



STATE OF NEW HAMPSHIRE  
 DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT  
**DIVISION of PARKS and RECREATION**  
 172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856  
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April 15, 2013

Her Excellency, Governor Margaret Wood Hassan  
 and the Honorable Executive Council  
 State House  
 Concord, New Hampshire 03301

**REQUESTED ACTION**

1. Authorize the Department of Resources and Economic Development, Division of Parks and Recreation to enter into a contract with the caterer shown below to provide non-exclusive catering services at the Oceanfront Pavilion and South Pavilion Conference Room at Hampton Beach State Park in Hampton, NH upon Governor and Executive Council approval through March 31, 2014.

Company Name	City / State
Bill Foster's Down East Clambake, Inc.	York, ME 03909

2. Further authorize the Department to accept monthly commission payments, at a rate of 20%, 15% or 10% based on the origin of reservations and dates booked to be paid by the caterer in accordance with the terms of the contract.

**EXPLANATION**

In early January 2013 the Division of Parks and Recreation advertised a Request for Proposals (RFP) for non-exclusive Catering Services at the new Oceanfront Pavilion and South Pavilion Conference Room at Hampton Beach State Park. A copy of the RFP was posted on the Department of Administrative Services' and the Division's websites. In addition, a notice was sent to the Hampton Area Chamber of Commerce, and an email notification sent to all Chamber businesses in the food and beverage industry. Eight (8) establishments attended a mandatory pre-proposal meeting and site tour held on January 11 and 15, 2013, of which seven (7) proposals were received. A three (3) person selection committee comprised of members from DRED reviewed and scored the proposals and found them all to be satisfactory. A copy of the scoring summary and the committee members is attached for your information and convenience. Five (5) of the catering contracts were already approved by the Governor and Executive Council on April 17, 2013, Item #69. This contract with Bill Foster's is expected to be the final caterer selected to perform these services.

The multi-catering contracts will provide a wide variety of catering options at a reasonable cost to individuals and organizations that rent the facilities, to include: food service, liquor and beverage

service, linens, dishes, glasses, silverware, utensils, and all cook and service ware.

The Attorney General's office has reviewed and approved this contract as to form, substance and execution.

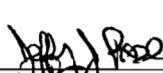
Respectfully submitted,

Concurred,



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Philip A. Bryce  
Director



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Jeffrey J. Rose  
Commissioner

JJR/PAB/lml

**RFP - Catering Services Proposal Scoring Sheet: January 29, 2013**

**Business Name: *Lupoli Companies***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	25	30	40	95
Jude David Event & Facility Mgr.	30	33	30	93
Marianne Chaisson Events Coordinator	25	30	40	95
<b>Grand Total:</b>				283

**Business Name: *Bill Foster's Downeast Clambake***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	30	30	20	80
Jude David Event & Facility Mgr.	30	30	35	95
Marianne Chaisson Events Coordinator	30	30	25	85
<b>Grand Total:</b>				260

**Business Name: *Dunbar Hotel, LLC d/b/a Ashworth by the Sea***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	30	30	20	80
Jude David Event & Facility Mgr.	30	25	30	85
Marianne Chaisson Events Coordinator	30	30	25	85
<b>Grand Total:</b>				250

**RFP - Catering Services Proposal Scoring Sheet: January 29, 2013**

**Business Name: *Flavor Concepts, LLC***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	30	20	30	80
Jude David Event & Facility Mgr.	25	25	35	85
Marianne Chaisson Events Coordinator	30	15	25	70
<b>Grand Total:</b>				235

**Business Name: *The Old Salt Eating and Drinking Place and Apartments, Inc.***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	15	25	30	70
Jude David Event & Facility Mgr.	25	25	30	80
Marianne Chaisson Events Coordinator	20	20	25	65
<b>Grand Total:</b>				215

