is recommended and the quantities that the Licensee expects to stock at this site. The Licensee should provide a sample menu and sample pricing estimates.
3. Resume of Key Personnel – Licensee should include all management personnel, their experience, their training and the schedule each would be expected to work.
4. Experience of Firm – Licensee should show related experience of owner or key personnel.
5. Financial Statements - Licensee should show evidence of financial stability.

All proposals shall be addressed and delivered by the date and time specified to:

Wanda Farmer, Senior Buyer
City of Newport News Purchasing Department
2400 Washington Avenue (4th Floor)
Newport News, VA 23607-4301

From the time the proposal is first advertised to the time a contract is signed, all offerors or contents of any proposal must be kept confidential. All proposals submitted under this Informal Solicitation (Including all documents, schedules, reports, plans and other attachments) shall become the property of the City of Newport News and will not be returned (See *Trade Secrets/Proprietary Information*, Page 18).

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EVALUATION OF PROPOSALS:

Evaluation of the firms responding shall be based upon the following criteria which are listed in the order of importance:

- ✓ Suggested Rental Rates and Arrangements
- ✓ Proposed Inventory/Services
- ✓ Resumes of Key Personnel
- ✓ Experience
- ✓ Financial Statements

AWARD

Award shall be made to the responsible offerror whose proposal is determined to be the most advantageous to the City taking into consideration the evaluation factors set forth in the "Informal Solicitation". The award of a contract shall be the sole discretion of the City. The award shall be based on the evaluation of all information as the City may request. The City reserves the right to accept or reject any or all proposals in whole or in part and to waive any informalities in the Informal Solicitation. Further, the City reserves the right to enter into a License Agreement deemed to be in its best interest.

QUESTIONS

Questions regarding this Solicitation should be directed to the Department of Purchasing, Wanda Farmer, Senior Buyer by email (wfarmer@nngov.com) or facsimile (757) 926-8038, and copy Vickie Gwynn, Assistant Buyer (vgwynn@nngov.com) ***no later than 2:00 p.m. on June 20, 2012***. All questions must be submitted *in writing*; telephonic inquiries will not be considered.

DIRECT CONTACT

Direct contact with any City employee, including the Department of Parks, Recreation and Tourism without the expressed permission of the Director of Purchasing or his designated representative, on the subject of this proposal, is strictly forbidden. Violation of this paragraph may result in disqualification of your proposal.

REFERENCES

A list of customers within a seventy-five (75) mile radius of the City including the name and phone number of the person most knowledgeable of the services provided:

Please provide a minimum of 3 similar projects successfully completed within the past 5 years.

-1- NAME AND ADDRESS OF CONTRACTING ENTITY, BRIEF OVERVIEW AND DURATION OF PROJECT

PRINCIPAL CLIENT (NAME) AND PHONE NUMBER:

-2- NAME AND ADDRESS OF CONTRACTING ENTITY, BRIEF OVERVIEW AND DURATION OF PROJECT

PRINCIPAL CLIENT (NAME) AND PHONE NUMBER:

-3- NAME AND ADDRESS OF CONTRACTING ENTITY, BRIEF OVERVIEW AND DURATION OF PROJECT

PRINCIPAL CLIENT (NAME) AND PHONE NUMBER:

TRADE SECRETS/PROPRIETARY INFORMATION

Trade Secrets or Proprietary information submitted by an offeror, or Licensee in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror or Licensee must invoke the protections of this section prior to or upon submission of data or other materials to be protected and state the reasons why protection is necessary. *Price quotations in proposals submitted to the City are not “proprietary” or “confidential”.* They are considered public information. Information leading to the decision to award, including prices and other factors, shall be made public (section 2-557.2 of City Code).

Please mark one:

No, the submittal I have turned in does not contain any trade secrets and/or proprietary information.

Yes, the submittal I have turned in does contain trade secrets and/or proprietary information.

If **YES**, please list the *page numbers and the reasons* why the information is considered a trade secret and/or proprietary information. These pages shall be conspicuously labeled “PROPRIETARY INFORMATION” in **red** ink at the top and bottom center of each page. **Do Not Mark the Whole Proposal Proprietary.**

SAMPLE LICENSE AGREEMENT

This **License Agreement**, made this _____ day of _____, 2012, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal Corporation of the Commonwealth of Virginia, “Lessor,” hereinafter called the “City” and _____, hereinafter called “Licensee.”

