

CONTRACT / FORMAT OF AGREEMENT

H. SMITH RICHARDSON GOLF COURSE
CLUBHOUSE FOOD & LIQUOR CONCESSION
2425 Morehouse Highway, Fairfield, Connecticut

THIS AGREEMENT, dated this _____ day of _____, 2020, is between the Town of Fairfield, Connecticut, (Hereinafter called the "Town") and _____ (hereinafter called the "Concessionaire").

WHEREAS, Pursuant to and in accordance with Town of Fairfield Bid Number 2021-13 the Town has chosen Concessionaire as the successful bidder; and

WHEREAS, pursuant to said bid the Town desires to enter into an agreement with Concessionaire for the operation of the H. Smith Richardson Golf Course Food & Liquor Concession located at 2425 Morehouse Highway, Fairfield, CT and the Concessionaire desires to enter into said agreement and operate said H. Smith Richardson Golf Course (HSRGC) Concession; (the "Concession").

NOW, THEREFORE, in Consideration of the mutual promises contained herein, including all of the provisions of the Bid Documents for Town of Fairfield Bid Number 2020-73 which are hereby incorporated and made part of this agreement (Agreement), the Town and the Concessionaire hereby agree as follows:

1. Grant: The Town hereby grants to Concessionaire the right to operate the H. Smith Richardson Golf Course concession at H. Smith Richardson Golf Course, and leases to Concessionaire that certain area of the building located thereon, situated at the 2425 Morehouse Highway, located in Fairfield, Connecticut (the "Premises"), as outlined in the bid documents, upon the terms and conditions herein below set forth.
2. Term: This Agreement is for a term of [x] years and [x] months (the "Term") commencing on [x], 2020 (the "Commencement Date"), and expiring on [x] (the "Expiration Date").
3. Renewal Options:
 - (a) Provided Concessionaire is not in default under the terms and conditions of this Lease after the expiration of any applicable notice or cure period, Concessionaire may request to renew and extend the term of this Lease for [one, two, three] (#) year periods (each, an "Extended Term") following the expiration of the original [#] year (#) month term by giving written notice ("Concessionaire's Notice") of exercise of the option, to the Town at least six (6) months prior to the expiration date of the then present term of this Lease, subject to Town's sole discretion to accept such renewal request. The options to extend shall be on the same terms and conditions contained herein, except as the Fees may be adjusted by agreement of the parties. There shall be no further options to extend beyond the [#] option[s] set forth above.

(b) If Concessionaire is in default, and such default has continued beyond the expiration of any applicable cure period on the date the notice of exercise of the option is received by Town, then said notice shall be ineffective, or if Concessionaire is in default on the Commencement Date of the then Extended Term which default has continued beyond the expiration of any applicable cure period, the Extended Term shall not commence and this Lease shall terminate at the end of the original term.

(c) Concessionaire's failure to give Town written notice exercising its option set forth in Section 2(a) above within the stipulated time shall result in the automatic forfeiture of such option to renew. Town shall be under no obligations to solicit such notice, nor to remind Concessionaire of its obligation hereunder.

(d) Except as modified herein, all terms and conditions of the Lease shall be in full force and effect during an Extended Term without any further options to extend beyond the [#] option[s] to extend contained in Section 3(a). The option[s] to renew are offered exclusively to the current Concessionaire and may not be assigned, pledged or otherwise transferred except to Concessionaire's assignee, if any, as provided in Section 12 hereinafter.

4. Purpose: The Concessionaire shall have available at times indicated in this agreement for sale to the public, food and beverage services at reasonable prices and served in a manner that ensures a high-level of service and quality to both golfers and non-golfers. Menu selections are to be varied and include American and Continental style meals as well as lighter fare. Selections are not to be oriented toward any single ethnic style. The style of menu and general range of price are subject to approval by the Fairfield Golf Commission (FGC).

Entertainment of a passive nature and appropriate to a quality restaurant in a Town owned building is permitted and encouraged, however it is not to be used as a source of business except in conjunction with the food and beverage aspect of the Concession. Entertainment will not be permitted except when the kitchen is open for normal business. Admission charges are not to be used for the public to gain access to the Concession. The volume of entertainment is to be restricted to a level so as not to interfere with the ability of patrons to carry on normal conversations. Entertainment which can be heard outside the building will not be allowed.

Except for the goods and services listed in this section, the Concessionaire may not engage in any other business or services on the Premises. Prior written approval of the Parks and Recreation Commission is required if the Concessionaire wishes to expand the list of approved goods and services.