**Business Name: *The Meat House***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	20	25	20	65
Jude David Event & Facility Mgr.	20	20	20	60
Marianne Chaisson Events Coordinator	20	20	20	60
<b>Grand Total:</b>				185

**RFP - Catering Services Proposal Scoring Sheet: January 29, 2013**

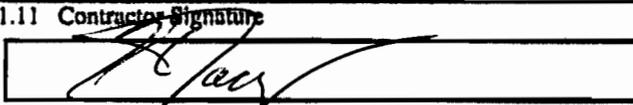
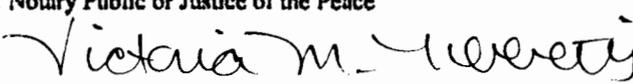
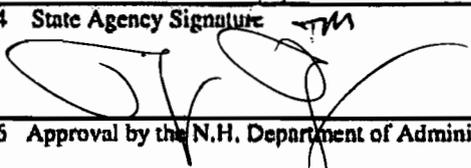
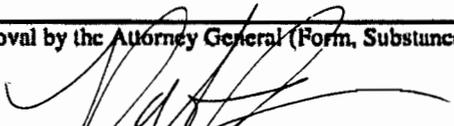
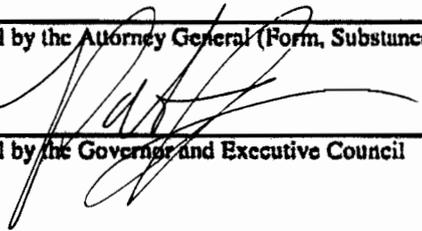
**Business Name: *DLP Restaurant Corp (DLP Chill)***

	<b>Operation Plan Max Points (30)</b>	<b>Past Exp/Qualifications Max Points (30)</b>	<b>Financial Commitment Max Points (40)</b>	<b>TOTAL</b>
Gail Wolek Deputy Director	20	30	10	60
Jude David Event & Facility Mgr.	25	25	20	70
Marianne Chaisson Events Coordinator	20	20	20	60
<b>Grand Total:</b>				<b>190</b>

Subject: Catering Services

**AGREEMENT**  
The State of New Hampshire and the Contractor hereby mutually agree as follows:  
**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Resources and Economic Development		1.2 State Agency Address 172 Pembroke Rd, PO Box 1856, Concord, NH 03302-1856	
1.3 Contractor Name Bill Foster's Downeast Clambake Inc		1.4 Contractor Address 5 Axholme Rd York, ME 03909	
1.5 Contractor Phone Number 800 552 0242	1.6 Account Number 37020000-402197 35P03505	1.7 Completion Date March 31, 2014	1.8 Price Limitation 10%-20% Commission Rate
1.9 Contracting Officer for State Agency Jude David, Events and Facilities Manager		1.10 State Agency Telephone Number (603)227-8715	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Kevin Tracy - Owner	
1.13 Acknowledgement: State of <u>Maine</u> , County of <u>York</u> On <u>2/20/13</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]		VICTORIA M. TIBBETTS NOTARY STATE OF MAINE COMMISSION EXPIRES 8-19-16	
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Philip A. Bryce, Acting Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>n/a</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>3/20/13</u>			
1.18 Approval by the Governor and Executive Council By:  On:			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**  
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials                       
Date 2/20/13

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials                       
Date 2/20/13

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement 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. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. 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 hereto.

**State of New Hampshire  
Department of Resources and Economic Development  
Division of Parks and Recreation**

**CATERING SERVICES AT THE SEASHELL COMPLEX  
HAMPTON BEACH STATE PARK  
HAMPTON, NH**

**EXHIBIT A**

**Scope of Services:** The Contractors, hereinafter called “Caterers,” shall be responsible for providing catering services along with a cash bar at the Oceanfront Pavilion and South Pavilion Conference Room located at the Hampton Beach Seashell Complex on a *non-exclusive* basis, for the purpose of enhancing the guest experience, cultivating a mutually beneficial partnership with and providing a source of revenue to the Department of Resources and Economic Development (“State”). Catering services, including food and liquor services, may be required at the following four locations: the Oceanfront Pavilion, South Pavilion Conference Room, the Oceanfront Terrace, and the sand/beach area abutting the Pavilion.

