

JUN 26 2023

Pease Development Authority



PEASE
INTERNATIONAL
PORTS AND HARBORS

555 Market Street, Suite 1 Portsmouth, NH 03801

**PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS**

CONCESSION AGREEMENT

This concession agreement ("the Agreement"), effective July 01, 2023, is between the Pease Development Authority, Division of Ports and Harbors (PDA-DPH) 55 International Dr., Portsmouth, NH 03801 and **Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)** ("Concessionaire"), with an address of **91 Gulf Road Derry, NH 03038**. This Agreement is entered into with the Concessionaire in conjunction with two Rights-of-Entry (ROE) issued to the Concessionaire regarding the placement of two buildings (#s 5 and 6) on State property from which the Concessionaire shall operate. The terms of said ROEs, including but not limited to the meaning of the "Premises," are incorporated herein by reference. Termination of either of the ROEs shall result in an automatic termination of this Agreement.

1. RIGHT TO SELL

PDA-DPH grants to the Concessionaire the right and privilege to sell prepared food and beverage items normally associated with a Food Concession, generally including, but not limited to, the following items: Hamburgers, hot dogs, sandwiches, lobster rolls, prepared shellfish, salads, mac and cheese, chowders/soups, packaged snacks, sodas, juices, coffee tea and breakfast items, at Rye Harbor Marine Facility, Rye, NH (the "Marine Facility") in accordance with the terms contained herein including but not limited to Paragraph 13. In addition, the Concessionaire may sell live lobsters and shellfish as part of its food concession in accordance with the terms and conditions contained herein, including but limited to paragraph 13. Concessionaire must comply with all state and local laws governing the sale and distribution of prepared food items and live lobsters / shellfish. Concessionaire must obtain and maintain all necessary food and beverage permits. No alcoholic beverages shall be opened or consumed on state owned property in accordance with administrative rule Pda 603.11(b).

2. AGREEMENT TERM

Period 1 – July 1, 2023 – October 31, 2023

Period 2 – May 1, 2024 – October 31, 2024

3. CONCESSION FEE

As consideration for the privilege of operating the Food Concession from and on PDA-DPH property hereunder, the Concessionaire agrees to pay ten percent (10%) of its gross revenues, computed monthly, excluding only sales tax and gratuities, by the 15th of each month of operation and made payable to the Pease Development Authority, Division of Ports and Harbors and forwarded to PDA, 55 International Drive, Portsmouth, NH 03801 (the "Concession Fee"). By way of example, but not limitation, the concession fee for June shall be paid by July 15th. The minimum monthly Concession Fee due and payable to PDA-DPH shall be \$1,000.00, regardless of the number of days of operation in a given month or the applicable gross revenue for that month. If, during any of the months of May, September, and October, the Concessionaire does not operate on fifteen (15) days or more in a particular month (i.e. not open for business on at least fifteen (15) days that month), it may request a fifty percent (50%) reduction in the minimum

Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION

2

monthly Concession Fee of \$1,000.00, if that is the Concession Fee owed for that month, which PDA-DPH may grant, in writing, at its discretion. If Concessionaire does not operate during the entirety of any given calendar month of the Term (i.e. does not open for business on any day in a given month), it may request, in writing, a waiver of the minimum Concession Fee for that calendar month, which PDA-DPH may waive, in writing, at its discretion.

4. ACCOUNTING METHODS

All sales, including but not limited to cash, credit, debit, and electronic transactions, shall be recorded through a Point-of-Sale system or cash register to be provided by the Concessionaire. A daily sales report (in duplicate) shall be prepared by the Concessionaire listing the beginning and ending control readings for each system or register. Any corrections or errors in recording sales during the day shall be clearly explained on the sales report. Concessionaire shall provide PDA-DPH with a statement of Gross Receipts for each weekly period, ending each Sunday along with payment on the 15th of each month. Concessionaire's sales and business records shall contain sufficient information and detail in the event that PDA-DPH chooses to audit the gross sales data submitted by the Concessionaire. PDA-DPH reserves the right to require receipt of audited statements from the Concessionaire at the end of each fiscal year. PDA-DPH shall retain the right to review the Concessionaire's sales and business records in connection with its operations at the Marine Facility at such times as PDA-DPH deems necessary. The Concessionaire shall maintain its records in an orderly and accessible format. The Concessionaire shall make such records available for inspection, examination, and audit by the PDA-DPH and its agents. Records shall be maintained by the Concessionaire during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement.

5. CANCELLATION BY CONCESSIONAIRE

This Agreement shall be subject to termination by the Concessionaire regardless of grounds therefore by giving PDA-DPH thirty (30) days written notice. The provisions of paragraph 20 shall survive termination.