WITNESSETH: That for and on consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. The City does hereby issue an License Agreement the following described property, to wit:
_____ square feet of operating space inside the Huntington Park, building located at Huntington Park Beach, 5500 West Mercury Boulevard, Newport News, Virginia.
2. The initial term of this Lease shall be for the period commencing approximately **July 1, 2012** and terminating on **March 31, 2013**, unless sooner terminated as provided herein. At the termination of the initial term of this Agreement, Licensee may, at the sole option of the City, renew this Lease for no more than three (3) additional one (1) year terms. In no event shall this lease extend beyond **January 1, 2016**. The Department of Purchasing is authorized to renew this lease based on the following criteria:
 - a) No delinquent rent payments are due.
 - b) The required maintenance of the demised premises is performed.
 - c) The required insurance coverage is kept in place.
 - d) Licensee has performed in accordance with the terms and conditions of the lease, including any performance standards.
3. The rental rate for this Lease and any subsequent extensions of the Lease shall be as follows:
 - a) Licensee shall pay annually to the City for the use and occupancy of the leased premises the sum of _____ payable in equal monthly installments of _____ per

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month for the months of May through September, inclusive, of each year. Rent payments shall be due and payable in monthly installments, in advance, on or before the tenth (10th) day of each month. Failure to pay any installment of rent by the tenth (10th) of each month shall subject Licensee to a late payment charge of ten percent (10%) of the monthly rent. This late charge shall be compounded and added to the outstanding balance after the tenth (10th) day of each following month until the total payment and late charges are paid to the City. Delinquent rent payments, or the failure to make rent payments, of two (2), or more, months shall be grounds for the termination of the lease. A security deposit of **Five Hundred Dollars (\$500)** shall be held by the City to guarantee performance by the Licensee until termination of the lease and all renewals thereof, including a period of completion and satisfaction of the final audit.

- b) If this lease is extended for an additional one-year-term, or any subsequent extension as provided herein, then the annual rent shall increase to an amount equal the **one** percent **(1%)** of the original term lease rate. All extensions of the lease shall be subject to the same terms and conditions for payments as set forth in subsection (a) above pertaining to the payment of the rent for the original term.
- c) In addition to the rent required by subsections (a) and (b) above, Licensee shall pay to the city as additional rent _____ percent (____ %) of Licensee's gross receipts for each of the twelve (12) months of either full or partial operation inclusive of each year during the original term and any renewal term. Such additional rent payments shall be due and payable in monthly installments on or before the fifteenth (15th) day of each following month. Failure to pay any installment of additional rent by the fifteenth (15th) of each month shall subject Licensee to a late payment charge of ten percent (10%) of the monthly additional rent. This late charge shall be compounded and added to the

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outstanding balance after the fifteenth (15th) until the total payment and late charges are paid to the City. Delinquent additional rent payments, or the failure to make additional rent payments, of two (2), or more, months shall be grounds for termination of the Lease.

d) The City shall be provided access to Licensee's sales records in order to verify or determine the additional rent. Records shall be maintained for the entire period of the lease, including any extensions. Complete copies of the sales records shall be provided to the city for audit at the end of each season and at termination of the lease. These records shall become the property of the city.

4. Licensee agrees that this Lease is not transferable or assignable to any third person or entity, specifically including any purchaser of Licensee's business or of a controlling interest in Licensee's business which is operated at the Huntington Park Beach, without the prior written approval of the City.

5. In case of default or breach of any of the covenants and agreements herein contained to be performed by Licensee, the city reserves the right to annul and cancel this Lease and to enter upon the said leased premises or any part thereof, and repossess the same. Prior to the exercise of its option to cancel this lease pursuant to this paragraph, the city agrees to give written notice of such default or breach to the Licensee. In the event the Licensee cures the default or breach within thirty (30) days, no basis for action pursuant to this paragraph will lie. If this Lease is canceled, all unpaid rents, including unpaid additional rents, shall become due and payable immediately upon cancellation.

6. Either party may cancel this lease without cause, with (60) days notice prior to the first day of January of each year. The City reserves all other rights and remedies allowed under law.

7. Licensee shall defend, indemnify and save harmless the City, and its officers, agents and employees, from any and all losses and claims of physical damage to property and bodily injury

Concession Services at Huntington Park

or death to any person or persons, which may arise out of, or be caused by, the use and maintenance of said premises by Licensee or any claim as aforesaid growing out of Licensee's business or businesses referred to herein. In addition, Licensee agrees to obtain and continually keep in force, a general liability insurance policy with a company qualified to do business in the Commonwealth of Virginia and to have the City named, at no cost to the City, as an additional insured thereon. The policy shall at least provide the following coverage:

- a) Bodily injury or death to any person or persons - \$1,000,000.
- b) Physical damage to property - \$500,000.