The Caterers shall provide a wide variety of options for catering services at a reasonable charge to individuals and organizations that rent the facilities, and to the State for State functions, collectively the “Customer.” If the Caterer is unable to provide the necessary services and supplies, the Caterer shall work with the Customer to arrange for such services and supplies so as to provide a high-quality, customer focused experience as befits a premier State Park facility. Catering services and related supplies shall include, but not be limited to:

1. Food Service
2. Cash Bar
3. Linens
4. Dishes
5. Glasses
6. Silverware
7. Utensils
8. All cook and service ware
9. Assist guest with any other rental needs
10. Post-event cleanup. All areas shall be clean and fully restored by the end of the event. No caterer-owned equipment shall be left onsite. Restoration shall be deemed acceptable to the State upon inspection by the event coordinator. Caterer shall reimburse the State for any and all costs to clean and restore the facility and equipment to its original condition.

The State and the Caterers shall meet quarterly to assess reasonableness of charges associated with the above services.

The Caterers shall keep on file at all times a current State of New Hampshire Off-Premises Liquor License or shall outsource the liquor services to a contracted caterer that holds a current State of New Hampshire Off-Premises Liquor License. Additionally, Caterers shall keep on file at all times a current State of New Hampshire Food Service License issued by the State Division of Health and Human Services.

Contact information for all Caterers will be provided to all Customers whose reservation originated with by State or its agents. The Caterers shall service all State-initiated events, whose selection shall be based upon solicited quotes, and at the State’s discretion. In all cases, Caterers shall enter into separate written agreement with each Customer seeking catering services. Such agreements shall document, at a minimum but not limited to, the expectation of services, number of expected attendees, and method of payment.

In addition, the Caterers shall generate additional revenues by actively proposing to the State, and promoting and producing "function" business at the Seashell Complex throughout the year. All function events are subject to final approval by the State and shall be in accordance with the State Park guidelines.

During events, appropriate service dress shall be required for all staff. Managers shall be easily identifiable and chefs manning serving stations shall appear in classic chef's uniform and hat. Deviations of standard apparel for events shall be approved by the State.

The on-site kitchen shall primarily serve as the staging area for State-held functions. Parking for catering support vehicles shall be designated to the parking apron adjacent to the pavilion service entrance during events and for re-supply. Two parking spaces shall be temporarily assigned to the Caterers for their use during the event.

The State may provide wireless internet connection for which the Caterers may use to process credit card activity, however, the Caterers shall be solely responsible and liable for operating and maintaining secure credit card transactions, processing and recordkeeping, in compliance with the Payment Card Industry Data Security Standard (PCI DSS) promulgated by the PCI Security Standards Council. The State shall not be liable to the Caterers or any other person for any loss, damage, or inconvenience occasioned by any cause whatsoever to said Caterers, including, but not limited to, any loss of income for any function, program or contract that may not take place for whatever reason due to an emergency or unforeseeable situation, or due to interruptions or loss of utilities or wireless internet connection.

The contract term shall begin upon Governor and Executive Council approval through March 31, 2014.

In addition to the provisions in Exhibit C, the State reserves the right, at its discretion, to terminate its contract with any Caterer due to the Caterer's substantive lack of performance including but not limited to lack of providing customer-contracted services for scheduled events, or for any accounting discrepancies or general lack of cooperation in providing the required financial information to the State. The reason(s) for cancellation shall be stated in a written notice to the Caterer. This contract shall remain in full force with all remaining Caterers in compliance with the terms and conditions herein.