The Town will not permit any person other than the Concessionaire to engage and will not itself engage in business in competition with Concessionaire at this facility during the term of the Agreement.

5. Fees: Concessionaire shall pay Town, as part consideration for this Agreement, fees as follows:

Said fees shall be paid

Season 2021:	\$xxxxx
Season 2022:	\$xxxxx
Season 2023:	\$xxxxx
Season 2024:	\$xxxxx
Season 2025:	\$xxxxx

Seasonal fees shall be made in bi-yearly installments on the 1st day of April and on or before the 1st day of July. Payments are to be made to the Fairfield Parks and Recreation Department, 75 Mill Plain Road, Fairfield, CT 06824.

If any installment of Concession Fee due from Concessionaire is not received by the Town when due, Concessionaire shall pay to the Town an additional sum of 10% of the overdue concession fee as a late charge. Acceptance of any late charge shall not constitute a waiver of Concessionaire's default with respect to the overdue amount or prevent the Town from exercising any of the other rights and remedies available to the Town.

6. Security Deposit / Performance Bond: To ensure the faithful performance of the Agreement between the Concessionaire and the Town, Concessionaire shall post a security deposit with the Town. Said Security Deposit shall be in one (1) (or a combination) of the following surety arrangements each year, which shall in total equal twenty-five percent of the annual rental fee for that year; (1) an irrevocable bank letter of credit; or (2) cash which shall be held by the Town in a non-interest bearing Reserve Account (and which may be co-mingled with other funds of the Town; or (3) other acceptable surety arrangements agreed upon between the Town and Concessionaire. The security deposit agreed upon by the parties must be approved and posted prior to Concessionaire taking possession of the premises, and the actual surety documents shall be available upon execution of this Agreement. Said security deposit may be used by the Town, in its sole discretion, to cover: shortfalls in payments to the Town by Concessionaire, unpaid obligations to third-parties incurred by Concessionaire, cost of obtaining substitute performance of any of the obligations of Concessionaire, and/or damage to equipment owned by the town caused by Concessionaire, and its agents or employees, whether or not said equipment is used by Concessionaire in its business.

7. Insurance/Indemnification: Concessionaire's insurance shall comply in all respects with the requirements set forth in RFP 20121-13 and the conditions below. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Concessionaire or its Sub-Concessionaires/Firms, employees or agents to the Town or others. Any remedy provided to the Town shall be in addition to, and not in lieu of, any other remedy available under this Contract or otherwise.

The Town of Fairfield, its employees and agents shall not be liable to the Concessionaire, any Invitee or any other person or entity for any damage (including indirect and consequential damage), injury, loss or claim (including claims for interruption of or loss to business) based on or arising out of any cause whatsoever, including the following: repair to any portion of the HSRGC Clubhouse or the surrounding areas, interruption in the use of the HSRGC Clubhouse or any equipment therein; any accident or damage resulting from any use or operation (by the Town, Concessionaire or any other person or entity) of heating, cooling, electrical, sewerage or plumbing equipment or apparatus; termination of this Agreement by reason of damage to the HSRGC Clubhouse or the surrounding area; any fire, robbery, theft, vandalism, mysterious disappearance, or any other casualties; actions of any other person or entity; failure or inability to furnish any service specified in this Agreement; and leakage in any part of the HSRGC Clubhouse from water, rain, ice or snow that may leak into, or flow from, any part of the HSRGC Clubhouse, or from drains, pipes or plumbing fixtures in the HSRGC Clubhouse. All risk of loss by fire or other casualty to the Concessionaire's equipment shall be borne by the Concessionaire and the Town shall have no liability for such loss. In case of such loss, the Concessionaire, upon written approval from the Parks and Recreation Director and the FGC may work from a temporary facility and the monthly fees shall be adjusted as agreed upon by the parties in writing. Any property placed by the Concessionaire or any Invitee in or about the HSRGC Clubhouse shall be at the sole risk of the Concessionaire, and the Town of Fairfield shall not in any manner be held responsible therefor. Any person receiving any article delivered for the Concessionaire shall be acting as the Concessionaire's agent for such purpose and not as the Town's agent. The Concessionaire shall not have the right to set off or deduct any amount allegedly owed to the Concessionaire pursuant to any claim against the Town from any rent or other sum payable to the Town.