Evidence of such insurance coverage and a copy of the additional insured endorsement, including renewals thereof, shall be provided to the City and approved by the Newport News City Attorney, or his designee.

8. The licensed premises shall be used only for the following activities and under the following conditions. No other activities or uses are permitted without the prior written consent of the City.
 - a) Licensee shall sell hot and cold food, beverages and other sundry items from an indoor concession stand. The City reserves the right to refuse any and all products or services which the Licensee proposes to sell, or provide that are not keeping with a family oriented facility in a public park. The restriction or prohibition of questionable or distasteful items or services shall be at the sole discretion of the City or his appointed representative.
 - b) Licensee shall provide a stock of goods for resale and shall remove all inventory of food and beverages at the end of each season and at the termination of this Lease.
 - c) The minimum hours of operation shall be 11:00 a.m. until 6:00 p.m., seven (7) days a week, from Memorial Day through Labor Day, and on the weekends (Saturday and Sunday) between May 1 and Memorial Day and between Labor Day and September 30.

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Additional hours may be added at the discretion of Licensee. The City's Director of Parks, Recreation and Tourism may approve Licensee's advance request to reduce to reduce the hours of operation on a day-by-day basis for good cause shown by Licensee.

- d) Licensee shall have the exclusive right to operate the facility at the Huntington Park Beach during the term of this License Agreement and any renewals thereof. No business shall be conducted outside the leased premises without the prior written approval of the City's Director of Parks, Recreation and Tourism.
- e) Licensee shall also be responsible for the upkeep of the premises to include daily clean-up of the beach in the immediate vicinity of the concession stand, cleaning of two rest rooms during concession operation hours and cleaning the concession area. This shall include picking up trash, emptying trash receptacles, cleaning rest room floors and fixtures and restocking paper supplies and hand soap products for the rest rooms will be furnished by the City.
- f) Licensee shall provide adequate trash containers for its customers and shall regularly empty trash containers according to the quality standards.
- g) Licensee shall comply with all laws, rules and regulations of the City, State and Federal government as they pertain to the operation of the concession stand.
- h) The serving of alcoholic beverages is prohibited. Such beverages may not be sold for on or off premises consumption.
- i) All improvements to the building, including installation of large appliances, shall become property of the City at the termination of this Lease without any compensation there for being due from the City to Licensee.

Concession Services at Huntington Park

- j) The City shall repair, as needed, the exterior of the building and the rest rooms. The Licensee shall allow the City access to the premises at any reasonable time, to examine or to make repairs, or alterations to the premises.
- k) City staff will open, close and clean rest room facilities during nonoperational hours of the concession.

9. Licensee covenants and agrees to pay all license, fees and taxes for the conduct of its business on the leased premises, and will not use or employ the said leased premises or any part thereof for any purpose or in any manner which might be construed as a nuisance or contrary to law.

10. Licensee's personal property, necessary for the conduct of its business at Huntington Park Beach, shall be registered or scheduled in the City of Newport News, Virginia, for property tax assessment purposes.

11. City's Park Rangers and employees of the Parks, Recreation, and Tourism Department shall have the right to enter onto the leased premises during reasonable business hours for the purpose of ensuring that Licensee is complying with applicable laws and the terms of this Lease.

12. Licensee shall make provisions for phone service at the leased premises, The City will pay for electricity, water and sewer services associated with the Huntington Park Station building.

13. The failure of the City, at any time, to require performance by Licensee of any provision hereof shall in no way affect the right of the City thereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision or as a waiver of the provision itself.

14. At the end of this Lease, Licensee shall return the property to the City in the same condition as when the property was first conveyed to Licensee, except for ordinary wear and tear incidental to the use of the property.

Concession Services at Huntington Park

15. This License Agreement represents the entire agreement between the City and Licensee and supersedes all prior negotiations, representations or agreements, either written or oral. This lease may be amended only by written instrument signed by both the City and Licensee.

IN WITNESS WEREOF, the City and Licensee have executed this License Agreement as of the day first above written.

