

**TOWN OF OYSTER BAY
NASSAU COUNTY, NEW YORK**

REQUEST FOR PROPOSALS

**CONCESSION SERVICES
HARRY TAPPEN BEACH CONCESSION FACILITY
GLENWOOD LANDING, NEW YORK**



Submission Deadline: March 26, 2018, no later than 4:45 p.m. as set forth herein.

REQUEST FOR PROPOSALS
TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	1
Authorized Contact Person	2
Introduction.....	2
Site Description.....	2
Form of License Agreement	3
Format of Proposal.....	3
Schedule for Proposals.....	3
Questions and Clarifications	4
Qualification Based Selection Process.....	4
Criteria for Evaluation and Award.....	4
Use of Subcontractors and Other Subordinate Entities.....	5
Familiarization with Current Programs, Facilities and Documents	5
Attachment Number 1 (Format of Proposal)	7
Appendix A (Form of License Agreement)	10
Appendix B (Disclosure Affidavits)	11

AUTHORIZED CONTACT PERSON

Prospective firms are advised that the authorized Town of Oyster Bay contact person for all matters concerning this RFP is:

JOSEPH G. PINTO
Commissioner of the Department of Parks
Town Hall South
977 Hicksville Road
Massapequa, New York 11758
(516) 797-4142
jpinto@oysterbay-ny.gov

INTRODUCTION

Pursuant to section 104-b of the New York General Municipal Law and the written procurement policies and guidelines currently in effect in the Town of Oyster Bay (the “Town”), the Town of Oyster Bay Department of Parks hereby solicits your proposal to provide the Food and Beverage Service Concession at the Town of Oyster Bay Harry Tappen Beach Concession Facility located on the north shore of Oyster Bay along the North Hempstead Harbor (the “Facility”). The term of the contemplated Concession License Agreement shall begin on May 11, 2018, and shall continue to and until October 31, 2018, unless extended in accordance with the terms of the License Agreement.

The intent of this RFP is to obtain the most qualified concessionaire to provide food and beverage service at the Facility. The operation should emphasize informal family dining in a casual beach atmosphere. As set forth below, selection will be based upon consideration of the overall qualifications, experience, financial status, and benefit to the Town, the type, mode and features of proposed operations and management, and the proposer’s recommendations for any capital additions or improvements to the Facility.

The Town reserves the right to negotiate with any and all proposers, to decline any and all proposals, and to select the proposer which, in the Town’s sole judgment, will best serve the needs of the Town and its residents.

SITE DESCRIPTION

The Town of Oyster Bay Harry Tappen Beach is located on the north shore of Oyster Bay along the North Hempstead Harbor. The Facility has a marina, swimming pool, picnic area and playgrounds. There is also a concession facility located on the Facility which is across from the

main entrance, surrounded by a beach. The beach and pool is maintained and manned with lifeguards from the Town of Oyster Bay from Memorial Day to Labor Day. Marina Summer Seasonal dates are approximately mid-April through mid-November of each year. The concession facility is primarily operated from Memorial Day through the second week of October; hours of operation are approximately from 11:00 a.m. to 10:00 p.m. The concession facility has restrooms, Men and Women, which shall be cleaned and maintained by the Concessionaire.

No vending machines shall be permitted except upon the concession facility premises.

Please be advised that the occupancy of the concession facility is presently limited to 88 persons due to existing septic system limitations.

FORM OF LICENSE AGREEMENT

The successful proposer will be required to execute a license agreement with the Town in substantially the form annexed hereto as Appendix "A" (the "License Agreement"). Any objections to the terms and conditions of the proposed License Agreement must be set forth in the proposer's response to this RFP, as set forth below. However, it is the intention of the Town to adhere substantially to the form of license agreement annexed hereto, and the Town shall be under no obligation to modify any of the proposed terms and conditions of the form of License Agreement annexed hereto as Appendix "A."

FORM OF PROPOSAL

Proposers must submit ten (10) hard copies (one signed original and nine copies) and one (1) electronic copy of each proposal with additional relevant information. Proposals should be organized as described in Attachment No. 1 herein. The submission of extraneous or voluminous additional materials not expressly required pursuant to this Request for Proposals is not welcome and may be rejected and returned to the proposer.

SCHEDULE FOR PROPOSALS

A non-mandatory proposers conference shall be held at the Department of Parks conference room, 977 Hicksville Road, Massapequa, New York 11758 on February 26, 2018 at 10:00 a.m.

A non-mandatory site visit and walk-through of the Facility shall be held at the Facility on February 28, 2018 at 10:00 a.m.

The Town reserves the right, at its sole option, to conduct personal interviews of one or more of the proposers prior to selection. The dates and times for such personal interviews shall be scheduled for the mutual convenience of the Town and selected proposers.

Proposals must be submitted in hard copy to the attention of the Authorized Contact Person identified above by March 26, 2018, no later than 4:45 p.m. Email or facsimile responses

will not be considered. In the interest of fairness to all participants, no extensions or exceptions will be permitted, unless issued as an Addendum to this RFP and applicable to all proposers.

QUESTIONS AND CLARIFICATIONS

Any questions or requests for clarification of this RFP must be submitted in writing on or before March 12, 2018, no later than 12:30 p.m. to the Authorized Contact Person identified above. Questions must be submitted by email. Responses will be issued by the Town in the form of an Addendum to this RFP prior to the submission deadline. As such, be aware that all questions (and answers) will be shared amongst all parties.

All communications during the RFP process must be directed solely to the Authorized Contact Person identified above. Communication, whether in writing or verbally, with any Town elected officials, employees or any member of the Town Evaluation Committee may be cause for disqualification from the RFP process.

QUALIFICATION BASED SELECTION PROCESS

The Town, after receipt and review of responses to this RFP, reserves the right to reject all proposals based upon the information provided by the proposers in their proposal, any other source of reliable information concerning the proposers, and based upon subsequent negotiations between the Town and proposer firms. The review process of the RFPs submitted are described under the section entitled: "CRITERIA FOR EVALUATION AND AWARD."

