

NY Acai

CONCESSION LICENSE AGREEMENT

THIS CONCESSION LICENSE AGREEMENT, made and entered into as of the 23 day of April, 2019 ("Effective Date"), by and between the City of Long Beach, a political subdivision of the State of New York, hereinafter referred to as the "City", and **NY Acai Co.**, whose address is 906 West Beech Street, Long Beach, New York, 11561, hereinafter referred to as the "Licensee". This License Agreement is being entered into under the authority conferred to the Acting City Manager of the City of Long Beach by City Council Resolution 23/2019, annexed hereto as Exhibit A.

WITNESSETH:

WHEREAS, it is the City's desire to continue to provide a wide variety of food and refreshment concessions, a greater diversity of food choices, and excellent quality foods at the City's Food Truck area at Riverside Boulevard between Broadway and the Boardwalk (hereinafter the "Shoregasboard")

WHEREAS, the City, after soliciting competitive proposals for such services pursuant to a Request for Proposal ("RFP"), has accepted the proposal of Licensee; and

WHEREAS, Contractor has represented that it is able to satisfactorily provide the services according to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Definitions:

- a) "Contract Documents" shall mean the following documents which are incorporated herein by reference with this Agreement:
 - (i) City's Request for Proposal, addenda and attachments issued and maintained by its Purchasing Department and annexed hereto as Exhibit B; To avoid ambiguity, to the extent there are any terms in the City's Request for Proposal that conflict with the terms herein, the terms and conditions of the City's Request for Proposal shall prevail.
 - (ii) Licensee's Certificate of Insurance;
 - (iii) Licensee's Proposal, amendments and revisions as maintained by the Purchasing Department and incorporated by reference herein and made a part hereto.
- b) "Concession Services" shall mean the services provided by the Licensee to the general public at the Shoregasboard as provided in the Contract Documents, and as described in Exhibit B attached hereto, which shall not be revised or changed in any way without the prior written consent of the City
- c) "Contract Year" shall mean each 12 month period during the term of this Agreement with the first Contract Year commencing on May 1, 2019.



- d) "Facilities" shall mean any food truck or cart utilized by the Licensee to provide Concession Services
- (e) "Shoregasboard" shall mean the food truck market location located on Riverside Boulevard between Broadway and the Ocean Beach Park, and any other location that the City may deem appropriate or desirable in its sole discretion.
- (f) "Minimum Operating Standards" shall mean the operational requirements contained in the Request for Proposal described in Exhibit A attached hereto and incorporated herein by reference;

2. Services to be Performed:

The Licensee hereby agrees to provide the City with Concession Services at the Shoregasboard in accordance with the Minimum Operating Standards and as provided in the Contract Documents. The Licensee is not authorized to provide any other services of any type not expressly authorized herein without the express written authorization of the City.

3. Term:

The Term herein shall consist of three (3) Ocean Beach Park season from the Effective Date of this Agreement, ending on September 30, 2021. The City may, at its sole discretion, opt to extend Licensee's license under this Agreement for an additional two (2) terms, consisting of two (2) Ocean Beach Park Seasons at its sole discretion. Should the Licensee be desirous of extending its terms past the 2021 Ocean Beach Park Season, the Licensee must express same in writing to the City at least five (5) months prior to the commencement of the 2022 Ocean Beach Park season. The Ocean Beach Park Season shall be defined by the City of Long Beach City Charter, the City of Long Beach's Code of Ordinances, and any applicable City Council Resolution, which are specifically incorporated by reference herein

4. Compensation:

As compensation for the privilege of providing Concession Services to the City as described herein for each Contract Year, the Licensee shall pay the City the following annual fee, plus an enhanced fee for Shoregasboard vendors in order to provide staff to clean the Shoregasboard location, electrical fees, water usage fees, sanitation fees, waste oil disposal and disposal of contents thereof, waste water disposal, and chairs, tables, umbrellas and plants:

2019: \$6,000 + \$2,000 = **\$8,000**

2020: \$6,000 + \$2,000 = **\$8,000**

2021: \$6,000 + \$2,000 = **\$8,000**

Payment shall be made annually on or before May 1 of the calendar year throughout the Term of this Agreement (the "Due Date"), with the first payment due on May 1, 2019. If payments are not received within ten (10) calendar days of the Due Date, then the City may terminate this Agreement, begin procedures to pursue any remedies as provided in this Agreement or by law. The annual payments shall be made payable to "City of Long Beach" and sent to Office of the Purchasing Agent, City of Long Beach, 1 West Chester Street, Long Beach, New York 11561.