LICENSOR: CITY OF NEWPORT NEWS, VIRGINIA

By:_____

Department of Purchasing

ATTEST:

By:_____

City Clerk

LICENSEE:_____

By:_____

APPROVED AS TO FORM:

By:_____

City Attorney

INSURANCE REQUIREMENTS

Insurance: The bidder/offeror shall maintain adequate liability insurance, which shall protect and save harmless the City of Newport News, Virginia, its officials, employees, and volunteers from all suits and actions of every kind and description arising from injury or damage to persons and property in the prosecution of said work or in failure to properly safeguard same, and from all claims arising under the workers' compensation laws.

The Commonwealth of Virginia requires construction Licensees and Licensees to obtain and maintain workers' compensation insurance while performing work on behalf of the City. Evidence of coverage needs to be provided prior to commencement of work by bidders/offerors.

Prior to commencement of services, the bidder/offeror shall furnish the City with the following separate endorsements, and a certificate of insurance showing all required insurance coverage with companies licensed to do business in Virginia. A separate endorsement to the general liability policy shall be provided in which the City is designated as an "Additional Insured." In addition, a separate endorsement to the workers' compensation policy shall be provided in which the City is designated as an "Alternate Employer."

Sample forms CG 20 10 (designating the City as Additional Insured for liability claims) and WC 00 03 01(2005 ed.) (designating the City as an Alternate Employer for workers' compensation claims, pursuant to Section 65.2-302(A) of the Code of Virginia, 1950, as amended); and the Commonwealth's form for Worker's Compensation Certificate of Coverage are attached.

Certain providers of professional services (including but not limited to architects and engineers) shall also furnish a certificate of insurance showing professional liability insurance with companies licensed to do business in Virginia, prior to the commencement of services.

The bidder/offeror shall have ten (10) days from notice of intent to award to provide insurance documentation. Failure to provide the Certificate and forms within this period may be cause for the City to award a contract to the next responsive bidder/offeror, and hold the original Licensee liable for excess costs. All insurers providing the above coverage shall give the City thirty (30) days advance written notice in the event of any non-renewal or cancellation of such insurance (10 days notice for non-payment of premium). As confirmation thereof, the City must be furnished either a policy endorsement specifically providing for such notice (copies of three sample endorsements attached), or a copy of the policy language that gives the City such assurance, or a statement on the insurance agent's, broker's, or insurer's letterhead that the City shall be given such notice.

<u>TYPE INSURANCE COVERAGE</u>	<u>LIMITS</u>
1. Workers' Compensation Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	Statutory \$100,000.00 each accident \$100,000.00 each employee \$500,000.00 policy limit
2. Commercial General Liability	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
3. Automobile Liability (Owned, hired, License Agreement, and borrowed Vehicles)	\$100,000.00 each occurrence
4. Professional Liability (if applicable)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
5. Environmental/Pollution Legal Insurance	\$2,000,000.00 each occurrence \$2,000,000.00 aggregate

This insurance coverage supersedes any conflicting insurance coverage and limits in the Department of Engineering 1983 Standard Specifications.

POLICY NUMBER: _____ COMMERCIAL GENERAL LIABILITY
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LICENSEES OR LICENSEES (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organizations:

City of Newport News
Purchasing Department
2400 Washington Ave
Newport News, VA 23607

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement).

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for this insured.

CG 20 10 10 93

Concession Services at Huntington Park

Endorsement

Alternate Employer

WC 00 03 01

Policy Amendment

If the following information is not complete, refer to the appropriate information page attached to the policy.

INSURED	POLICY NO.	SEQ. NO.

PRODUCER	EFFECTIVE DATE

SCHEDULE

Alternate Employer

Address

State of Special
or Temporary Employment

**City of Newport News
c/o Purchasing Department
2400 Washington Avenue**

Newport News, Virginia

Virginia

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured.

Under Part One (Workers Compensation Insurance), we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the person entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employers duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premiums will be charged for your employees while in the course of special or temporary employment by the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

WORKER'S COMPENSATION

CERTIFICATE OF COVERAGE

Section 11-46.3, Code of Virginia, requires Licensees to obtain and maintain workers' compensation insurance while performing work on behalf of the Commonwealth of Virginia departments, institutions or agencies. This same requirement applies for work being performed on behalf of local governments.

Evidence of coverage needs to be provided prior to commencement of work.

This form is to be returned to the organization contracting the work.