CRITERIA FOR EVALUATION AND AWARD

The process and criteria to be used by the Town in evaluating these proposals shall be the following:

- a. **Evaluation Committee:** A Town Evaluation Committee will make the final recommendation to the Town Board of the Concessionaire, based upon rating criteria described in paragraph b. below. The Town reserves the right to make changes in the Town Evaluation Committee at any time in its sole discretion. The Town may invite proposers to make presentations to the Evaluation Committee to demonstrate their qualifications and approach to the project. The final selection shall be made by the Town Board.
- b. **Award Criteria:** The Award Criteria to be considered by the Town Evaluation Committee shall include all of the criteria required pursuant to Guideline No. 6 as set forth in the Town's Procurement Policies and Procedures adopted on December 13, 2016, by Resolution No. 721-2016, with particular emphasis on the following:

- i. **General Qualifications**
Proposer's experience and expertise in providing similar services, with emphasis on similar municipal concession and restaurant facilities on Long Island, and references reflecting similar work and related experiences.
- ii. **Proposed Services/Products**
Responsiveness of proposed operating and management strategy, recognition of potential issues and problems, and effective, innovative and creative strategies for addressing same.
- iii. **Financial Strength and Resources**
Proposer's demonstrated financial strength and resources and ability to fulfill the financial commitments and requirements of the RFP, including proposer's ability to finance and complete construction of any capital modifications or improvements to the Facility accepted by the Town.
- iv. **Proposed Capital Improvements**

The attractiveness and potential benefits to the Town of the proposer's proposals for future capital modifications or improvements to the Facility, if any.
- v. **Financial Proposal**

The financial benefit to the Town of the proposer's financial proposal over the term and duration of the License Agreement.

USE OF SUBCONTRACTORS AND OTHER SUBORDINATE ENTITIES

Prospective firms are advised that the Town will entertain proposals that include the use of subcontractors and/or other subordinate entities. In such event, the proposal must clearly state the extent and nature of the work proposed to be delegated to the proposed subcontractor or other subordinate entity. The same information required by this RFP to be provided by the proposer shall also be provided for each proposed subcontractor or other subordinate entity.

FAMILIARIZATION WITH CURRENT PROGRAMS, FACILITIES AND DOCUMENTS

The Town makes no representation or warranty concerning the current status or condition of the Facility or the accurateness or completeness of any information provided as part of the RFP process.

It is the sole responsibility of the proposers to familiarize themselves with the Facility and any other information which is necessary and relevant to the scope of this RFP and proposer's proposal hereunder.

ATTACHMENT NUMBER 1

FORMAT OF PROPOSAL

Proposals should be organized as shown below with tab dividers between sections and should include all the information indicated. Note that elaborate brochures or other presentations beyond those sufficient to present a complete and extensive response to this solicitation are not desired.

SECTION A. INTRODUCTORY STATEMENT

SECTION B. QUALIFICATIONS AND APPROPRIATENESS OF PROPOSED STAFF

Provide names and resumes of key personnel proposed for this project. The proposal should also include an organizational chart for the operation of the food and beverage service.

SECTION C. APPROPRIATENESS AND QUALITY OF PROPOSER'S EXPERIENCE

1. Proposer's experience and expertise in providing similar food, beverage and concession services, with emphasis on similar municipal concession and food service facilities on Long Island.
2. Minimum of five (5) references with contact information, reflecting similar work and related experience.

SECTION D. PROPOSED MANAGEMENT AND OPERATING STRATEGY

Proposed operating, management and marketing and sales strategy, recognition of potential issues and problems, and effective, innovative and creative strategies for addressing same. The response in this section should emphasize any and all ways that the proposer intends to deliver services in a manner that is consistent with the family atmosphere at the Facility while, at the same time, maximizing the potential profit to the Town.

SECTION E. FINANCIAL AND OTHER INFORMATION

A complete statement detailing the current financial standing of the proposer and all principals holding an interest the proposer-corporation. Both the proposer and all principals will be required to maintain, and should clearly demonstrate, financial resources and capability to properly conduct and promote a Food and Beverage Service and to complete any future capital improvements proposed by proposer. These statements should be supported by detailed documentation including, but not limited to, an audited financial statement of the proposer; bank, credit, and business references, corporate and personal tax returns, each of which will maintained confidential to the extent permitted by law, but at all times consistent with the New York State Public Officers Law.

Further, both the corporate proposer and all principals must submit a sworn statement:

1. that neither the corporation or its principals are the subject of any on-going investigations or enforcement proceedings by Federal and State law enforcement and taxing authorities;
2. that neither the corporation or its principals are the subject of any action or proceeding to collect a debt or to enforce any obligation relating to corporate affairs or, in the event of such an action or proceeding, disclosing the nature of same, together with any index or docket number and the venue of same;
3. that the corporation and its principals are in compliance with all applicable labor and wage statutes; and
4. disclosing any and all wage and hour lawsuits to which the corporation and its principals have been parties and the disposition of same.

The corporate proposer and all principals must also submit Town of Oyster Bay disclosure affidavits, samples of which are annexed hereto as Appendix B.

By submitting a proposal in response to this RFP, proposer consents to the conduct by the Town of such credit and background investigations as the Town in its sole discretion deems necessary and appropriate.

SECTION F. FINANCIAL PROPOSAL

Proposer shall provide a detailed financial proposal describing the form and amount of the proposed license fee and any other type of financial remuneration to be paid to the Town by the proposer in consideration of the award of the concession and operating rights to the proposer. Said proposal must include a statement of a proposed monthly concession license fee to be paid to the Town, subject to the escalations set forth in the annexed form of license agreement (Appendix "A."). Proposer may also, at its discretion, propose any other form of alternative, additional or supplemental consideration it would like the Town to consider.

SECTION G. CAPITAL IMPROVEMENTS

The Town invites proposers to include a detailed capital improvement plan as a part of its response to this RFP. In the event that the proposer elects to submit a capital improvement plan, the proposer shall include a complete description of any capital additions, modifications or improvements the proposer intends to propose for the Facility, including the estimated cost and schedule for completion of said additions or improvements. Said description shall be accompanied by such drawings, renderings and site plans as the proposer deems appropriate and necessary. The proposer shall describe in detail the justification for the proposed capital additions or improvements, including any anticipated operational and/or financial benefits to the Town to be derived therefrom.