The Concessionaire shall reimburse the Town, its employees and agents for any loss or expense (as Additional Fees), and shall indemnify, defend and hold them harmless from and against all costs, damages, claims, liabilities, expenses (including Professional Fees), losses, penalties and court costs suffered by or claimed against them, directly or indirectly, based on or arising out of, in whole or in part, (a) use and occupancy of the HSRGC Clubhouse or the business conducted therein, (b) any act or omission of Concessionaire or any Invitee, (c) any breach of the Concessionaire's obligations under this Agreement, including failure to comply with Laws or to surrender the HSRGC Clubhouse upon the expiration or earlier termination of the Contract, or (d) any entry by the Concessionaire or any Invitee upon the HSRGC Clubhouse prior to the Commencement Date.

The Town shall be under no obligation to restore the Clubhouse building in the event of damage or destruction by fire or other casualty. As long as the Premises are not usable by the Concessionaire, the rental fees shall be abated on a prorated basis. In case of such loss, the Concessionaire, upon written approval from the Parks and Recreation Director and the FGC may work from a temporary facility and the monthly fees shall be adjusted as agreed upon by the parties in writing.

8. Equipment, Furniture and Fixtures: A list of equipment that the Town provides is listed on Schedule 'A' and the title to this equipment shall remain with the Town. The Concessionaire will be responsible for supplying all additional kitchen equipment not listed on Schedule A, including all furniture, fixtures, and fittings for the dining room, bar and patio areas.

9. Relationship of Parties; Personnel:
 - a) Independent Contractor. Concessionaire is an independent contractor and is not an agent or employee of, and has no authority to bind, Town by contract or otherwise. Concessionaire will perform the concession services in accordance with this Agreement but Concessionaire will determine, in Concessionaire's sole discretion, the manner and means by which the services are accomplished, subject to the requirement that Concessionaire shall at all times comply with any all applicable laws, rules and regulations.

 - b) Employment Taxes and Benefits. Concessionaire shall bear sole responsibility for payment of compensation and for provision of any benefits to its personnel. Concessionaire shall pay and report, for all personnel assigned to the Services, all applicable taxes and unemployment insurance applicable to such personnel. Concessionaire shall indemnify Town and hold it harmless from and against all claims, damages, losses and expenses, including reasonable fees and expenses of attorneys and other professionals, relating to any obligation imposed on Town to pay any taxes (including penalties and interest), social security, unemployment or disability insurance, or similar items in connection with compensation received by Concessionaire pursuant to this Agreement.

 - c) Concessionaire Personnel. Concessionaire or designated full-time manager must be on the premises occupied by Concessionaire at all times that the concession is open. The Concessionaire must ensure that the concession is always staffed with experienced, dedicated personnel. Concessionaire must keep the quality of service at a high level in accordance with similar golf course food and liquor facilities and shall be responsible for the decorum of its staff. Failure to maintain appropriate staff will be considered a material breach of the Contract. If the Town, at its sole discretion, deems such service to be insufficient, it shall notify the Concessionaire in writing, describing the deficiency requesting that it be corrected. The Town may terminate the Agreement if the Concessionaire fails to correct any deficiency or fails to provide evidence that corrective measures are in process, within fifteen (15) days of such written notice.

10. Private Events: Periodically throughout the golf season the golf course may be closed to the general public, normally ½ day at the most, to host private golf outing events. For information purposes only, during the 2019 season the golf course hosted about five (5) such special events, however, it is expected that this number will increase to between fifteen (15) and twenty (20) such special events.

The floor plan of the concession (see Exhibit A) was designed with the specific intention that public and private events can be hosted at the same time. The Concessionaire will be encouraged to host functions throughout all seasons.

Golfers are not permitted to bring their own beer and alcohol onto the course. While it is not mandatory that the outing group purchase food or beverages from the concession, the golf course, along with the Golf Professional, will encourage this and will distribute to the outing organizers any brochure supplied by the Concessionaire for this purpose.

11. Accounting Records/Internal Controls: The Concessionaire agrees to keep a book of accounts and records of all operations and to establish systems of bookkeeping and accounting in a neat and organized manner, satisfactory to the Parks and Recreation Commission and/or its designee. Concessionaire shall permit an inspection of said Concessionaire's books and records by the Parks and Recreation Commission and/or its designee, as often as such inspection is deemed necessary.