5. Time of Service:

Licensee shall provide Concession Services at the Shoregasboard, and the Shoregasboard alone, as delineated by the terms and conditions of the Request for Proposals, at all times when the Ocean Beach Park is open for business except when the Park is closed as determined in the sole discretion of the City, in accordance with the Licensee's Concession Services schedule, as approved in writing by the City, which shall be submitted by Licensee prior to offering Concession Services at the Park. In the event of inclement weather, Licensee may cease operations until the weather improves with the consent of the City, its attorneys, or the City's designee(s).

6. License for Facilities:

The City hereby grants to the Licensee, for the term of the Agreement the right, privilege and permission to provide Concession Services at the Shoregasboard. These rights and privileges are subject to the following:

- a) This Agreement is made on the express condition that the Shoregasboard shall be used only in conformance with the applicable laws and ordinances, including the terms and conditions of the Request for Proposals. All rights of the Licensee hereunder may be terminated by the City, effective upon receipt of written notice in the event that any other use is made thereof.
- b) The City provides, and the Licensee accepts, the Shoregasboard "as is" except as otherwise provided by the terms and conditions of the Request for Proposals.
- c) Any and all construction, alterations, or additions, and/or all equipment used pursuant to this Agreement, shall meet all applicable federal, state, county and City laws and local laws. The Licensee is responsible for applying for, obtaining, and paying all costs of any required permits. The Licensee shall pay for all charges for labor, services and materials used in connection with any improvements or repairs to the Shoregasboard undertaken by the Licensee. All such additions, improvements and fixtures except movable equipment and inventory, shall become the property of City upon completion and remain in and/or upon the Shoregasboard and be surrendered upon termination of the Agreement.
- d) The Licensee shall not allow activities which are prohibited in all other City owned land under the provisions of federal, state, county or City laws, rules, regulations or ordinances.
- e) The City shall be responsible for providing: (1) staff to clean and maintain the vicinity of the Shoregasboard location; (2) electricity; (3) water; (4) sanitation; (5) waste oil disposal; (6) waste water disposal; (7) chairs, tables, umbrellas, and plants
- f) City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in utility, or any other, services.



- g) All property of any kind that may be within the Shoregasboard during the continuance of the Agreement shall be at the sole risk of Licensee, and City shall not be liable to Licensee or any other person for any injury, loss or damage to property or to any person arising out of Licensee's activity on the Shoregasboard.
- h) Licensee agrees that any signs or advertising utilized at the Shoregasboard or in marketing Concession Services must have prior written approval from the Department which shall not be unreasonably withheld.
- i) Licensee agrees to maintain a conspicuously posted price list for items sold at the Shoregasboard
- j) Licensee agrees to conform with such other reasonable rules and other requirements which may be imposed by the City from time to time
- k) Licensee hereby agrees that:
 - (i) no activity will be conducted in the Park that will produce any hazardous substance, except for such activities that are part of the ordinary course of Contractor's business (the "Permitted Activities") provided. Said Permitted Activities shall be conducted in accordance with all applicable laws and shall be approved in advance, in writing, by the City.
 - (ii) The City will not be used in any manner for the storage of any hazardous substances except for the temporary storage of such materials that are used in the ordinary course of Contractor's business (the "Permitted Materials") provided such Permitted Materials are properly stored and disposed of in a manner and location meeting all applicable laws and approved, in advance, in writing by the City.
 - (iii) no portion of the Shoregasboard will be used as a landfill or a dump.
 - (iv) Licensee will not install any underground tanks of any type.
 - (v) Licensee will not allow any surface or subsurface conditions to come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.
 - (vi) Licensee will not permit any hazardous substances to be brought onto the Park property and if so brought thereon, Licensee shall immediately remove same with proper disposal and all required clean-up procedures shall be diligently undertaken pursuant to all applicable laws.