The Town's selection of a vendor under this RFP shall not, however, constitute permission to construct any capital improvements. Rather, any such capital improvement(s) shall be subject to review by the appropriate Town Departments, and must comply with all applicable laws, rules, and regulations as may be promulgated by the Town of Oyster Bay and

any other Federal or State agencies that have jurisdiction over the Facility and/or the surrounding properties.

SECTION H. OBJECTIONS TO FORM OF LICENSE AGREEMENT

Proposer shall identify any objections to the proposed form of license agreement annexed hereto as Appendix "A." The failure to submit any objections shall be deemed to represent the proposers assent to the terms of the proposed license agreement.

Be advised that unless and until the Town Board accepts and approves a proposal, and authorizes the execution of a license agreement, the evaluation committee's recommendation does not form an enforceable agreement between the Town and the proposer. Under no circumstances shall the Town be held liable for any costs or damages incurred by the proposer as a part of this RFP process.

SECTION I. SUPPLEMENTAL INFORMATION

Proposer may provide any additional information relevant to the proposer's qualifications or proposal for this project at the proposer's sole option.

APPENDIX A

LICENSE AGREEMENT

DATED:

PARTIES: TOWN OF OYSTER BAY, a municipal corporation of the State of New York, having its principal office at Town Hall, 54 Audrey Avenue, Oyster Bay, New York 11771, and hereinafter referred to as the "TOWN," acting for and on behalf of the DEPARTMENT OF PARKS, and hereinafter referred to as the "DEPARTMENT;" and

[INSERT CONCESSIONAIRE NAME] having its principal place of business at [INSERT CONCESSIONAIRE PRINCIPAL BUSINESS ADDRESS], and hereinafter referred to as the "CONCESSIONAIRE."

WITNESSETH:

WHEREAS, it is the general intent and purpose of this License Agreement (the "License Agreement") to secure the efficient and beneficial operation of a Food and Beverage Concession Service at the Town of Oyster Bay Harry Tappen Beach Concession Facility (the "Tappen Beach Concession") located on the north shore of Oyster Bay along the North Hempstead Harbor, and to provide for such future repairs, improvements and modifications as shall be deemed acceptable to and in the best interests of the Town and its residents;

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

USE

1. Subject to the provisions of this License Agreement, the TOWN agrees to grant to the CONCESSIONAIRE an exclusive and non-transferrable license, and the CONCESSIONAIRE agrees, to maintain and operate a food and beverage concession service at the Tappen Beach Concession for the term set forth herein. The CONCESSIONAIRE shall use the Facilities allocated to it in this License Agreement, as set forth below, for no other purpose

than the operation of a food and beverage concession service in strict conformance with the terms and conditions of this License Agreement.

FACILITIES

2. The CONCESSIONAIRE's operation shall consist of all those facilities at the Tappen Beach Concession premises designated in writing by the Commissioner of the DEPARTMENT or his designee (hereinafter, the "COMMISSIONER") to be used by the CONCESSIONAIRE (the "FACILITIES"), including: the existing restaurant; outdoor patio; all offices; and any additional food and beverage dispensing facility, now or subsequently constructed or located at the premises, as designated and approved in writing by the COMMISSIONER.

TENT AND OTHER ENCLOSURES

3. The use and location of any tent or other temporary enclosure to be used in connection with any event at the Tappen Beach Concession premises shall be subject to the advanced approval in writing of the COMMISSIONER.

HOURS OF OPERATION

4. The CONCESSIONAIRE shall, with the approval of the Commissioner of the DEPARTMENT, establish its hours of operation. The CONCESSIONAIRE shall have the right to close its facilities on any day that the Beach or the Marina is closed.

PERSONNEL

5. The CONCESSIONAIRE agrees to have a sufficient number of trained, qualified, uniformed attendants on duty at all times for the proper operation of the facilities. The uniform, which shall be furnished by the CONCESSIONAIRE, at its expense, shall be of a design subject to the approval of the COMMISSIONER. Said personnel will be employed by, and will be employees of, the CONCESSIONAIRE. The CONCESSIONAIRE shall be

responsible for the payment of salaries and the withholding of required taxes for all employees. The CONCESSIONAIRE agrees to maintain an efficient staff, which at all times shall be courteous to the public and reflect favorably upon the TOWN. The CONCESSIONAIRE shall require its employees to observe a strict impartiality as to rates and service.

QUALIFICATIONS

6. The CONCESSIONAIRE represents and warrants that it has substantial financial capacity and resources sufficient to provide for the operation and maintenance of the FACILITIES in strict compliance with the terms and conditions of this License Agreement and has extensive experience in the operation and management of a restaurant similar in nature to the operations contemplated by this License Agreement.

GARBAGE REMOVAL

7. The CONCESSIONAIRE shall, at its own expense, arrange for a private refuse disposal service to dispose of rubbish, garbage, trash, and other waste matter, which shall be removed from the premises as frequently as is necessary to maintain the premises in good, clean, and sanitary condition.

MAINTENANCE AND CARE OF PREMISES

8. The CONCESSIONAIRE agrees that:

(a) The CONCESSIONAIRE shall keep any room, space or area under its control or used in connection with its food and beverage service, including the bathrooms, in a clean and sanitary condition.

(b) The CONCESSIONAIRE shall be responsible for the maintenance, repair, or replacement of all of the FACILITIES' fixed equipment and furnishings, including, but not limited to, the HVAC system, and all other structures and equipment included within the FACILITIES licensed herein, and shall keep all such equipment and furnishings in good working

order. All such structures and equipment shall be operated and maintained in strict accordance with all applicable federal, New York State, Nassau County and Town codes, regulations and requirements.

(c) The COMMISSIONER or his authorized representative shall have the right to enter upon and inspect the premises at any time during the term of this License Agreement. If, as a result of such inspection, the COMMISSIONER determines that any deficiencies exist in the condition of those areas within the CONCESSIONAIRE's area of responsibility, the COMMISSIONER shall provide notice to the CONCESSIONAIRE in writing. The CONCESSIONAIRE shall commence appropriate corrective work within five (5) business days of the date of such notice. If the CONCESSIONAIRE fails to complete the appropriate corrective work within a reasonable time of such notice, as determined by the COMMISSIONER in his sole discretion, the COMMISSIONER shall have the right to correct such deficiencies itself and to bill the CONCESSIONAIRE for the cost of such work. The CONCESSIONAIRE shall pay the bill for such work immediately upon presentation. The CONCESSIONAIRE agrees to assume any liability that may arise during the existence of the deficient condition.

(d) The TOWN agrees to remove snow from the premises and to make the premises accessible to the public at the earliest possible opportunity.

(e) Upon termination of this License Agreement, the premises, including the FACILITIES, shall be returned to the TOWN broom clean and in as good order, condition and repair as they were in on the EFFECTIVE DATE, reasonable wear and tear excepted.

(f) The TOWN makes no representation or warranty concerning the present condition or state of maintenance, repair or code compliance of the FACILITIES, and the

CONCESSIONAIRE accepts same in "AS IS" condition. Notwithstanding any other requirement of this License Agreement, it shall be the sole responsibility of the CONCESSIONAIRE, within sixty (60) days of the EFFECTIVE DATE, to bring all areas of the FACILITIES under the CONCESSIONAIRE'S occupancy and use into full compliance with all applicable federal, New York State, Nassau County and Town codes, regulations and requirements at its sole expense.

UTILITIES

9. The CONCESSIONAIRE shall be responsible for one-hundred (100%) percent of all of the utility costs of the FACILITIES as read on Electric Meter Number [insert meter number] (currently marked "CONCESSIONAIRE"), Gas Meter Number [insert meter number], charges for domestic water and sprinkler water service fees, and costs associated with the Simplex system or any other notification system installed at the licensed premises. To the extent possible, the CONCESSIONAIRE agrees to be billed directly for these charges by the utility provider and to make appropriate arrangements for said direct billing of such utility services within thirty (30) days of the Effective Date. In the event that the CONCESSIONAIRE's failure to pay any utility bill results in a utility provider terminating any utility service and/or pursuing collection from the TOWN, the TOWN shall have the right to terminate the License Agreement and to require the CONCESSIONAIRE to immediately vacate the premises.

PRICING

10. The CONCESSIONAIRE agrees that prices charged for its food and services, shall be comparable to those charged by restaurants of similar quality and nature in Nassau County. The CONCESSIONAIRE shall be required at all times to post a menu and schedule of prices at all facilities being serviced under this License Agreement. It is agreed and

understood that all income derived from the operation of this License Agreement shall belong to the CONCESSIONAIRE, except as provided for in Paragraph 43.

LICENSES AND PERMITS

11. The CONCESSIONAIRE shall procure, at its own cost and expense, all licenses or permits necessary for the lawful operation of the FACILITIES and its business. The TOWN shall provide reasonable cooperation to the CONCESSIONAIRE to obtain such license or permits.

OCCUPANCY LIMITATION

12. The maximum occupancy of the Tappen Beach Concession shall not exceed 88 persons. The occupancy limit provided herein shall not be increased without the approval of the COMMISSIONER and shall also be conditioned upon the CONCESSIONAIRE's obtaining any and all required permits, licenses, and certificates, as the case might be to achieve such increase.

BOARD OF HEALTH REQUIREMENT

13. The CONCESSIONAIRE warrants and agrees that all food and beverage items that are offered for sale under this License Agreement shall comply with all applicable date code requirements and shall be purchased, stored, prepared, handled, served, and/or sold in a clean and sanitary manner and in accordance with the requirements of the Nassau County Department of Health and any and all other applicable rules and regulations.

ASSUMPTION OF RISK

14. The CONCESSIONAIRE assumes all risk in the operation of the FACILITIES and agrees to comply with all federal, state, and local regulations and all rules, regulations, and ordinances of the TOWN, as well as rules and regulations of the

DEPARTMENT. The TOWN agrees to comply with any rule, regulation, or ordinance under which it has sole responsibility as the owner of the Beach Concession.

ADVERTISING

15. The CONCESSIONAIRE shall be permitted to advertise its products, provided it does so in a reasonable manner and in good taste. The COMMISSIONER shall make the final decision as to what constitutes advertising in a reasonable manner and in good taste. The CONCESSIONAIRE shall bear all costs for advertising.

The CONCESSIONAIRE shall be permitted to erect signs, as necessary for the operation of the business, on the perimeter of the Tappen Beach Concession. The signs shall be made of wood or similar material. The size, design, copy, and location of any signs shall be subject to the prior written approval of the COMMISSIONER. The CONCESSIONAIRE agrees that any signs are intended solely to inform the public of the location and identity of the restaurant in a tasteful and appropriate manner. The COMMISSIONER shall make the final decision as to what constitutes a tasteful and appropriate manner. The CONCESSIONAIRE shall bear the cost of any signs, including any utility and maintenance costs.

TELEPHONE

16. The CONCESSIONAIRE shall pay for its telephone and internet usage in the conduct of its business.

EQUIPMENT

17. The CONCESSIONAIRE has the right to use any fixed equipment belonging to the TOWN on the premises as of the EFFECTIVE DATE and any fixed equipment installed by the TOWN thereafter. The CONCESSIONAIRE may, with prior approval of the COMMISSIONER, purchase additional fixed equipment required and necessary for the operation of the FACILITIES.

SUPPLIES

18. The CONCESSIONAIRE agrees to provide, at its own cost and expense, all furnishing, equipment, materials and supplies ordinarily incident to the operation of a food and beverage service.

REAL ESTATE TAXES

19. The CONCESSIONAIRE shall be responsible for paying all real estate taxes or assessments, if any, on the real property subject to this concession.