6. CANCELLATION BY PDA-DPH

This Agreement shall be subject to termination by PDA-DPH in the event of the failure of the Concessionaire to perform, keep and observe any of the conditions of the contract and the failure of the Concessionaire to correct the default or breach within a time specified by PDA-DPH. This contract may be terminated immediately by PDA-DPH in the event the Concessionaire fails to provide proof of insurance coverage or engages in any activity which is deemed, in the sole discretion of PDA-DPH, to compromise public safety and health. PDA-DPH may terminate this ROE for any other reason upon ninety (90) days advanced written notice of termination. The provisions of paragraph 20 shall survive termination.

7. RIGHT TO DECIDE QUESTIONS

The decision of PDA-DPH relative to the proper performance of the terms of the Agreement shall be final and conclusive on the parties hereto, and shall be final and conclusive as to each matter not covered in the Agreement and specifications that may arise in connection with the privileges granted, and also as to each matter which is not clearly covered herein.

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8. ASSIGNMENT OR SUBCONTRACT

This Agreement may not be assigned or transferred without the express written approval of the PDA-DPH. Consistent therewith, sale of the building that is subject to the ROE to another party does not guarantee that party will receive an Agreement to operate a concession at the Premises.

9. RIGHT TO INSPECT

The Concessionaire shall allow PDA-DPH, or such person as may be designated by PDA-DPH, access to the Premises at all reasonable hours for the purpose of examining and inspecting said Premises, or for any other purpose as may be required by this Agreement. Except in the event of an emergency, PDA-DPH agrees that such access will not unduly affect the operations of the Concessionaire's business.

10. SANITATION

The Concessionaire shall be responsible for routine cleaning of all areas of the Premises where food or merchandise is stored, prepared, or sold and the equipment used in support of these activities. Concessionaire shall at all times be responsible for grounds pickup on the Premises and other areas of the Marine Facility where its customers consume food and beverage items purchased from the Concessionaire.

Cleaning within this proposal shall mean the picking up of all waste materials and the routine cleaning of walls, floors, windows, fixtures, draperies, blinds, tables, chairs, and garbage containers. The term "routine cleaning" shall imply all of the provisions associated with good housekeeping, including supplying materials and supplies that may be necessary to perform this service.

Concessionaire shall be responsible for maintaining high standards of sanitation in accordance with the rules and regulations promulgated by the NH Department of Health and Human Services, Bureau of Food Protection, PDA-DPH or any other governmental entity having jurisdiction over such matters. Any licenses or permits required to sell food and beverage items shall be prominently displayed on the Premises in plain view of the public. The Concessionaire shall maintain at least two (2) lined and covered durable garbage containers, each with a capacity of at least fifty (50) gallons, on the Premises, and shall be responsible for regularly picking up garbage and rubbish and depositing same at a location designated by PDA-DPH. Waste shall not be left in Concessionaire's garbage containers overnight.

11. ANIMALS

In accordance with NH RSA 466:44, the Concessionaire agrees that they will not allow any animal into the building identified in the ROE, with the exception of service animals as contained within the provisions of NH RSA 167-D.

12. EQUIPMENT

All equipment deemed necessary by the Concessionaire shall be obtained at its own expense. The Concessionaire shall be responsible for all necessary electrical, plumbing and ventilating installations in accordance with existing local, state, and federal codes. Sales and service layout areas proposed by the Concessionaire are subject to the approval of PDA-DPH.

13. ITEMS TO BE SOLD

Concessionaire shall provide PDA-DPH a written list of all menu items at least 30 days prior to commencement of each Period under the Agreement Term for PDA-DPH approval. In all instances, food and beverage items sold must be of good quality and meet the approval of PDA-DPH. Questions on quality will be referred to PDA-DPH whose judgment in all cases shall be final.

14. RECYCLABLE AND BIODEGRADABLE SERVING MATERIALS

The Concessionaire shall utilize serving supplies produced from recyclable or biodegradable materials.

15. PRICES

The rates and prices charged for all items sold shall be subject to the review and approval of PDA-DPH, which approval shall not be unreasonably withheld. In approving prices, primary consideration shall be given to the prices charged for similar merchandise furnished or sold outside the areas administered by the particular park area under similar conditions, with due regard being given to such other factors as may be deemed significant. Prices shall be legibly posted on the Premises by the Concessionaire in plain view of the public.

16. PERSONNEL

Concessionaire shall at all times maintain a staff of employees necessary for efficient operation of the business.

All employees of the Concessionaires shall be clad in neat and clean attire satisfactory to PDA-DPH. The Concessionaire shall employ only competent and satisfactory persons and whenever PDA-DPH shall notify the Concessionaire in writing that any person employed on the Premises, in its opinion, is incompetent, disorderly, unsanitary, or otherwise unsatisfactory, such conditions shall be corrected or such person shall be discharged and shall not again be employed without consent of the PDA-DPH. The Concessionaire shall have a competent and responsible supervisor in attendance at all times. No one other than employees of the Concessionaire will be allowed behind counters in the service and sales areas on the Premises without the approval of both the Concessionaire and PDA-DPH.

Employment of any elected official of the State of New Hampshire by the Concessionaire is prohibited during the period this Agreement is in force.

17. HOURS OF OPERATION

Dates and hours of operation will be set as a matter of written Agreement between the Concessionaire and PDA-DPH. As service to the public is the underlying objective, the decision of PDA-DPH will be final.

18. STATUTES, ORDINANCES AND REGULATIONS

In connection with the performance of this Agreement, the Concessionaire agrees to comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, including those of PDA-DPH, which shall impose any obligation or duty on the Concessionaire and to procure all necessary licenses and permits required in connection with the operations described herein.

19. FINAL AUTHORITY

In order to guarantee the high quality of services and merchandise provided to the public any questions relating to policies, prices, quality, cleanliness, and services must be settled to the satisfaction of PDA-DPH. In making its decisions, PDA-DPH will be aided by members of its staff and such other officials of the State of New Hampshire as may be deemed appropriate and necessary.

20. PERFORMANCE & INDEMNIFICATION

The Concessionaire agrees to perform and faithfully observe and comply with the conditions, regulations and provisions prescribed herein and further to defend (with counsel acceptable to the State of New Hampshire and PDA-DPH) and indemnify the State of New Hampshire and PDA-DPH against and from any and all claims, judgments, damages, penalties, fines assessments, costs and expenses, liabilities, and losses (including without limitation, sums paid in settlement of claims, attorney's fees, consultant's fees and experts fees) resulting or arising during the term of this Agreement:

- A. From any condition of the Premises including any building structure or improvements thereon for which Concessionaire has taken possession of hereunder;
- B. From any breach or default of any obligation on the part of Concessionaire to be performed pursuant to the terms of this Agreement or from any act or omission of Concessionaire or any of its agents, contractors, servants, employees, licensees or invitees; or
- C. From any accident, injury, death, loss or damage whatsoever caused, to any person or property occurring during the term of this Agreement, on or about the Marine Facility areas (including but not limited to piers, docks, gangways, building, and parking areas) arising out of or incidental to the use, management or control of the area(s) and activities which are the subject of this Agreement.

21. RELATION TO STATE

In the performance of this Agreement, the Concessionaire is in all respects, an independent contractor and is neither an agent nor an employee of the State of New Hampshire or PDA-DPH and that the State of New Hampshire and PDA-DPH shall, at no time, be legally responsible for any negligence or willful acts on the part of said Concessionaire or any of its officers, employees, agents or members resulting in either personal or property damage to any individual, firm or corporation. Neither the Concessionaire nor any of its officers, employees, agents or members shall have authority to bind the State of New Hampshire and PDA-DPH nor are they entitled to any of the benefits, workers' compensation or emoluments provided by the State of New Hampshire and PDA-DPH to its employees.

The Concessionaire agrees to hold the State of New Hampshire and PDA-DPH harmless against liability for loss or damage to the Concessionaire's equipment or supplies or equipment rented or leased by the Concessionaire from others from any cause whatsoever, while they are located on state property either during the operating period or while in storage.

22. INSURANCE

On or before the effective date of this Agreement, Concessionaire and any agent, contractor, or vendor of Concessionaire shall provide PDA-DPH with proof of required insurance coverage as outlined in Exhibit A.

23. SOVEREIGN IMMUNITY

No provisions of this Agreement shall be deemed to constitute or effect a waiver of this sovereign immunity of the State of New Hampshire and no provision of this Agreement shall be deemed to constitute or effect a waiver of the sovereign immunity of PDA-DPH as a body politic and corporate of the State of New Hampshire. The sovereign immunity of the State of New Hampshire is reserved to the State of New Hampshire to the fullest extent allowed under law and the sovereign immunity of PDA-DPH is reserved to it to the fullest extent allowed under law subject, however, to contractual claims arising under this contract to the extent such are permitted by New Hampshire NH RSA Ch.491:8, as the same may be amended.

24. MEETINGS

Meetings shall be held when deemed necessary by PDA-DPH at a place and time to be agreed upon mutually by PDA-DPH and the Concessionaire for the purpose of discussing current operational problems, presentation of official requests for changes in schedules, process, portions, products or policies and other pertinent business which may arise.

The PDA-DPH will be represented at these meetings by the Director of the DPH or his/her authorized representative(s) and such subordinate supervisory personnel fully acquainted with field operations as he/she shall designate.

The Concessionaire shall be represented, at a minimum, by one (1) officer of the company or a corporation, a partner (if a partnership) or the owner.

25. AMENDMENT

This Agreement may be amended only by an instrument in writing and signed by both parties hereto.

26. CONSTRUCTION OF CONTRACT AND TERMS

This contract shall be construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

27. CONDITIONAL OBLIGATION OF THE STATE

Notwithstanding, anything to the contrary contained in this Agreement, it is understood and agreed to by the parties hereto that all obligations of the State of New Hampshire and/or PDA-DPH hereunder, including, without limitation, the continuance of payments or any other obligation hereunder are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder, are contingent upon the availability and continued appropriation of funds by the General Court of New Hampshire and made available for any payments or any other obligation hereunder in excess of such available appropriated funds. In the event of a reduction or termination of said appropriated funds, the State of New Hampshire and/or PDA-DPH shall have the right to terminate this Agreement by giving the Concessionaire fifteen (15) days advance written notice of such termination and upon the expiration of said fifteen (15) days, this Agreement shall terminate.

Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION

7

28. WAIVER OF BREACH

No waiver by PDA-DPH of its right to enforce any provision hereof after default on the part of the Concessionaire shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Concessionaire.

29. ENTIRE AGREEMENT

This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties and supersedes all prior Agreements and understandings relating thereto.

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Rye Harbor Lobster Pound, LLC (dba Rye Harbor Lobster Pound)
CONCESSION
8

PEASE DEVELOPMENT AUTHORITY
DIVISION OF PORTS AND HARBORS

Date: 4/29/2023

Melanie Walsh
Witness

Paul E. Brean
Paul E. Brean, Executive Director, PDA

Rye Harbor Lobster Pound LLC
(dba Rye Harbor Lobster Pound)

Date: 6/24/23

Erika Cheever
Witness Signature

Sylvia Cheever
Witness Printed Name

Nathan Hanscom
Authorized Signature

Nathan Hanscom Manager
Printed Name/Title

EXHIBIT A

MINIMUM INSURANCE REQUIREMENTS
CONCESSION OPERATORS
OPERATING ON THE PROPERTY OF THE STATE OF NH,
PEASE DEVELOPMENT AUTHORITY-DIVISION OF PORTS AND HARBORS (PDA-DPH)

All Concession Operators with an associated building and Right of Entry are required to provide a Certificate of Insurance ("COI") to the Pease Development Authority-Division of Ports and Harbors ("PDA-DPH") before the commencement of business on PDA-DPH property and to maintain such insurance while conducting such business. ROE holder shall ensure renewal certificates of insurance are on file with PDA-DPH prior to policy expiration dates. Failure to comply with the requirements set forth herein may cause a delay in opening for business on schedule or result in the immediate termination of this contract.

The following are the minimum requirements for insurance coverage:

1. **Commercial General Liability:** shall provide for a liability limit on account of each accident resulting in bodily injury, death, or property damage to a limit of not less than \$1,000,000.00 per occurrence.
2. **Automobile Liability:** One (1) million dollars automobile liability coverage.
3. **Workers Compensation:** Coverage equal to minimum statutory levels as required by New Hampshire State law.
4. **Additional Insureds:** State of New Hampshire, Pease Development Authority, and Division of Ports and Harbors, must be named as additional insureds under all liability coverages
5. **Certificate Holder:**
Pease Development Authority, Division of Ports of Harbors
555 Market St.
Portsmouth, NH 03801
6. **Notice of Cancellation:** A 30 day notice of cancellation (with the exception of a 10 day notice for non-payment of premium) must be provided.
7. **Waiver of Subrogation:** With the exception of workers compensation coverage, a statement that a waiver of subrogation is included with respect to applicable coverage
8. **Primary Insurance:** A provision that any liability coverage required to be carried shall be primary and noncontributing with respect to any insurance carried by the PDA.
9. **Renewed COI's to be forwarded to additional insured prior to previous COI expiration date.**

For questions, please contact the Pease Development Authority Legal Department at (603) 433-6348.

1380

RYE HARBOR LOBSTER POUND LLC
1875 OCEAN BLVD UNIT 3
RYE, NH 03870



54-153/114

DATE 6-24-23

PAY
TO THE
ORDER OF

P.O.A. - D.P.H.

8200

Two Thousand Dollars

DOLLARS



*** Citizens ***

FOR R.O. #5 + #6

[Signature]

⑈001380⑈ ⑆011401533⑆ 3316089987⑈

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