Throughout the term of the lease, the Concessionaire will be required to maintain a true and accurate revenue control system that maintains detailed sales information from each transaction. Specifically, sales information for the concession must be recorded electronically, via a mobile point-of-sale system (e.g., Revel Systems POS, LightSpeed Retail POS, ShopKeep POS, Breadcrumb POS, TouchBistro POS, etc.) with a minimum of 4G wireless Internet service, with details on, but not limited to, each sales transaction, the item(s) sold, time, date of sale and price of the item sold. The Concessionaire will be required to provide the FGC with regular sales reports as

requested. The Concessionaire must also establish a dedicated bank account for gross receipts deposits and cash disbursements related to the operation of the Concession. All accounting and internal control related records shall be maintained for a minimum of six (6) years from the date of creation of the record.

The Town shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including State of Connecticut sales tax return records, Federal and State income tax returns and Federal and State payroll tax reports.

12. Assignment and Subcontracting: The Concessionaire will not assign or this Agreement or sublet any portion of the Premises without first obtaining the written consent of the Town of Fairfield and the FGC.
13. Failure to Operate / Termination: Either party may terminate this Agreement in the event of a material breach by the other party of this Agreement if such breach continues uncured for a period of ten (10) days after written notice. Further, if the Town determines, at its sole discretion, that the facilities are not being operated in the best interests of the Town, or if the Concessionaire fails to operate the Concession for two (2) successive days during the golf season without approval from the Town, or is adjudicated bankrupt, or has admitted insolvency in writing or a receiver or other officer of any court is appointed to take charge of the property or affairs of the Concessionaire, or if any assignment is made by the Concessionaire for the benefit of creditors, the Town shall have the right to terminate the Agreement by providing fifteen days written notice of termination to the Concessionaire.

Upon the termination of this Agreement, whether by action of the Town or lapse of time, Concessionaire shall immediately vacate the premises. Concessionaire shall remove all of its personal property from the premises. In the event Concessionaire removes its trade fixtures, it shall restore the premises to its pre-Agreement condition. Any items of personal property remaining on the premises shall be deemed abandoned, and may be disposed of by the Town without liability to the Concessionaire.

Upon Concessionaire vacating the premises pursuant to this Section, Town shall return to Concessionaire the pro-rated unused portion of any fees paid, together with security deposit, less any sums retained pursuant to Section 6 of this Agreement.

No waiver by the Town of any default by the Concessionaire shall be deemed to operate as a waiver of any subsequent default.

14. Hours of Operation: Concessionaire shall operate the concession every day, including all holidays, during the golf season; the ‘golf season’ typically commences during the last week in March and concludes the second week in December – weather permitting. The concession is to be open during those hours when the golf course is open and for such additional hours as the FGC may approve. It is highly encouraged that the concession remains open during the off-season.

The daily hours of operation shall be posted at all times within the concession facility.

The concession shall open for business a minimum of one (1) hour prior to the first scheduled tee time and shall not close prior to dusk/sundown. The concession shall be permitted to remain closed or close prior to dusk/sundown if the golf course is closed due to weather conditions.

If the Concessionaire fails to operate the concession for two (2) successive days during the golf season without approval from the FGC or designee, or is adjudicated bankrupt, or has admitted insolvency in writing or a receiver or other officer of any court is appointed to take charge of the property or affairs of the Concessionaire, or if any assignment is made by the Concessionaire for the benefit of creditors, the Town shall have the right to terminate the Agreement by giving written notice of termination to the Concessionaire.

15. Regulations and Licensing:
 - a) Concessionaire shall comply with all of the Town of Fairfield Health Department requirements for operating a concession and shall obtain and pay for all of the necessary licenses. This entails meeting all of the State and local food service regulations and passing inspection.

