

TOWN OF SCARBOROUGH



INVITATION TO BID NUMBER 162014

RETURN THIS BID TO:

Attention: Purchasing/ITB #162014
PO Box 360
259 US Route One
Scarborough, ME 04070-0360

THIS IS NOT AN ORDER

DATE ITB ISSUED: 2/11/14

ITB TITLE: FOOD AND BEVERAGE CONCESSION SERVICES AT HURD PARK

SEALED BIDS MUST BE SUBMITTED TO THE PURCHASING AGENT, TOWN CLERK'S OFFICE, OR DELIVERED TO THE OPENING LOCATION AND MUST BE TIME AND DATE STAMPED BY THE PURCHASING AGENT OR HIS DESIGNEE PRIOR TO THE BID OPENING ON MARCH 6TH, 2014 AT 11:00 AM AT WHICH TIME THEY WILL BE PUBLICLY OPENED.

OPENING LOCATION: TOWN OF SCARBOROUGH, TOWN HALL, LOCATED AT 259 US ROUTE ONE SCARBOROUGH, ME 04074 IN THE TOWN MANAGER'S CONFERENCE ROOM, MAIN LEVEL.

F.O.B. POINT IF MAILED: FINAL DESTINATION

EMAILED AND/OR FAXED BIDS WILL NOT BE ACCEPTED.

LATE BIDS WILL NOT BE ACCEPTED.

ALL QUESTIONS REGARDING THIS ITB SHOULD BE DIRECTED IN WRITING TO KIM MASSA, PURCHASING ADMINISTRATIVE ASSISTANT, AT (207) 730 4088 (FAX) OR KMASSA@CI.SCARBOROUGH.ME.US.

THE PREFERRED METHOD IS VIA EMAIL.

IMPORTANT NOTICE: IF YOU RECEIVED THIS SOLICITATION FROM THE TOWN'S WEB SITE, YOU MUST REGISTER WITH THE PURCHASING OFFICE TO RECEIVE SUBSEQUENT AMENDMENTS.

A handwritten signature in cursive script that reads "Tom Hall".

TOM HALL
TOWN MANAGER

CONTRACT INTENT: This Invitation to Bid (ITB) is intended to result in the **LEASING OF A TOWN OF SCARBOROUGH OWNED BUILDING AT HURD PARK IN SCARBOROUGH, MAINE FOR OPERATION AS A CONCESSION STAND** offering food items and sundries to users of Hurd Park under license from the Town.

NOTICE OF INTENT TO AWARD: After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. It lists the name of each company or person that offered a bid and the price they bid. It may also provide notice of the Town's intent to award a contract(s) to the bidder(s) indicated. A copy of the Bid Tabulation will be mailed to each company or person who responded to the ITB. Bidders identified for award are not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the Purchasing Agent. A company or person who proceeds prior to receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the Purchasing Agent does so without a contract and at their own risk.

PAYMENT FOR TOWN PURCHASES: Payment for agreements for the undisputed purchase of goods or services provided to the Town, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later.

FEDERAL EXCISE TAX: The Town is exempt from all Federal Excise Tax.

STATE SALES TAX: The Town is exempt from all State of Maine Sales Tax.

PERFORMANCE AND PAYMENT BONDS: Performance and Payment bonds are **NOT** required for this contract, but the Tenant shall provide a refundable \$1000 security deposit to be held during the duration of the contract period.

INDEMNIFICATION: The contractor shall indemnify, hold harmless, and defend the Town from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the Town for a claim of, or liability for, the independent negligence of the Town. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the Town, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Town", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Town's selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor's work

INSURANCE: Contractor shall purchase and maintain workers' compensation insurance, general public liability and property damage insurance, including vehicle coverage, all with limits and terms satisfactory to Owner:

Worker's Compensation:

Worker's Compensation insurance shall be in strict accordance with the requirements of the most current laws of the State.