7. Amendment of the Contract:

This Agreement may be amended only by mutual written consent of the parties.

8. Assignment/Subcontracting:

The Licensee shall provide all services required by this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the City, at the City's sole discretion. In the event of a corporate acquisition and/or merger, the Licensee shall provide written notice to the City within thirty (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The City shall have the right to terminate this Agreement at its sole discretion upon such notice or any time thereafter.



9. Termination and or Cancellation:

Failure of the Licensee to comply with any of the provisions of this Agreement, including the terms and conditions of the Request for Proposal, shall be considered a material breach of contract and shall be cause for immediate termination of the Agreement at the sole discretion of the City.

10. Permits / Licenses:

Contractor must secure and maintain any and all permits and licenses to provide services pursuant to this Agreement. Contractor shall comply with all laws, regulations, and ordinances, whether state, local, or federal concerning its operation.

11. Minimum Insurance Requirements:

Contractor shall procure, pay for and maintain during the term of the Lease insurance as required herein:

- a) Comprehensive General Liability including, but not limited to, independent contractor, contractual, Premises/Operations and Personal Injury covering liability assumed under indemnification provisions of this Lease, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$1,000,000, each occurrence; and property damage of not less than \$100,000, each occurrence. (Coverage shall be on an "occurrence" basis and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability shall be included to limits of \$100,000, per occurrence.

12. Indemnification:

To the fullest extent permitted by law, the Licensee shall (1) immediately defend and (2) indemnify the City, and its councilmembers, officers, and employees from and against all liabilities, regardless of nature or type that arise out of, pertain to, or relate to the Agreement or the Amendment as defined in this Agreement, unless arising out of the City's gross negligence. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

Additionally, Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, and employees, immediately upon tender to Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Licensee are responsible for the claim does not relieve Licensee from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. In order for Licensee to be relieved of the duty to defend, there must be no possible factual or legal basis on which Licensee's duty to indemnify under any provision of this indemnity agreement could be held to attach.



13. Governing Law:

The laws of the State of New York shall govern this Agreement.

14. Independent Contractor Status:

The Licensee is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of City . Licensee acknowledges that it is responsible for complying all laws and regulations relating thereto. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the Agreement, at the discretion of the City.

15. Severability:

The terms and conditions of this agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

16. No Presumption Against Drafter:

For purposes of this Agreement, as well as the terms and conditions contained in the Request for Proposals, none of the parties shall be considered the drafter of this Agreement so as to give rise to any presumption or convention regarding construction of this document. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

17. Notice:

Any notice required or permitted to be given hereunder shall be delivered personally or sent by mail with postage pre-paid to the following addresses or to such other places as may be designated by the parties hereto from time to time.

For the Licensee:

NY ACAI Co. NY ACAI Co.
906 West Beech Street
Long Beach, NY 11561
(516) 724-2815
timothy.delgrosso@gmail.com
anthonysodano@gmail.com


For the City:

City of Long Beach
Attn: Purchasing Agent
1 West Chester Street
Long Beach, New York 11561




IN WITNESS WHEREOF the parties herein have executed this Concession License Agreement for Concession Services, as of the day and year first written above.

City of Long Beach

By: 
Robert Agostisi, Acting City Manager

Licensee

By: 
Tammy Del Grosso
(Printed Name)
President
(Title)

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

On this 25 day of April, in the year 2019, before me personally came im del grosso, to me known, who, being by me duly sworn did depose and say that he/she has a principal place of business at 1 riverside blvd; that he/she is the President of NY ACAI CORP, the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Nina Smolinski

Notary Public

NINA SMOLINSKI
Notary Public - State of New York
No. 01SM6290485
Qualified in Suffolk County
My Commission Expires October 15, 20

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

On this ____ day of April, in the year 2019, before me personally came Robert Agostisi, to me known, who, being by me duly sworn did depose and say that maintains a principal place of business at 1 West Chester Street, Long Beach, New York; that he/she is the City Manager of the City of Long Beach, the municipal corporation described in and which executed the above instrument; and that he/she signed his/her name hereto.

Notary Public