SUPERVISION

20. The CONCESSIONAIRE shall at all times have a manager, assistant manager, or other designated person in charge on duty. The COMMISSIONER shall approve the CONCESSIONAIRE's senior manager. The CONCESSIONAIRE shall promptly replace its senior manager if directed to do so by the COMMISSIONER. The COMMISSIONER may direct the replacement of the senior manager if the COMMISSIONER, in his or her sole discretion, reasonably determines that the CONCESSIONAIRE's senior manager has failed to perform his or her duties in a professional manner.

ACCESS

21. The CONCESSIONAIRE shall grant access to the premises at all reasonable times to the COMMISSIONER or Deputy Commissioner of the DEPARTMENT, the Town Attorney or his duly designated representative, the Town Comptroller or his duly designated representative, any member of the Town Board or their duly designated representative, and the Town Supervisor or his duly designated representative.

VENDING MACHINES

22. The CONCESSIONAIRE agrees that it will not install any amusement, jukebox, arcade or other vending machines except upon the restaurant premises and not without the prior written approval of the COMMISSIONER.

ALTERATIONS

23. Any proposed modifications, alterations, or repairs made by the CONCESSIONAIRE, except those required on an emergency basis, must be approved in advance in writing by the COMMISSIONER. The TOWN may, in its sole discretion, make any alterations, decorations, additions, or improvements to the premises at the TOWN's expense. Nothing herein shall be deemed to obligate or require the TOWN to make any such alterations, decorations, additions, or improvements.

RECORDS AND ACCOUNTS

24. The CONCESSIONAIRE shall keep complete and accurate books and records of account in accordance with Generally Accepted Accounting Procedures. On or before the first day of April of each calendar year of this License Agreement, the CONCESSIONAIRE shall provide the TOWN with a copy of a Statement of Income and Balance Sheet, in accordance with the Uniform System of Accounts or other previously established format, covering the CONCESSIONAIRE's operation under this Agreement for the previous calendar year. The CONCESSIONAIRE shall permit the TOWN or its duly authorized representative to inspect and audit appropriate books and records at any reasonable time during business hours after giving the CONCESSIONAIRE twenty-four (24) hours' notice of the time and day of such inspection and audit.

EXCLUSIVITY

25. The TOWN shall not permit any person, entity, or corporation to sell or bring into the Tappen Beach Concession premises, for general sale to the public, any goods or services permitted to be sold by CONCESSIONAIRE under this License Agreement, except for those vendors having previous agreements with the Town for the provision of such services.

POURING RIGHTS

26. In the event that the TOWN enters into an exclusive agreement with a national soft drink company, the TOWN reserves the right to require the CONCESSIONAIRE to serve only any soft drink products approved by the TOWN. The TOWN shall give the CONCESSIONAIRE at least sixty (60) days advance notice prior to the effective date of such agreement. During the term of this License Agreement, the CONCESSIONAIRE shall not enter into any exclusive agreement with a national soft drink company.

FIRE INSURANCE

27. The TOWN agrees to include the FACILITIES' buildings and TOWN-owned furnishings and equipment on the TOWN's property insurance policy. The CONCESSIONAIRE agrees to obtain fire insurance for any personal property owned by the CONCESSIONAIRE.

The TOWN will determine the cost of such fire coverage and will bill the CONCESSIONAIRE for the same. In the event of a loss, the TOWN will promptly make a claim against the policy, and reserve all proceeds received for necessary repairs or reconstruction. The CONCESSIONAIRE shall perform all necessary repairs or reconstruction in accordance with all applicable provisions contained in this License Agreement. CONCESSIONAIRE agrees to enter promptly upon the restoration and repair of the FACILITIES and to restore the FACILITIES to the same or substantially similar condition as

existed before the loss. The CONCESSIONAIRE shall bear any expense incurred beyond the insurance proceeds. The CONCESSIONAIRE shall be responsible for any policy deductible. Such policy deductible is subject to change at any time based upon the TOWN's property policy.

POSSESSION

28. It is expressly understood and agreed that no building space or equipment is leased to the CONCESSIONAIRE, but that during the term of this License Agreement, the CONCESSIONAIRE shall have unrestricted use and possession of the designated premises, except as provided in this License Agreement. The CONCESSIONAIRE has the right to occupy the spaces assigned to it, operate under the license hereby granted to it, and continue in possession of the premises subject to the terms of this License Agreement only so long as the CONCESSIONAIRE strictly and properly complies with every provision contained in this License Agreement. No interest in real property is conveyed by virtue of or under this License Agreement.

TITLE TO EQUIPMENT

29. Title to all non-fixed equipment provided by the CONCESSIONAIRE shall remain with the CONCESSIONAIRE, and such equipment shall be removed by the CONCESSIONAIRE at the termination of this License Agreement. If any property remains on the premises after the expiration or termination of this License Agreement, the TOWN shall notify the CONCESSIONAIRE, and if the CONCESSIONAIRE fails to remove such property within ten (10) days from the date of such notification, the TOWN may deal with such property as though it had been abandoned and charge all costs and expenses incurred in the removal thereof to the CONCESSIONAIRE.

The CONCESSIONAIRE may move non-fixed equipment between the Tappen Beach Concession and its other facilities as needed.

DAMAGE TO EQUIPMENT

30. The CONCESSIONAIRE agrees to be responsible to the TOWN for any damage or loss to TOWN equipment that occurs by reason of the CONCESSIONAIRE's use, negligence or other fault, or that of its patrons, employees, or suppliers, and shall compensate the TOWN for the value of any equipment that is so damaged or lost by the CONCESSIONAIRE.

BAILMENT

31. The CONCESSIONAIRE agrees to be responsible for loss or damage to property turned over to it by any patron of the FACILITIES. CONCESSIONAIRE may limit its ability for any such loss or damage as provided under applicable law.

WAIVER OF CLAIMS

32. The CONCESSIONAIRE waives any and all claims for compensation from the TOWN for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the structures, equipment, water supply systems, drainage systems, gas mains, electrical apparatuses, or wires furnished for the premises, or by reason of any loss of any gas supplies, water supplies, heat, or current, which may occur from time to time from any cause, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, civil commotion, or riot, and the CONCESSIONAIRE releases and discharges the TOWN and its agents from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, unless caused by the negligence of the TOWN, its agents, or employees. The CONCESSIONAIRE further waives any and all claims for compensation or refund of any capital investment or investment in maintenance, repairs, furnishings or equipment, in the event this License Agreement is terminated by the TOWN for cause sooner than the fixed term pursuant to Paragraph 42.

Nothing herein should be construed as a waiver of the insurance claims described in Paragraph 27.

INSURANCE AND WORKERS' COMPENSATION

33. The CONCESSIONAIRE agrees to obtain, at its expense, from an insurance company authorized to do business in the State of New York, and to keep in force during the term of this License Agreement, a policy of comprehensive general liability on which the CONCESSIONAIRE and the TOWN are each named insured, including, but not limited to, for the torts and negligence of the CONCESSIONAIRE's personnel, with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. On or before the commencement date of this License Agreement, the CONCESSIONAIRE shall provide the Town Attorney with a certificate and copy of the policy evidencing its procurement of the insurance required under this Paragraph 33.

The CONCESSIONAIRE shall comply with all provisions of New York Workers' Compensation Law and shall, prior to conducting operations at the Concession Facilities, furnish a certificate showing evidence of current coverage.

All insurance coverage required by this Paragraph shall be subject to the approval of the Town Attorney.

All policies shall be issued in the name of the CONCESSIONAIRE, and the TOWN shall be listed as a named insured. The insurance policies required by this Paragraph shall not be canceled without thirty (30) days prior written notice to the TOWN. If the CONCESSIONAIRE fails to maintain such insurance policies and to obtain such policies and furnish certificates evidencing such coverage within thirty (30) days of the receipt of notice by the TOWN regarding this deficiency, the TOWN shall have the right to terminate this License Agreement.

The CONCESSIONAIRE agrees to indemnify, defend and hold the Town harmless for and against any personal injury, wrongful death or property damage which occurs during any lapse in insurance coverage or as a result of any failure by the CONCESSIONAIRE to abide by any notice or other term or provision of the policy.

The indemnity and hold harmless provisions of Paragraph shall survive and be of full force and effect notwithstanding any lapse in the insurance coverage required under this Paragraph.

TERMINATION OF AGREEMENT

34. The TOWN has the right to terminate this License Agreement for either cause or at will. A termination at will may be for any reason or no reason at the sole election of the TOWN.

35. The TOWN shall be permitted to terminate for cause if any one of the following events (“Events of Default”) occurs:

- (a) The COMMISSIONER reasonably determines that the CONCESSIONAIRE has failed to fulfill any of its material obligations with sufficient diligence to ensure proper services within the term of this License Agreement, including any authorized extension;
- (b) The CONCESSIONAIRE fails to pay its utility costs as described in Paragraph 10;
- (c) The CONCESSIONAIRE fails to maintain the insurance policies described in Paragraphs 27 and 33, or fails to furnish certificates and endorsement pages evidencing such policies within thirty (30)

days of the receipt of notice from the TOWN sent in accordance with Paragraphs 27 and 33.

- (d) The CONCESSIONAIRE does not comply with all laws, ordinances, rules, or provisions governing this License Agreement, or is otherwise in violation of any provisions of the License Agreement;
- (e) The CONCESSIONAIRE engages in any illegal conduct or otherwise violates any law, rule, regulation, or judicial order applicable to the CONCESSIONAIRE, this License Agreement, or the CONCESSIONAIRE's operation of food and beverage services;
- (f) The CONCESSIONAIRE assigns, or otherwise transfers, all or any of its interest in the License Agreement or in the premises, or otherwise causes a change in control in the CONCESSIONAIRE's ownership, without the prior written consent of the TOWN as described in Paragraphs **Error! Reference source not found.** and 39;
- (g) The CONCESSIONAIRE is in material default of any of the terms and conditions of this License Agreement;
- (h) The CONCESSIONAIRE does not timely make all payments to the TOWN required under this License Agreement, or under any other license or concession agreement then pending between the

TOWN and CONCESSIONAIRE including, but not limited to, the monthly concession fee payments

Upon the occurrence of any of these Events of Default, the TOWN, without prejudice or waiver of any of its rights or interests under the License Agreement, shall give the CONCESSIONAIRE written notice of the Event of Default. The CONCESSIONAIRE shall have ten (10) days from the date of such notice to cure the Event of Default except if such default is not a payment default or otherwise susceptible to cure within ten (10) days so long as the CONCESSIONAIRE commences to cure the default within ten (10) days and thereafter diligently pursues the same to completion within a reasonable period of time (the "Cure Period"). If the CONCESSIONAIRE fails to cure the Event of Default within the Cure Period, the TOWN shall have the right to declare the CONCESSIONAIRE in default and to terminate the License Agreement and assume possession and control of all materials, equipment, and operations under the License Agreement. Under no circumstances shall the CONCESSIONAIRE have any claim for recovery of any of the materials, equipment, and operations that may be assumed by the TOWN. The Town may in addition thereupon, but shall not be required to, undertake all necessary and appropriate measures to complete any uncompleted capital improvements at the sole cost of the CONCESSIONAIRE.

36. The TOWN shall be permitted to terminate at will by providing twenty (20) days written notice to the CONCESSIONAIRE. If the TOWN terminates at will, the TOWN shall pay to the CONCESSIONAIRE a sum equal to the actual cost of construction of capital improvements made to the FACILITIES after the EFFECTIVE DATE, if any, as certified through the process described in Paragraph 44, less 10% for each year or part of a year elapsed since the completion of the improvement. In addition, the TOWN will pay the

CONCESSIONAIRE for lost profits on catering events which were booked prior to receipt of a notice of termination for any reason other than a termination for cause, subject to any offset for any amounts due to the TOWN for any reason under the License Agreement. The amount of lost profits shall be certified by an independent public accountant selected by CONCESSIONAIRE and subject to the reasonable approval of the COMMISSIONER.

In the event of a termination of the License Agreement prior to the expiration the Term for any reason, CONCESSIONAIRE shall deliver to COMMISSIONER within two (2) business days following such termination a schedule of all future events for which a deposit has been paid to CONCESSIONAIRE, together with a copy of the contract and the amount of said deposit in cash or by certified check, which amounts shall be remitted to the TOWN and held in escrow by the TOWN pending either the satisfactory occurrence or cancellation of the event.

MODIFICATION

37. The express terms of the License Agreement control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. The License Agreement may be modified only by a writing duly executed by the TOWN and the CONCESSIONAIRE, and no modification of the License Agreement shall be effective until the modification has been agreed to in writing and duly executed by the Town Supervisor or his duly designated representative after approval by the Town Board of the TOWN.

TRANSFER OR ASSIGNMENT

38. The CONCESSIONAIRE may not assign, or otherwise transfer, all or any part of its interest in this License Agreement or in the premises or otherwise cause a change in control in the CONCESSIONAIRE's ownership without the prior written consent of the TOWN BOARD, which consent shall not be unreasonably withheld. The term "assign" shall mean the transfer or setting over of a right or interest. The term "change in control" shall mean any change

in ownership equal to the percentage of votes or membership interests required to exercise decision-making authority.

39. In the event that the TOWN BOARD consents to the assignment or transfer of this License Agreement or the change in control in the CONCESSIONAIRE's ownership, the assignee, transferee, or new owner shall operate the food and beverage service in a fashion substantially similar to the CONCESSIONAIRE's operation and in strict conformance with the terms, conditions and requirements of this License Agreement.

FINANCING

40. Any collateralization or mortgage of this License Agreement in full or in part, or any of the CONCESSIONAIRE'S revenues, financial interests or rights hereunder, or any other financing agreement in connection with CONCESSIONAIRE's performance hereunder shall be limited solely to financing in connection with improvements of the FACILITIES. Any such collateralization or mortgage shall be submitted to the Town Attorney for review and shall be subject to the prior approval of the Town Board of the TOWN. Under no circumstances shall the TOWN be liable or responsible for any indebtedness incurred by the CONCESSIONAIRE to any other party in connection with any financing obtained by the CONCESSIONAIRE for the operation and improvements of the FACILITIES.

INDEPENDENT CONTRACTOR STATUS

41. The CONCESSIONAIRE agrees that it is, and shall at all times be deemed to be, an independent contractor, and it shall not, in any manner whatsoever, by its actions or deeds, commit the TOWN to any obligation irrespective of the nature thereof, and it shall not, at any time or for any purpose, be deemed an employee of the TOWN. It is further understood and agreed that no agent, servant, or employee of the CONCESSIONAIRE shall, at any time or under any circumstances, be deemed to be an agent, servant, or employee of the TOWN.

TERM

42. The term of this License Agreement shall be for the period commencing on May 11, 2018, and shall continue to and until October 31, 2018.

CONCESSION FEES

43. (a) The CONCESSIONAIRE shall pay the TOWN in accordance with the following schedule: \$_____ per month commencing on the EFFECTIVE DATE until [DATE (the “ANNIVERSARY DATE”)].

(b) The CONCESSIONAIRE agrees to pay a late charge of five (5%) percent of the monthly concession payment due if the concession payment is received by the TOWN after the 20th day of any month. The TOWN further reserves the right to require concession fees to be paid by certified check. The TOWN shall exercise this option at its sole discretion by notifying the CONCESSIONAIRE by certified mail.

(c) The TOWN, at its sole option, shall have the right to convert the fees required pursuant to this Paragraph to be calculated as a percentage of annual gross receipts. If the TOWN exercises this option, CONCESSIONAIRE shall pay to the TOWN a yearly fee equal to 8% of the annual gross receipts. If the CONCESSIONAIRE’s annual gross receipts exceed \$[PROPOSE AMOUNT], the annual fee paid to the TOWN shall be 10% of the annual gross receipts.

(d) Except as provided below, the term “gross receipts” as used in this License Agreement shall mean the total amount received by or accruing to the CONCESSIONAIRE by reason of the privileges granted under this License Agreement, including but not limited to from any sales or rentals, the provision of any food or beverage services, including catering services, and the provision of any other services authorized by this License Agreement.

The following shall be excluded or deducted from the gross receipts:

(i) Excise, sales, or other taxes that are imposed upon the sale or rental of goods or services that are collected by the CONCESSIONAIRE for the appropriate government or taxing authority, including any taxes or other levies of a different character imposed on the CONCESSIONAIRE subsequent to the date of this License Agreement that are intended as substitutes for or to complement any such taxes. This exclusion from the gross receipts is not intended to apply to any franchise, capital stock, income, or similar taxes that are based upon profits of the CONCESSIONAIRE.

(ii) Tips, gratuities, or other charges for merchandise or services that are included in the account or bill of a patron and for which the CONCESSIONAIRE makes actual payment to employees or others, provided, however, that any portions of such charges retained by the CONCESSIONAIRE shall be included in the gross receipts.

No deductions from the gross receipts shall be made for consideration paid by the CONCESSIONAIRE to travel agencies, group tour operators or organizers, outside salesmen, or promotional or booking organizations or services; nor shall any exclusion from the gross receipts be made for uncollectible patron accounts. No deduction or exclusion from the gross receipts shall be made for fees paid to credit card companies, to collection agencies, or to other outside parties engaged to assist in the collection of accounts receivable.

Immediately upon the sale of goods or services subject to license fees, those license fees shall immediately vest in and become the property of the TOWN, for which the CONCESSIONAIRE shall be responsible until delivered to the TOWN as provided in this License Agreement.

FUTURE CAPITAL IMPROVEMENTS

44. The CONCESSIONAIRE may make additional capital improvements to the FACILITIES, at its own cost and expense, with no setoff from the concession fee payment to the TOWN, provided that all such capital improvements must be approved in advance in writing by the COMMISSIONER.

(a) Designs for all capital improvements shall be developed in accordance with the New York State Building and Fire Code and in compliance with the requirements of the Americans with Disabilities Act and other applicable codes, law, regulation, or ordinance. Designs shall be prepared and signed by architects and engineers licensed to practice in New York State. The CONCESSIONAIRE shall select all architectural and engineering consultants, including consultants selected for the development of the draft and final environmental impact statements, each of whom shall be licensed to practice in New York State as needed, subject to the approval of the COMMISSIONER. Designs for all capital improvements shall be subject to the prior written approval of the COMMISSIONER before any advertising for or acceptance of bids or the award of contracts for construction. Bidders shall be required to pay wages at the prevailing rates set by the New York State Department of Labor. It shall be the CONCESSIONAIRE's responsibility to enforce these requirements.

(b) The COMMISSIONER's approval and acceptance of any capital improvement shall be conditioned upon the DEPARTMENT'S receipt of a report from an independent construction consulting firm selected and retained by the TOWN at the expense of the CONCESSIONAIRE confirming that the construction of such capital improvement has been completed and setting forth: (i) the actual cost of construction of the completed capital improvement; and (ii) the date on which the construction was completed. No at-will termination

payment shall be made for any capital improvement until it is accepted and approved by the DEPARTMENT.

(c) The CONCESSIONAIRE shall be solely responsible for any expenses in excess of originally-estimated costs of the project proposed by the CONCESSIONAIRE and approved by the COMMISSIONER. The TOWN shall have no any liability whatsoever either to the CONCESSIONAIRE or the CONCESSIONAIRE's contractors, subcontractors, or suppliers for any additional expenses, except as provided by law.

(d) Title to all improvements shall vest in the TOWN brick-by-brick during and following the performance of any work.

(e) The CONCESSIONAIRE agrees to obtain, prior to the commencement of any construction projected to cost in excess of \$100,000, a performance bond and a payment bond in the full amount of the cost of construction for any and all capital improvements.

(f) Without limiting any of the foregoing, the design, construction and occupancy of any capital improvements shall be subject to the ordinary requirements for review and approval of new construction by the TOWN Department of Planning and Development; provided further, however, that the TOWN waives all application and permit fees for said review and approval.

INDEMNIFICATION

45. The CONCESSIONAIRE hereby agrees to defend, indemnify and hold harmless the TOWN and its agents, representatives, successors and assigns (the "Indemnified Parties") from any and all demands, claims, actions, causes of action, proceedings, liabilities, fines, penalties, damages, losses, judgments and expenses, (including, without limitation,

reasonable attorney's fees) of whatsoever kind and nature, imposed upon, incurred by, or asserted against any of the Indemnified Parties directly or indirectly arising out of or resulting from: (i) any accident, injury to or death of person or loss of or damage to property occurring or claimed to have occurred on or about the Tappan Beach Concession premises or any part thereof, (ii) the CONCESSIONAIRE'S use, occupancy, operation, maintenance or management of the Tappan Beach Concession premises, (iii) the CONCESSIONAIRE'S failure to comply with or perform any of the terms, covenants or conditions of this License Agreement, (iv) this License Agreement and the transactions contemplated hereunder.

NOTICES

46. Any notices hereunder shall be in writing and shall be given upon delivery by: (i) hand delivery, (ii) delivery by a reputable, recognized national overnight courier service, or (iii) the United States Postal Service when sent by Priority Mail Express, in each instance, addressed to each party at its address set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of delivery or the date that delivery is refused as evidenced by the records of the courier or delivery service or the United States Postal Service, as applicable. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) business days prior notice thereof, any party may from time to time at any time change its mailing address hereunder.

MISCELLANEOUS

47. CONCESSIONAIRE shall comply with all applicable laws and regulations in operating the concession service under this Agreement at the Facilities. The

TOWN shall comply with all applicable laws and regulations relating to ownership of the beach Concession property and the Facilities.

48. This Agreement is subject to the reasonable rules and regulation set by Commissioner of the DEPARTMENT and the TOWN as may be amended at any time from time to time.

49. If any term or provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

50. One or more waivers by either party of the obligation of the other to perform any covenant or condition shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition. The failure of either party to seek redress for a violation of or to insist upon the strict performance of any term, covenant or condition in this Agreement shall not prevent a similar act from constituting a default under this Agreement.

51. Wherever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine gender.

52. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the respective parties and their successors and permitted assigns.

53. The article, section and marginal headings herein are intended for convenience in finding the subject matters, and are not to be used in determining the intent of the parties to this Agreement.

54. This Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This Agreement shall not be modified, terminated (except for a termination in accordance with the express provisions of this Agreement), nor any provision waived except in writing signed by the CONCESSIONAIRE and the TOWN.

55. The interpretation and validity of this Agreement shall be governed by the laws of the State of New York

56. This Agreement shall be subject to and conditioned upon, and shall not be binding on the TOWN until, the approval and authorization of the TOWN BOARD. This Agreement shall be executed on behalf of the TOWN by the Town of Oyster Bay Supervisor after receiving approval and authorization from the TOWN BOARD.

57. Each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

IN WITNESS WHEREOF, CONCESSIONAIRE and TOWN have respectively executed and delivered this Agreement as of the date first above written.

TOWN OF OYSTER BAY

DRAFT

By:
Town of Oyster Bay Supervisor

[INSERT NAME OF CONCESSIONAIRE]

DRAFT

By:
Title:

APPROVED AS TO FORM:

DRAFT

Commissioner of Parks

DRAFT

Deputy Town Attorney

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the ____ day of _____ in the year 20__ before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he has a principal place of business in Oyster Bay, New York; that he is Town Supervisor of the TOWN OF OYSTER BAY, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to authorization of the Town Board of the Town of Oyster Bay.

NOTARY PUBLIC

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the ____ day of _____, in the year 20__ before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he is the _____ of [Concessionaire], the corporation described herein and which executed the above instrument and that he signed his name pursuant to the authority as the _____ of [Concessionaire].

NOTARY PUBLIC

DRAFT

APPENDIX B

5. I, nor the Proposer, have not been a party to any wage and hour lawsuits, except
(provide details, if applicable): _____

[Sign Name]

[Print Name]

Duly sworn to before me on the ____
day of _____, 2018.

NOTARY PUBLIC