1. State: Statutory
2. Applicable Federal

- (e.g. Longshoreman's): Statutory
- 3. Employer's Liability: \$1,000,000

Builders Risk Insurance:

Contractor shall purchase and maintain builders risk insurance, which shall cover Contractor and Owner as loss payees to the extent of their interests.

Comprehensive General Liability Insurance.

Bodily Injury and Property Damage Liability:

	Each	
	Occurrence	Aggregate
Premises – Operations	\$1,000,000	\$3,000,000
Completed Operations/Products	\$1,000,000	\$3,000,000
Contractual Liability	\$1,000,000	\$3,000,000

Property Damage liability insurance will provide explosion, collapse and underground coverages where applicable.

Personal Injury with employment exclusion deleted:

\$3,000,000 Annual Aggregate

Comprehensive Automobile Liability:

- 1. Bodily Injury:

\$1,000,000 Each Person, \$3,000,000 Annual Aggregate
 \$1,000,000 Each Occurrence, \$3,000,000 Annual Aggregate

- 2. Property Damage:

\$1,000,000 Each Occurrence, \$3,000,000 Annual Aggregate

Owner shall be named as an additional insured on the comprehensive general and automobile liability policies. Contractor shall provide Owner copies of all the actual insurance policies for review and approval before the commencement of work.

A bidder's failure to provide this supplemental information, within the time set by the Town, will cause the Town to consider the offer non-responsive and reject the bid.

ANNOTATED LITERATURE: Bidders must annotate their product literature to identify for the Town the location of the supporting information regarding each product specification set out in this ITB.

SUPPORTING INFORMATION: The Town strongly desires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made by the Purchasing Agent that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer,

the Town reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the Town and may include the requirement that a bidder will provide a sample product(s) so that the Town can make a first-hand examination and determination.

FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER: Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

ALTERATIONS: The awarded bidder must obtain the written approval from the Purchasing Agent prior to making any alterations to the agreed upon specifications (post-award) contained in this ITB or subsequent Contract. The Town will not pay for alterations that are not approved in advance and in writing by the Town.

CONTINUING OBLIGATION OF CONTRACTOR: Regardless of the terms and conditions of any third-party financing agreement, the contractor agrees that none of its responsibilities under this contract are transferable and that the contractor alone will continue to be solely responsible until the expiration date of the contract. Such responsibilities include, but are not limited to, the provision of equipment, training, warranty service, maintenance, parts and the provision of consumable supplies. By signature on this ITB the bidder acknowledges this requirement and indicates unconditional acceptance of this continuing obligation clause.

WORKMANSHIP & MATERIALS: All work and/or fabrication must be performed in a thorough and workmanlike manner and in accordance with current industry practices. The contractor will be held responsible for the quality of the finished item and/or service provided.

INVOICES: Invoices must be sent directly to the Town address shown on the individual Purchase Order, Contract Award or Delivery Order. Payment schedule will be determined with the winning bidder. Questions concerning payment must be addressed to the Town of Scarborough's Accounts Payable Department.

CONTRACT PERIOD: From May 1 through September 30 for the 2014 and 2015 seasons. Optional bids for up to 5 years will be considered.

RENEWAL OPTION: Prior to Six (6) months before the conclusion of the Two (2) year contract; Community Services will negotiate with the Contractor for an additional Three (3) year contract that may be accepted by both parties.

CONTRACT PRICES: Contract prices are to remain firm through the duration the contract(s) and the extension or renewal of the contract(s).

CONTRACT CANCELLATION: The Town reserves the right to cancel the contract at its convenience by giving written notice to the contractor. The Town is liable only for payment in accordance with the payment provisions of this contract for services or supplies provided before the effective date of termination.

SITE VISITS: Prospective bidders are responsible for visiting the work site so that they can see the conditions under which the work described in this ITB will be performed. Prospective bidders can contact Bruce Gullifer, at (207)730-4151 to arrange for a visit.