The undersigned organization stipulates that it either:

A. Has worker's compensation insurance Yes

Insurance Company: _____

Policy Expiration Date: _____

B. Is self-insured for workers' compensation Yes

Title of Construction Contract: _____

Contract Number: _____

Signed By: _____

Title: _____

Firm Name: _____

Address: _____

NOTICE ENDORSEMENT

Policy Number:

IL 60 05 VA 01 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MATERIAL COVERAGE CHANGE OR CANCELLATION
NOTIFICATION – CERTIFIED MAIL**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND LICENSEE PROTECTIVE LIABILITY PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

SCHEDULE

Name of additional Insured Person(s) Or Organization(s) and mailing address:	Location And Description Of Project
City of Newport News c/o Purchasing Department 2400 Washington Avenue Newport News, VA 23607	

We will not cancel or reduce coverage under this policy without providing at least 30 days notice of our intent to do so. Notice of such cancellation or reduction of coverage will be provided by certified mail, return receipt requested, to the Additional insured in the schedule above.

Concession Services at Huntington Park

NOTICE ENDORSEMENT

Policy Number:

WC 99 00 10 01 10A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MATERIAL COVERAGE CHANGE OR CANCELLATION
NOTIFICATION – CERTIFIED MAIL**

This endorsement modifies insurance provided under the following:
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

SCHEDULE

Name of additional Insured Person(s) Or Organization(s) and mailing address:	Location And Description Of Project
City of Newport News c/o Purchasing Department 2400 Washington Avenue Newport News, VA 23607	

We will not cancel or reduce coverage under this policy without providing at least 30 days notice of our intent to do so. Notice of such cancellation or reduction of coverage will be provided by certified mail, return receipt requested, to the Additional insured in the schedule above.

NOTICE ENDORSEMENT

Policy Number:

COMMERCIAL AUTO

CA 02 03 12 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**VIRGINIA CANCELLATION AND NONRENEWAL
NOTICE TO DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM

GARAGE COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

TRUCKERS COVERAGE FORM

SCHEDULE

1. Name: City of Newport News c/o Purchasing Department
2. Address: 2400 Washington Avenue Newport News, VA 23607
3. Number of days advance notice: 30
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Concession Services at Huntington Park



City of Newport News

2400 Washington Avenue • Newport News, Virginia 23607

office of the City Attorney

Phone (757) 926-8416 • Fax (757) 926-8549

City Attorney
STUART E. KATZ

Chief Deputy City Attorney
COLLINS L. OWENS, JR

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NICOLE M. MONTALTO

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RICHARD D. CAPLAN
JOSEPH M. DURANT
LYNN A. SUGG

Assistant City Attorneys
PAMELA P. BATES
SHANNON M. MANNING
ROBERT E. PEALO

March 14, 2011

To Whom It May Concern:

Re: Notice of cancellation requirements for insurance coverage

Dear Sir or Madam:

In the wake of recent revisions to the Acord form, I have been receiving documentation from insurers that indicates that, since a statement regarding notice of cancellation is no longer included on the form, that the company cannot give any such assurance in the future. Many of the companies have indicated that they intend to strictly rely on the disclaimers in the form.

Please note that where the City requires that it be added as an additional insured, specific endorsements are required. A simple notation of these endorsements on the Acord form will not be accepted. Also, any additional insured endorsement will be rejected if it includes an exclusion of completed operations coverage.

Further the City will not accept proof of insurance that fails to provide for thirty (30) days notice of policy cancellation [ten (10) days for non-payment]. This assurance may be provided by one of the following three methods:

1. A note on company letterhead that the City will receive such notice. This may be on the letterhead of either the agent, the broker, or the insurance company, and not include a blanket disclaimer of liability upon failure to give such notice.
2. A separate endorsement specifying the notice as required, or
3. A copy of a policy provision regarding such notice.

In addition, this same assurance must be given when the City requires an Alternate Employer endorsement. No edition of an alternate employer endorsement that includes a provision that the statutory employer will receive no notice of cancellation will be accepted. A form including this provision appears to be contrary to Virginia Code § 65.2-804(B), which requires thirty (30) days notice of cancellation [ten (10) days for non-payment]. Virginia Code § 65.2-800 requires that an employer be insured, and paragraph C of that section equates an employer and a statutory employer for the purposes of that duty.

Concession Services at Huntington Park

Page Two
Insurance forms required
March 14, 2011

In summary, the City will accept no proof of insurance that does not include in one of the forms indicated above an assurance that the City will receive thirty (30) days notice of cancellation [ten (10) days for non-payment]. Failure to provide the information could result in rejection of your insured's bid or offer to provide services to the City, or a rejection of the insured's request for City permits that require the City to be named as an additional insured.

Very Truly Yours,

/s/ Joseph M. DuRant

Joseph M. DuRant
Deputy City Attorney

Ed. March 14, 2011

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