## **EXHIBIT B**

The revenue sharing shall consist of the following:

1. Function bookings originated by the State or its agents:
  - a. Caterers shall pay 20% commission rate to the State; and
2. Function bookings during "un-booked" days proposed by the Caterer or its representatives and approved by the State:
  - a. Caterers shall pay 15% commission rate to the State on Fridays, Saturdays and Sundays in-season (May 1-October 31) and on holidays throughout the entire year; and
  - b. Caterers shall pay 10% commission rate to the State on Mondays, Tuesdays, Wednesdays and Thursdays year-round during non-holidays; and
  - c. Caterers shall pay 10% commission rate to the State in the off-season (November 1- April 30) during non-holidays.

Commission rates shall be applied to the "gross sales" of the Caterer's operations occurring at the Seashell Complex, adjacent patios or adjacent beach areas, excluding taxes, employee meals, and service charges. Commission rates shall apply to all food, liquor, and merchandise offered for sale by the Caterers. Commissions shall be subject to "returns and allowances."

**Sales Records**

Caterers shall provide accountable records to track gross sales. Generally, sales from food are based on a predetermined per participant fee. An itemized invoice along with an agreement between the Caterer and Customer shall be submitted to the State's Event Management department 60 days prior to the event and shall include items such as food, rentals and service charges.

For sales of beverages, the Caterer shall adopt a system that is able to track sales. Whether the agreement with the Customer is a "cash bar" (transactional fee collected at the time of the sale) or an "open bar" arrangement, the State reserves the right to review and make recommendations for the method of tracking sales in advance of the event. State personnel shall be present to observe sales during the event or review the sales after the event.

The Caterers shall submit an event report within 7 days following the event which reconciles food sales and beverage sales which will be used to compute the commission due the State. The State reserves the right to create a standardized report for summarization purposes and reserves the right to request the Customer agreement from the Caterer.

**Payment to State**

Commissions owed to the State shall be paid monthly within fifteen (15) days after the close of the previous month. Checks shall be made payable to "Treasurer, State of New Hampshire," attached to duplicate copies of sales reports for the previous month, and delivered to the Events and Facilities Manager.

Caterers shall at all times provide receipts to the State in an efficient, economic, and timely manner in accordance with generally accepted business practices.

**Accounting Records**

Caterers shall maintain such records that meet generally accepted accounting principles that are reviewed by a Certified Public Accountant. The records shall be kept in a manner that clearly identifies revenue generated from events associated with this contract. The records including bank transactions shall be made available upon demand to the State for purposes of verifying and auditing revenue.

**Penalties**

The State reserves the right to disqualify a Caterer from future events if there are any accounting discrepancies or general lack of cooperation in providing financial information to the State.

**Accounting Reports**

Caterers shall submit within 90 days of the Caterer's fiscal year to the State the following accounting reports:

- a. Detailed Revenue Report from operations at Hampton Beach State Park facilities.
- b. Review by CPA indicating that revenue from on-site operations is fairly stated in relation to the Caterer's overall financial statements.

**EXHIBIT C – SPECIAL PROVISIONS****Additional Liability Insurance**

In accordance with the Form P-37, Item 14.1.2, fire and extended coverage insurance shall be in the amount of \$2,000,000.

In addition to the Form P-37, Item 14 Insurance, the Caterers shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, Liquor Liability Insurance that covers its operations and services.

**Amendment**

Form P-37, Item 18 Amendment is repealed and replaced with the following: This Agreement may be modified only by written amendment, which has been executed and approved by the appropriate parties from the State and Caterers.

**Termination**

Form P-37, Item 10 Termination is repealed and replaced with the following: The State may terminate its Agreement with a single Caterer without cause by giving the Caterer sixty (60) days written notice before the effective termination date.