- b) The Concessionaire must at all times possess a valid State of Connecticut Food Operators Certificate.
 - c) The Concessionaire must maintain a full liquor permit throughout the duration of the agreement and will need to show clear evidence of being able to conform to this requirement. A copy of the valid liquor permit shall be given to the Town within a reasonable time frame from the award of the contract. Any violation of the liquor permit will constitute an immediate termination of the contract for cause without further obligation by the Town.
 - d) The Concessionaire, his/her agents and employees must adhere to Town and State of Connecticut rules and regulations and Town ordinances, insofar as such rules and regulations may affect the Concessionaire's use of the premises and its adjoining golf facilities. The Town and State entities include, but are not limited to, the Town Health Department, the Town Recycling Program, the State Board of Health and the State Liquor Commission. Cleaning up after private parties must be done as soon as practical after the event and must not interfere with the normal use and enjoyment of the facilities.
 - e) The Concessionaire shall pay all license fees, taxes and special assessments applicable to or resulting from the operation of and the premises used by the Concessionaire.
16. Exclusivity: Except as described above for private events, the Town will not permit any person other than the Concessionaire to engage in, and it will not itself engage in, a business in competition with the concession at the H. Smith Richardson Clubhouse. The business of the concession is the for-profit sale of food and beverages directly to the consumer and nothing else. Concessionaire may not engage in any other business on premises without written approval from the Town's Director of Parks and Recreation, including catering services, which approval will not be unreasonably denied.
17. Facilities and Service:
- a) Concessionaire will be required to furnish the golfing community and the general public with a food and full liquor permit concession. Concessionaire may not engage in any other business on said Premises without approval from the Town.
 - b) The proposed concession shall be personal to the Concessionaire and shall not be assigned, sold or subcontracted without the written approval of the Town. In addition, the Concessionaire or designated full-time manager must be on the Premises during the times of operation.
 - c) Concessionaire shall pay all license fees, taxes and special assessments applicable to or resulting from the operation of the Concession and the Premises used by the Concessionaire.
 - d) Concessionaire must maintain in good condition all Town property. The Concessionaire will be required to operate and maintain all equipment provided by the Town according to the manufacturer's specifications. All equipment is listed on "Schedule A".
 - e) Concessionaire must maintain a clean and safe work environment in and around the HSRGC Clubhouse. This includes the areas encompassed by the Concession, such as, the patio, the surrounding sidewalks and incoming driveway used for deliveries, and the enclosed refuse area located in the parking lot. The Concessionaire will be held responsible for keeping the Premises clean and free from refuse, rubbish and all other debris. The Town will arrange the removal of refuse (including cost of dumpster) via separate contract.
 - f) The Concessionaire shall not sell any tobacco products.
 - g) Concessionaire will be responsible for notifying the FGC and the Director of Parks and Recreation in writing of any disputes and/or issues regarding all aspects of the business, within fourteen calendar days of the occurrence.
 - h) Concessionaire shall be required to provide ice at no additional charge to the golf course water stations.

- i) Except for structural repairs, the Concessionaire, at his/her own cost and expense, shall maintain that portion of the premises leased/licensed in full and complete repair to the satisfaction of the Parks and Recreation Commission. No alterations shall be made to the premises without the prior written approval of the Town.
 - j) Concessionaire is responsible for cleaning of all areas encompassed by the concession, and will use his own supplies. These areas include the kitchen, food preparation area, bar, seating area, outside terrace, internal facilities, external doors, and windows. The Concessionaire must maintain a clean and safe work environment of all Town properties. This includes the areas encompassed by the concession, such as; the patio, the surrounding sidewalks and incoming driveway used for deliveries, and the enclosed trash area located in the parking lot.
 - k) Concessionaire shall be responsible for keeping the premises clean and free from refuse and rubbish. All refuse shall be kept in containers provided by the Concessionaire and the Concessionaire shall be responsible for the disposal and related costs of trash removal and will use a trash hauler approved by the Town. The Concessionaire shall adhere to the Town of Fairfield recycling program as prescribed by Town ordinance.
 - l) Concessionaire shall be responsible for immediately taking steps to remedy any pest control issue that is brought to its attention and results, in the Town's sole discretion, from the activities of the concession.
 - m) Concessionaire shall not install any vending machines, and may not store deliveries or office equipment with the dining area or other public spaces.
 - n) Concessionaire shall be responsible for cleaning and resupplying the restrooms.
18. Utilities: The Concessionaire shall be responsible for all utility payments in addition to the annual rental fee.
19. Inspection: Authorized representatives of the Town shall be permitted to inspect the Concession Premises upon reasonable notice during business hours.
20. Smoke Free Building: The HSRGC Clubhouse is a Town owned building falling under Sec. 19a-342 of the Connecticut General Statutes and therefore is deemed as a designated "no smoking" area. The Concessionaire is required to enforce this Statute; failure to do so may result in a fine and may be cause for dismissal.
21. This Agreement shall be governed by the laws of the State of Connecticut
22. Severability: If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

INWITNESS WHEREOF, the Town has caused this lease Agreement to be signed by the Purchasing Authority and the Concessionaire as caused this lease Agreement on this _____ day of _____, 2020.

TOWN OF FAIRFIELD

TOWN OF FAIRFIELD

CONCESSIONAIRE

Brenda L. Kupchick

Gerald Foley

Name

Name

Trading as

First Selectman

Director of Purchasing

Title

Title

Name/Title

Signature

Signature

Signature

SCHEDULE A

Equipment permanently fixed within the Concession facilities are as follows: