

**City of Isle of Palms, South Carolina
Request for Proposals (RFP) 2019-03
Beachfront Franchise**

I. General Information

In compliance with the City's Procurement Ordinance, the City of Isle of Palms, South Carolina is soliciting sealed proposals from fully qualified respondents ("Offeror" or "Contractor") for the purpose of providing specific commercial activities within well-defined beach areas. The successful Contractor will retain all the proceeds from the commercial services with the exception of their proposed franchise fee that will be paid to the City. Additionally, there are specific safety, beach and personnel services that the successful Contractor will be required to provide.

II. Commercial Activity Available on the Beach

The City of Isle of Palms is interested in entering into an exclusive franchise agreement with one contractor to offer surf lessons on the beach. The City has an overall goal of this activity being unobtrusive from any of the residential zoning districts of the island.

The franchise agreement shall be for one (1) year.

The minimum bid for a franchise is \$3,000 per year plus 4% of gross revenues.

III. Requirements of the contractor

After award of contract, awardee must be prepared to adhere to the following requirements:

- a. Maintain liability insurance in the amount of \$2 million and name the City of Isle of Palms as an additional insured.
- b. Carry workers compensation insurance protecting franchisee against liability or loss due to bodily injury and property damage arising out of occupational injury or illness of its employees.
- c. Maintain state and local licenses necessary to operate a business in the City of Isle of Palms.
- d. Indemnify and hold the City of Isle of Palms harmless for any and all claims arising out of franchisee's operation and performance of its duties under this contract.
- e. Comply with all applicable federal, state and local laws, ordinances, and regulations.
- f. In addition to the above requirements, the surf lessons must also meet the following requirements:
 - a. Surf lessons may only be conducted between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday. Lessons should not last more than two (2) hours.
 - b. There must be one (1) instructor for every three (3) students and no more than 6 students at a given time.

- c. Instructors must have current certification in either USLA or ARC Ocean Water Lifesaving, CPR and first aid certified with current certifications on file with the City prior to commencing operations.
- d. No surfing is allowed within 100 feet of any bather or swimmer.
- e. Surfboard leashes must be used at all times when a surfer is within two hundred feet (200') of any bather or other surfer.
- f. Instructors and students must clean the area of the beach where the surf lessons are held.
- g. Franchisees may not advertise, display signs or solicit by any other method on the beach, roadways, beach access paths or that any other area that is visible to the public within the City. All advertising and solicitation must be done off-site and through methods that cannot be detected by the public near the beach. The business plan submitted with each proposal must include all methods for advertising.
- h. The business plan submitted with the proposal must explain all methods for accommodating parking for instructors and participants.
- i. The business plan must identify the instructors' preferred area of the beach to hold the surfing lessons, however, the final location will be determined by the City.
- j. In addition to the requirements listed above, franchisees must be able to satisfy all terms and conditions of the attached Franchise Agreement, Exhibit A.

IV. Proposal requirements

Each Proposal shall include the following documents:

- a. Oath of Non-Collusion signed by a principal of the firm or an officer authorized to bind the corporation.
- b. Qualifications to conduct business on the beach. This shall include the size of the firm, office location from which the service is being performed, and a business plan for operations.
- c. History of responsible business practices on the beach
- d. Indicate and list any pending legal actions; indicate "none" if none exist.
- e. Financials: most recent tax return or other financial documentation
- f. Name and contact information for 5 references
- g. Outsourcing Statement: if your organization must outsource or contract any work to meet the requirements contained herein, this must be clearly stated in the proposal. Costs should be all-inclusive to include any outsourced or contracted work. Any proposals that call for outsourcing or contracting work must include a name, description, and contact information of the organization being contracted.

V. Proposal Evaluation Criteria

Proposals will be evaluated using the following criteria. The City reserves the right to reject, in whole or in part, any proposal submitted which the City believes would not be in its best interest.