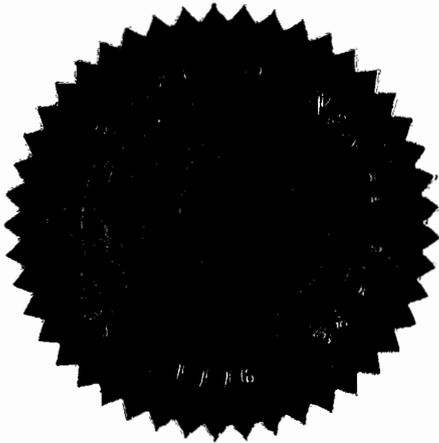
If for any reason, the Caterer fails to deliver contracted services, the Caterer shall be terminated and assessed a "failure to perform" fee for State run events of \$5,000. If the Caterer foresees an event beyond its reasonable and normal control, and properly notifies the State of such event in writing; the Caterer shall be allowed to exceed a production, revision or delivery date with no "failure to perform" fee assessed.

Agreements with third parties in which the Caterer fails to deliver contracted services shall be the financial responsibility and liability of the contracted Caterer. In addition, the Caterer shall be terminated and assessed a "failure to perform" fee for any lost revenue to the State and shall reimburse the State for any legal action taken against the State by third parties.

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Bill Foster's Down East Clambake, Inc., a(n) Maine corporation, is authorized to transact business in New Hampshire and qualified on April 3, 2013. I further certify that all fees required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 11<sup>th</sup> day of April, A.D. 2013

A handwritten signature in cursive script, reading "William M. Gardner".

William M. Gardner  
Secretary of State

**Bill Foster's Down East Clambake, Inc.**

**Certificate of Vote/Authority**

**March 12, 2013**

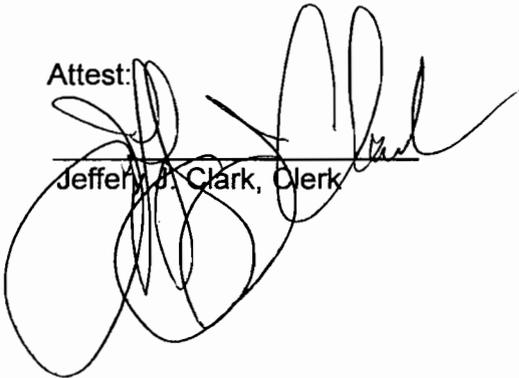
I, Jeffery J. Clark, hereby certify that I am the duly elected Clerk of Bill Foster's Down East Clambake, Inc. (This corporation also operates under the Assumed name of: Foster's Downeast Clambake.)

I hereby certify that the Board of Directors of the Corporation consented to authorize Kevin Tacy, as President, to sign all documents necessary on behalf of the Corporation. This authorization, which is consented to without the formality of convening a meeting, shall have the same force and effect as if taken at a special meeting of the Directors duly called and constituted pursuant to the Corporation's By-Laws and the laws of the State of Maine.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of March 12, 2013, and that Kevin Tacy is duly elected President respectively of the Corporation.

Date: March 12, 2013

Attest:

  
Jeffery J. Clark, Clerk





# CERTIFICATE OF LIABILITY INSURANCE

SBL  
R001DATE (MM/DD/YYYY)  
03-11-2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> PEOPLES UNITED INS AGENCY INC/PHS 050605 P: (866)467-8730 F: (800)308-5459 301 WOODS PARK DRIVE CLINTON NY 13323	CONTACT NAME: PHONE (A/C, No, Ext): (866)467-8730		FAX (A/C, No): (800)308-5459
	E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC #		
<b>INSURED</b> BILL FOSTER'S DOWNEAST CLAMBAKE INC PO BOX 486 YORK HARBOR ME 03911	INSURER A : Hartford Underwriters Ins Co		
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<input type="checkbox"/>	<input type="checkbox"/>				
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	<input type="checkbox"/>	<input type="checkbox"/>				
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>				EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A <input type="checkbox"/>	04 WEC CI7241	01/23/2013	01/23/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		<input type="checkbox"/>	<input type="checkbox"/>				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Those usual to the Insured's Operations.