The Town of Scarborough reserves the right to accept or reject any and all bids when it is deemed in the best interest of the Town.

ADDITIONAL INFORMATION:

ALL inquiries or requests concerning this Invitation to Bid shall be made in writing and must be received before the close of business on February 28, 2014 to the Attention of Kim Massa, Purchasing Administrative Assistant by fax (207 730-4088) or email to kmassa@ci.scarborough.me.us. The Town is not responsible for oral interpretations given by any Town employee, representative or other.

THIS PAGE MUST BE INCLUDED WITH ANY ALTERNATE PROPOSAL(S) NOTED CLEARLY

SCOPE OF SERVICES

1. The tenant will operate a seasonal takeout concession stand serving the general public from at least the Friday preceding Memorial Day through the Friday following Labor Day for the 2014 and 2015 seasons. Renewal option for three (3) additional seasons will be considered.
2. During the operating seasons identified in section 1, the Tenant will operate the concession stand daily, Monday through Sunday, opening for business no later than 11:00am and closing no earlier than 6:00pm daily.
3. In return for the use of the Town's facility and equipment, for each of the contract years the Tenant shall make four (4) payments to the Town following this schedule:
 - May 31st
 - June 30th
 - July 31st
 - August 31st
4. The Tenant shall be entitled to retain all proceeds and profits obtained from operating the concession stand, provided the Tenant has made the payments to the Town required by number 3 above, which payments the Tenant is obligated to make whether or not the operation of the concession stand as an independent contractor and shall not be an employee or agent of the Town of Scarborough for any purposes.
5. Within 30 days after the end of each operating season, the Tenant shall provide a detailed record of revenues and expenses for the season to the Town's Department of Community Services.
6. No later than March 30th, 2014, the Tenant chosen shall provide a \$1,000 security deposit, in order to secure satisfactory operation of the concession stand and to secure the Town against any damages to Town's premises or equipment. Upon expiration or termination of the written agreement, the Town shall return the \$1,000 security deposit to the Tenant only if the Town, after inspection, determines that the premises and equipment are in the same condition as at the commencement of the agreement, with reasonable wear and tear considered. Otherwise, the Town shall retain the \$1,000. The Tenant shall not be entitled to any interest on the security deposit.
7. For the entirety of the contract period, the relationship between the Town (the "Landlord") and the successful bidder (the "Tenant") will be contained in a Lease Agreement substantially in the form of Sample Lease Agreement – Appendix A.
8. Prior to the operating season, the Tenant shall conduct an inventory of the numbers, types, and condition of equipment located on the premises and shall obtain agreement from the Town's Department of Community Services as to the accuracy of such inventory before the Tenant commences operation of the concession stand.
9. Prior to commencing operation of the concession stand, the Tenant shall undergo such training regarding the safe and proper use of the concession stand equipment as is deemed appropriate by the Town's Department of Community Services.
10. Prior to commencing operation of the concession stand each operating season, the Tenant shall obtain all required permits from local, state and federal authorities, and the Tenant shall at all times operate the concession stand in compliance with all local, state, and federal laws and regulations.
11. At the conclusion of each season, the Tenant shall thoroughly clean all equipment and remove all supplies which are not the property of the Town of Scarborough from the premises and refill all propane gas containers used in the operation of the concession