The review will include evaluating all proposals for completeness and compliance with the minimum requirements of this RFP. Those proposals deemed responsive and responsible will then undergo a more extensive review that will include a validation of referenced previous projects and comprehensive analysis of the proposed work plan. The City may at its sole discretion, create a short-list of the highest-ranked Offeror's and require those on the short-list to participate in an onsite interview with City staff. The City also reserves the right to waive minor deficiencies or reject all proposals.

1. Franchise Fee (20 points): Offeror's proposed franchise fee payable to the City. The minimum bid for a franchise is \$3,000 per year plus 4% of gross revenues.
2. Overall Work Plan (25 points): Offeror's demonstrated understanding of the scope of work reflected by their proposed work plan. Specific attention will be paid to how well the offeror has met the City's goal of the operation being undetectable in all residential areas of the island.
3. Relevant Experience and History (30 points): Offeror's experience with performing the services requested in this RFP.
4. Quality of Service (25 points): Quality of services provided by Offeror based on responses from Offeror's provided references and history of responsible business on the beach.

VI. Proposal Process

Proposals should be submitted to the following:

Desirée Fragoso
City Administrator
City of Isle of Palms
1207 Palm Boulevard
Post Office Box 508
Isle of Palms, South Carolina 29451

Deadline for Submission: The deadline for submission is **11:00 a.m. Eastern Time on Friday, November 1, 2019**. Proposals must be received at 1207 Palm Boulevard, Isle of Palms, South Carolina 29451 in a sealed envelope. Sealed envelopes must be clearly marked "RFP 2019 – 03 Surfing Lesson Franchise" and include one (1) hard copy and one electronic copy in PDF format. It will be the responsibility of the bidders to verify and confirm receipt by the City.

Proposals may be delivered by hand or by mail, but no bid shall be considered which is not actually received by the City at the place, date and time appointed by the City and the City shall not be responsible for any failure, misdirection, delay or error resulting from the selection by any respondent of any particular means of delivery of proposals.

Respondents acknowledge and agree that the City will not be liable for any costs, expenses, losses, damages (including damages for loss of anticipated profit) or liabilities incurred by the

respondent or any member of the respondent's organization as a result of, or arising out of, submitting a bid, negotiating changes to such bid, or due to the City's acceptance or non-acceptance of the bid or the rejection of any and all proposals. Respondents are responsible for submission of accurate, adequate and clear descriptions of the information requests. Neither issuance of the RFP, preparation and submission of a response, nor the subsequent receipt and evaluation of any response by the City of Isle of Palms will commit the City to award a contract to any respondent even if all the requirements in the RFP have been met.

Firms considering submission under this RFP must be able to meet all terms and will be expected to have read and be prepared to enter into the attached contract, which is a part of this RFP.

By signing its bid, Respondent certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the City upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Bidder and its subcontractors or sub-subcontractors; or (b) that Bidder and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Bidder agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

If the Respondent is a corporation, state your correct corporate name and State of incorporation. If Respondent is a partnership, state names and addresses of partners. If Respondent is a trust or other legal entity, state correct names and addresses of trustees or names and address of those legally authorized to bid and enter into contracts.

FRANCHISE AGREEMENT

WHEREAS, the City Council of the City of Isle of Palms, by Section 7-3-20 of its City Ordinances has authorized the City Council to grant franchises for certain commercial activities on the beach in accordance with the terms of this agreement.

NOW, THEREFORE, PURSUANT TO SECTION 7-3-20 OF THE ISLE OF PALMS CODE OF ORDINANCES AND RESOLUTION _____ SELECTING A WINNING BIDDER, and for valuable consideration,

The City of Isle of Palms grants _____ a franchise to conduct surf lessons on the public beach specifically located at _____ shown in Attachment A for a period of one year, beginning _____, 2019 and ending _____, 2020 subject to the following terms and conditions:

Section I. SCOPE OF FRANCHISE

All commercial activity not expressly provided for herein is prohibited. This agreement authorizes franchisee to conduct surf lessons at the location specified above. No other services may be provided or goods rented. Except as specifically allowed in the franchise agreement, franchisee may not rent “hard” equipment including but not limited to:

- (a) Surfboards
- (b) Skim Boards
- (c) Sailboats
- (d) Paddleboards

Section II. BUSINESS LICENSE AND FEES

Under the provisions of the Franchise Agreement, the franchisee shall obtain a valid business license, pay a percentage of gross proceeds as dictated by City Code 7-1-18, and the amount bid by the franchisee annually.

The ___% shall be assessed and paid after the first year of operation and again annually for the term of the contract. The fee must be paid by _____ of the following year, even if the franchisee does not seek or is not awarded another contract. The City has the right to audit the franchisee’s books to determine the amount due the City under the franchise agreement on an annual basis, on or around _____ of each calendar year. Franchisee shall provide the City an audited financial statement prepared by a Certified Public Accountant no later than February 1 of each year during the term of this Franchise to verify the gross receipt amount. Failure to pay the 4% proceeds will constitute forfeiture. If the fee is not paid in full, and the City obtains a civil judgment against the franchisee, the City will seek a ruling that attorney’s fees and other costs be borne by Franchisee.

The bid amount and business license application will be due _____, at the beginning of each contract year, and annually through the term of the agreement.

Failure to pay any fees within ten days of the due date shall be grounds for revocation of the franchise.

Section III. PERIOD OF OPERATION

This agreement is effective _____, 2020 and will terminate on _____, 2021.

Franchisee shall operate between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday. It shall be at the Franchisee's discretion on what dates and months to operate according to its business plan.

Section IV. STANDARDS

- A. The Franchisee will be responsible for keeping its area of operation clean of all trash, litter and debris at all times. Franchisee will not leave trash or trash containers on the beach at the end of the day.
- B. The Franchisee will be held accountable to the City for the cleanliness of the beach in his/her franchise zone(s) as assigned. The area of responsibility extends from the water line to the primary dune line. Re-occurring legitimate complaints about beach cleanliness in a specified zone shall be grounds for franchise termination.
- C. In the event of a tropical storm or hurricane all equipment, or any other items used in the transaction of business must be removed 24 hours prior to forecasted landfall within 100 miles of the Beach. The Code Enforcement Officer has the power to require removal at his or her discretion based on other adverse weather conditions or tidal events.
- D. Franchisee may not advertise, display signs or solicit by any other method on the beach, roadways, beach access paths or that any other area that is visible to the public within the City. All advertising and solicitation must be done off-site and through methods that cannot be detected by the public near the beach. The business plan submitted with each proposal must include all methods for advertising.
- E. Franchisee, in setting up beach equipment, shall endeavor to provide the highest degree of public beach access possible.
- F. The following standards apply to Surf lesson franchisee:
 - a. All lessons and camps must have one instructor for every three students.
 - b. Instructors must have current certification in either USLA or ARC Ocean Water Lifesaving, CPR and first aid certified with current certifications on file

with the City prior to commencing operations. There must be a first aid kit on site.

Section V. INSURANCE

Franchisee shall obtain and pay for the following insurance coverages during the term hereof and shall provide a copy of the policies to the City:

- A. General Liability — A general liability policy protecting Franchisee against liability or loss due to bodily injury, property damage or personal injury arising out of the performance of its franchise responsibilities, including the provision of water safety service if applicable. The policy shall be written on an occurrence form and provide a combined single limit of liability of \$1,000,000 per occurrence. Coverage shall be included for: premises/operation; products/completed operation; contractual liability; independent contractors and shall include a broad form property damage endorsement. In the event this policy shall exclude coverage for lifeguard liability as a professional service, Franchisee shall be required to provide and pay for professional service coverage protecting the Franchise against liability for the acts; errors and omissions of its water safety personnel.
- B. Both the general liability and watercraft liability policies, as well as any professional services policy shall be endorsed to name the City of Isle of Palms as an “additional insured.”
- C. All policies shall be endorsed to provide the City of Isle of Palms sixty days prior written notice of non-renewal, reduction or exhaustion of limits or cancellation.
- D. All policies shall include a “waiver of subrogation” endorsement in favor of the City of Isle of Palms.
- E. The insuring company shall have no recourse against the City of Isle of Palms for the payment of any premiums, deductibles, or assessments.
- F. In the event Franchisee should fail to comply with the “loss reporting” requirements of any policy, that failure shall not adversely affect the coverage afforded the City, nor shall the City be responsible for complying with the reporting requirements of any policy.

Section VI. INDEMNIFICATION

Franchisee agrees to protect, defend, indemnify, and hold the City of Isle of Palms, its officers, agents and employees free and harmless from and against any and all losses, fines, penalties, damages, settlements, costs, charges, professional fees or other

expenses and liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Franchise and or the performance hereof, that are due to acts, errors, omissions or negligence of Franchisee, its officers, agents, employees or subcontractors. Franchisee further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

Section VII. SIGNAGE

Franchisee shall not display any signage other than specifically authorized by the Code Enforcement Officer or as negotiated herein as well as its company logo on its beach service equipment. Franchisee may have a tent no larger than 10 feet by 10 feet.

Section VIII. COMPLAINT PROCEDURES/REVOCATION/APPEAL PROCESS

Any complaints about the franchisee's operation will be investigated by the Code Enforcement Officer or any staff member designated by the Code Enforcement Officer within 48 hours of receipt of the complaint. The investigator, upon investigation of the complaint, will submit a written report addressing the complaint and giving a suggested resolution to the City Administrator within 2 business days. In the event the City Administrator determines the complaint has merit, the City Administrator will forward the report, to the Franchisee via email within two business days of receiving the information from the Code Enforcement Officer. If the Franchisee disagrees with the report, an appeal shall be filed with the City Clerk within ten (10) business days.

If the City Administrator finds the franchisee to be in violation of any of the above terms or terms of the franchise ordinance, the City Administrator may either revoke the franchise agreement or afford the Franchisee 10 days to cure or show reasonable progress towards resolving the issue. If the issue is not resolved, the City Administrator shall revoke the franchise agreement and vendor's business license and issue an order to suspend operations. The City shall send a written notice of the revocation and order to suspend operations to the vendor by registered or certified mail, return receipt requested and delivery restricted to the addressee. The vendor shall have ten business days from the receipt of said notice to submit a written Notice of Appeal to the City Clerk of Council.

Upon timely receipt of a notice of appeal of a revocation of a franchise agreement and business license the City Clerk of Council shall notify the Mayor or the Mayor's designee, and the item shall be placed on the agenda of the next regular City Council meeting whose agenda has not already closed. The City Clerk of Council shall notify the applicant of the date and time of the hearing. A special meeting of City Council may be called in order to address the the appeal.

On the date of the hearing, the City Council shall hear the appeal and shall determine

whether a cause for revocation of the franchise agreement and business license exists. The Council may deny the appeal if it finds that cause for revocation exists.

City Council's decision will be reduced to writing and the City Clerk shall submit the decision of Council to the Franchisee within five business days of the hearing.

Any appeals from City Council's decision will be made directly to the of Court of Common Pleas, Charleston County, South Carolina, within fifteen days of receipt of the City Council decision.

Section IX. TRANSFER/ASSIGN OF FRANCHISE

A Franchisee may not sell, transfer, or assign its franchise.

Section X. TERMINATION

Franchisee must provide 60 days notice to the City to terminate this agreement.

Violation of any provision of this Franchise Agreement may also lead to termination based on above-listed procedure.

CITY OF ISLE OF PALMS

FRANCHISEE

Mayor

By:

Witness #1

Witness #1