## CERTIFICATE HOLDER

NEW HAMPSHIRE STATE PARKS  
 PO BOX 0924  
 HAMPTON, NH 03843

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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## Leanne Lavoie

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**From:** Jude David  
**Sent:** Tuesday, March 12, 2013 8:26 AM  
**To:** Jude David; Leanne Lavoie  
**Subject:** RE: Seacoast Weddings & Events Guide Advertising Opportunities

Just as an FYI neither Fosters nor Meat House is going to hold a liquor license so we do not need liquor liability insurance from them...

Jude David, Events and Facilities Manager  
New Hampshire State Parks  
PO Box 0924  
Hampton, NH 03843-0924  
Voice: 603-227-8715  
Fax: 603-926-6073  
[jude.david@dred.state.nh.us](mailto:jude.david@dred.state.nh.us)  
[www.nhstateparks.org](http://www.nhstateparks.org)

-----Original Message-----

**From:** Jude David  
**Sent:** Tuesday, March 12, 2013 8:20 AM  
**To:** Leanne Lavoie  
**Subject:** FW: Seacoast Weddings & Events Guide Advertising Opportunities

Hi Leanne,

See below response from Bill's Foster's Downeast Clambake and attached WC insurance. Please let me know if anything stands out to you as additional needed or missing in below email and on insurance. Thanks.

Jude David, Events and Facilities Manager  
New Hampshire State Parks  
PO Box 0924  
Hampton, NH 03843-0924  
Voice: 603-227-8715  
Fax: 603-926-6073  
[jude.david@dred.state.nh.us](mailto:jude.david@dred.state.nh.us)  
[www.nhstateparks.org](http://www.nhstateparks.org)

-----Original Message-----

**From:** Kevin Tacy [<mailto:kevin@fostersclambake.com>]  
**Sent:** Monday, March 11, 2013 5:26 PM  
**To:** Jude David  
**Subject:** Re: Seacoast Weddings & Events Guide Advertising Opportunities

Hi Jude

~~\_\_\_\_\_~~

MISSING - I have requested a lawyer from NH to secure a cert of good standing in NH. I assumed that these certs are only available in the state that the company is incorporated in.

1. I will have the clerk of the corporation sign the COV and mail it to you
2. We have requested from our Workers Comp folks to send you the requested information directly
3. You have my permission to change the incorrect spelling of my last name from Tracy to Tacy

Thanks

**Leanne Lavoie**

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**From:** Kevin Tacy <kevin@fostersclambake.com>  
**Sent:** Tuesday, March 12, 2013 10:57 AM  
**To:** Jude David  
**Cc:** Leanne Lavoie  
**Subject:** Re: FW: Seacoast Weddings & Events Guide Advertising Opportunities

To whom it may concern,

You have my permission to remove my name from Form P-37, block 1.13.2 "Name and Title of Notary or Justice of Peace"

Sincerely,  
Kevin Tacy

On Tue, Mar 12, 2013 at 10:13 AM, Jude David <[Jude.David@dred.state.nh.us](mailto:Jude.David@dred.state.nh.us)> wrote:

Hi Kevin,

Please see below and "respond to all" with permission to cross out your name in the box titled "Name and Title of Notary or Justice of the Peace"

Thank you,

Jude David, Events and Facilities Manager

New Hampshire State Parks

PO Box 0924

Hampton, NH 03843-0924

Voice: [603-227-8715](tel:603-227-8715)

Fax: [603-926-6073](tel:603-926-6073)

[jude.david@dred.state.nh.us](mailto:jude.david@dred.state.nh.us)

[www.nhstateparks.org](http://www.nhstateparks.org)

-----Original Message-----

**From:** Leanne Lavoie  
**Sent:** Tuesday, March 12, 2013 9:41 AM

**To:** Jude David  
**Subject:** RE: Seacoast Weddings & Events Guide Advertising Opportunities