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- stand.
12. The Tenant shall not use or permit the use of the premises for any purpose other than the concession stand as provided in this Invitation to Bid (ITB), without prior written consent of the Town of Scarborough.
 13. The Tenant shall at all times keep the premises, fixtures, equipment and apparatus in good working order, condition and repair, damage by casualty expected. If the Tenant refuses or neglects to maintain or repair the premises, fixtures, equipment or apparatus to the reasonable satisfaction of the Town as soon as reasonably possible after written request from the Town, the Town may make such repairs and the Tenant shall reimburse the Town for the costs of making such repairs upon presentation of bills therefor.
 14. At expiration of the agreement, the Tenant shall surrender the premises in the same condition as the premises were in upon commencement of the agreement, reasonable wear and tear expected, and damage by casualty expected. The Tenant's obligation to observe and perform this covenant shall survive the expiration or termination of the agreement and is not limited by the Town's retention of the security deposit as provided in paragraph 6 of this specification.
 15. The Tenant shall keep in full force and effect a policy of insurance as outlined on pages 2, 3, and 4.
 16. The Tenant shall maintain fire and extended coverage insurance insuring the Town and the Tenant in amounts sufficient to cover any and all losses that might be incurred through the damage or destruction of the premises and any personal property kept on the premises.
 17. The Tenant agrees to Indemnify and save the Town harmless as outlined on page 2 under the heading "**INDEMNIFICATION.**"
 18. Nothing in the agreement shall constitute or be deemed a waiver of any immunities available to the Town pursuant to the Maine Tort Claims Act or other applicable law.
 19. As of the date of the agreement, the Tenant will be asked to list the names and addresses of the persons who will be employed in the operation of the concession stand. The tenant shall agree that they will update the list throughout the term of the agreement, providing such updates to the Town's Community Services Department within 48 hours of any change.
 20. The Town's Department of Community Services will provide proper training to the Tenant and, as needed, to all employees, concerning the safe use of concession stand equipment.
 21. The Town's Department of Community Services will issue a key to the lead concession stand operator identified by the Tenant for use during the entirety of each operating season.
 22. The Town's Department of Community Services will make timely repairs to or replacements of any faulty or damaged equipment in the concession stand if the fault or damage is not the result of negligent acts or omissions by the Tenant or the Tenant's agents or employees.
 23. The Tenant is responsible for the removal of daily trash generated from concession stand off premises.
 24. Outside vending machines are prohibited, unless installed and approved by Town Code Enforcement and Community Services Staff.
 25. Tenant is responsible for sweeping out and restocking restrooms upon leaving the premises during operating season. The Town will supply the Tenant with appropriate cleaning supplies and inventory needs.

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BID SCHEDULE

ITEM 1. In return for the use of the Town’s premises and equipment, the Tenant proposes to make payments to the Town as follows:

2014:
May 31: _____
June 30: _____
July 31: _____
August 31: _____
TOTAL: _____

ITEM 2. In return for the use of the Town’s premises and equipment, the Tenant proposes to make payments to the Town as follows:

2015:
May 31: _____
June 30: _____
July 31: _____
August 31: _____
TOTAL: _____

>>> NOTE: BID MUST BEAR THE HANDWRITTEN SIGNATURE OF A DULY AUTHORIZED MEMBER OR EMPLOYEE OF THE ORGANIZATION MAKING THE BID.

SIGNED: _____ **DATE:** _____

COMPANY: _____
Corporation, Firm, or Company

ADDRESS: _____
Street/PO Box

City State ZIP

TELEPHONE:(_____) _____ **FAX:** (_____) _____

EMAIL: _____

APPENDIX A
SAMPLE LEASE AGREEMENT

LEASE AGREEMENT

This LEASE is made this [DATE] by and between **THE TOWN OF SCARBOROUGH, MAINE** (“Landlord”) and **[INSERT NAME]** of [Insert address] (“Tenant”).

WITNESSETH:

1. PREMISES LEASED. Landlord does hereby lease to Tenant and Tenant does hereby lease from Landlord a take-out concession stand at Hurd Park in Scarborough, Maine (the “Premises”).

2. PURPOSE. Unless Landlord agrees otherwise in writing, the Premises shall be used only for the provision of food and beverage concessions to the public. Tenant shall provide concession services as deemed necessary to meet the lease requirements as described herein, and shall provide all labor and goods.

3. TERM. Provided Tenant meets its obligations under this Lease, the term of this Lease shall be from May 1 to September 30 for the 2014 and 2015 seasons.

4. RENT. Tenant covenants and agrees to pay a rent according to the following schedule:

2014 Season

- May 31, 2014 \$
- June 30, 2014 \$
- July 31, 2014 \$
- August 31, 2014 \$

2015 Season

- May 31, 2015 \$
- June 30, 2015 \$
- July 31, 2015 \$
- August 31, 2015 \$

5. SECURITY DEPOSIT. No later than March 30th, 2014, Tenant shall provide a \$1,000 security deposit, in order to secure satisfactory operation of the concession stand and to secure Landlord against any damages to the Premises. Upon expiration or termination of this

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Lease, Landlord shall return the \$1,000 security deposit to Tenant only if Landlord, after inspection, determines that the Premises are in the same condition as at the commencement of the Lease term, with reasonable wear and tear considered. Otherwise, Landlord shall retain the \$1,000. Tenant shall not be entitled to any interest on the security deposit

6. ITEMS FOR SALE. Items for sale can include, but are not limited to, food, candy, ice cream, snow cones, hamburgers, hot dogs and non-alcoholic beverages. Prices shall be submitted to the Community Services Director for review and approval before the commencement of Tenant's services under this Lease.

7. QUALITY OF SERVICES.

- a. The intent of this Lease is to provide optimum food and beverage concessions to the public, both in maximum hours and days of operation, as well as quality of goods and services provided. Tenant shall have the concession stand operational during the Lease term specified in Section 3 above and during the hours specified in subsection 8(b) below.
- b. Business hours shall be a minimum period of 11:00 a.m. to 6:00 p.m. from the Friday preceding Memorial Day to the Friday following Labor Day for each of the contract years.
- c. Tenant shall provide a clean, attractive and safe area; both inside and out of the facility, for the operation of the concession stand.
- d. Tenant shall have adequate staff to maintain full operation during business hours. Staff shall dress appropriately, preferably with identification indicating the organization they represent. A list of names and addresses of staff shall be provided to the Town of Scarborough Community Services Department and shall be updated within 48 hours of a staff change.
- e. Tenant shall be responsible for all inventories and shall ensure the quality of merchandise being sold.
- f. Tenant shall provide and maintain, in a conspicuous place, a menu sign, which shall list the prices of all items offered for sale, the hours of operation, and an indication to refer any comments to the Town of Scarborough Community Services Department. Design and location of the sign shall be subject to the approval of the Community Services Director or the Director's designee.
- g. Tenant shall clean the serving area and the surrounding areas directly related to the operation of the concession stand. The Tenant shall be responsible for litter related to operation of the concession stand.

8. TRAINING AND MAINTENANCE BY THE TOWN OF SCARBOROUGH DEPARTMENT OF COMMUNITY SERVICES. The Town of Scarborough Department of Community Services will issue a key to the lead concession stand operator identified by Tenant

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for use during the entirety of the Lease term. The Department of Community Services will provide proper training to Tenant and, as needed, to all employees, concerning the safe use of concession stand equipment. The Department of Community Services will make timely repairs to or replacements of any faulty or damaged equipment in the concession stand if the fault or damage is not the result of negligent acts or omissions by Tenant or Tenant's agents or employees.

9. **EQUIPMENT AND MAINTENANCE BY TENANT.** Tenant shall be responsible for all equipment stored on the site and for the maintenance of any and all equipment directly related to the operation of the concession stand.

- a. Prior to the operating season, Tenant shall conduct an inventory of the numbers, types, and condition of equipment located on the premises and shall obtain agreement from the Town of Scarborough Department of Community Services as to the accuracy of such inventory before Tenant commences operation of the concession stand.
- b. Prior to commencing operation of the concession stand, Tenant shall undergo such training regarding the safe and proper use of the concession stand equipment as is deemed appropriate by the Town of Scarborough Department of Community Services.
- c. At the conclusion of each season, Tenant shall thoroughly clean all equipment and remove all supplies which are not the property of Landlord from the premises and refill all propane gas containers used in the operation of the concession stand.
- d. Tenant shall at all times keep the Premises and all fixtures, equipment and apparatus in good working order, condition and repair, damage by casualty excepted. If Tenant refuses or neglects to maintain or repair the Premises or any fixtures, equipment or apparatus to the reasonable satisfaction of Landlord as soon as reasonably possible after written request from Landlord, Landlord may make such repairs and Tenant shall reimburse Landlord for the costs of making such repairs upon presentation of bills therefor.

10. **SURRENDER OF PREMISES.** At expiration of the Lease, Tenant shall surrender the Premises in the same condition as the Premises were upon commencement of the Lease, reasonable wear and tear excepted, and damage by casualty excepted. Tenant's obligation to observe and perform this covenant shall survive the expiration or termination of the Lease and is not limited by Landlord's retention of the security deposit as provided in paragraph 5 of this Lease.

11. **INSURANCE.**

- a. At all times during the term of this Lease, Tenant shall purchase and keep in full force and effect, at its own expense, comprehensive general liability insurance, including vehicle coverage, insuring at least the substantive areas of liability and monetary limits of the Maine Tort Claims Act. Tenant shall also maintain casualty insurance for the seasonal concession stand, equipment

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and Tenant's personal property. Tenant shall also maintain workers compensation insurance.

- b. Landlord shall be named as an additional insured on the comprehensive general liability insurance and as a loss payee on the casualty policy.
- c. The insurance policies must include language indicating that the Town of Scarborough Purchasing Agent's office shall be notified 30 days in advance of amendments to or cancellations of the policies.
- d. Before the earlier of commencement of the term or occupancy of the Premises, Tenant shall provide Landlord copies of the actual insurance policies for review and approval.

12. **DEFAULT.** In the event Landlord or Tenant defaults under this Lease, the other party shall have the available legal and equitable remedies.

13. **INDEMNIFICATION.** Tenant shall defend, indemnify and hold harmless Landlord, its officers, officials, employees and agents, in their public and individual capacities, from and against any and all claims, damages, demands, actions and causes of action for injury to persons or damage to property in or about the Premises or arising in any way from Tenant's occupancy or use of the Premises including, without limit, damage to Tenant's personal property. Tenant hereby acknowledges that Landlord shall have no responsibility for damage to Tenant's personal property. Landlord does not waive any of the immunities provided by the Maine Tort Claims Act or any other applicable law.

14. **ALTERATIONS.** Tenant shall make no alteration to the Premises without the express written consent of Landlord.

15. **COMPLIANCE WITH LAWS.** Prior to operation of the concession stand, Tenant shall obtain the required permits. Tenant shall comply with the Town of Scarborough Food, Food Handlers and Food Establishments Ordinance and all other federal, state and local laws, ordinances, rules and regulations.

16. **HAZARDOUS MATERIALS.** Tenant shall have no hazardous materials or wastes on the Premises without the express written consent of Landlord.

17. **WASTE AND RECYCLING.** Day-to-Day waste and recycling generated by the concession stand shall be the responsibility of the Tenant and should be properly disposed of in a timely manner on a daily basis. Use of Town owned Waste and Recycling containers is permitted.

18. **ASSIGNMENT.** This Lease may not be assigned by the Tenant.

19. **RENEWAL OPTION** – Prior to six (6) months before the expiration of the initial two (2) year contract term, the Contractor may request an option to renew the contract for an additional three (3) year period. Terms and conditions of the renewal period to be negotiated by both parties.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

WITNESS

TOWN OF SCARBOROUGH, MAINE

By: _____
Print name: Thomas J. Hall
Its: Town Manager, Duly Authorized

WITNESS

[INSERT NAME]

By: _____
Print name: [Insert Name]
Its: Owner/Operator, Duly Authorized