

**Nassau County
Office of the Comptroller**



**Review of License Agreements to Operate Food and Beverage Concessions
Between Nassau County Parks Department and
Dover Gourmet Corporation**

GEORGE MARAGOS

Comptroller

December 12, 2016

NASSAU COUNTY
OFFICE OF THE COMPTROLLER

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Executive Summary

Introduction:

Nassau County (“County”) acting on behalf of the Department of Parks, Recreation and Museums (“Parks Department”), entered into two separate licensing agreements with Dover Gourmet Corporation d/b/a Quick Snack/Carnival Ice Cream (“Dover”), granting Dover exclusive rights to provide catering, vending and concession services at various county parks and recreation facilities (“Parks”). One agreement pertains to Parks (excludes Carlton on the Park & the Public Safety Conversion), and the other to Nickerson Beach Park (“Nickerson Beach”). Dover has an exclusive license to operate snack bars, dining rooms and dining service, mobile trucks, golf cart food, vending machines, cafeterias, restaurants, special events, catering event entertainment and banquet catering at the Licensed Premises (“Premises”) (see Appendix A for a list of Licensed Premises) for the sale of hot and cold foods, beverages, candy and ice cream products, sundry items, and, where applicable, cabana service.

In addition to the two aforementioned Department of Parks license agreements, Dover has an agreement with the County to provide vending and concession services at County office buildings. Also, the County granted a land use permit to Dover for the use of land adjacent to Dover’s Coral House facility in Baldwin. Dover pays the County a monthly permit fee for the use of the land. Dover remits the office building license fee payments and the permit fees directly to the County’s Office of Real Estate Services.

Our audit is limited to the two license agreements to provide vending and concession services at Parks and at Nickerson Beach. The term of the license agreements is for 10 years, January 1, 2010 through December 31, 2019. For our audit period, January 2013 through May 2015, Dover paid the Department of Parks license fees totaling \$439,900, including \$47,578 for Nickerson Beach. Nickerson Beach is operated five months per year, from May to September. On average, Dover’s annual gross sales for Parks and Nickerson are \$1.9 million and \$101,000, respectively. Dover remits in license fees to the Parks Department, approximately 10% of Parks Net Sales, and 23% of Nickerson Beach Net Sales.

Purpose:

The objective of our audit was to review Dover’s compliance with the terms of the licensing agreements.

Key Findings:

Parks Department Findings:

- Did not levy liquidated damages against Dover for repeated incidents of non-compliance such as late payments, non-payment of late fees, and non-submission of aggregate reports.
- Did not bill Dover for \$22,800 in unpaid late charges.

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- Offset \$84,000 of license fee revenues against County expenditures resulting in both revenues and expenditures being underreported in the County financial system, and circumventing the Comptroller's claims process.
- Did not adequately monitor Dover: did not review backup documentation, points of sale/cash register tapes and vending machine meters, and proposed product pricing.
- Did not ensure that Dover employees who have contact with minors on County premises were fingerprinted by the Police Department.

Dover Findings:

- Did not remit monthly license fees timely to the Parks Department.
- Underreporting of cash sales receipts resulted in non-payment of over \$11K in New York sales tax and over \$27K in loss of fee revenues to the County.
- Did not submit relevant Annual Aggregate Reports in compliance with the license agreements.
- \$295,635 of Capital Improvements not started should be remitted to the County.
- Did not remit the accurate license fees for catering at Nickerson Beach Park owing the County \$1,402.
- Did not have Parks Department approval for use of County Seal for advertisement of Dover's private businesses.

Key Recommendations:

Parks Department Recommendations:

- Ensure that Dover submit Monthly Gross Sales Receipts and full fee payments on a timely basis, in accordance with the terms of the contract agreements
- Bill Dover for the \$22,800 of late charges due for late payments between January 2013 and May 2015.
- Bill Dover \$27,075 for the underreporting of fee revenues.
- Bill Dover \$1,402 in catering fee underpayment.
- Review statements of gross receipts and supporting documentation for accuracy.
- Enforce the submission of signed Monthly Gross Sales Receipts, signed Annual Summary of Gross Sales Receipts and signed and certified Annual Income and Expense Statement.
- Provide written notice to Dover with regards to late payments, late fees, non-submission of aggregate reports and certified income statement. In the event any such non-compliance is not remedied within 30 days of the written notice, levy liquidated damages in accordance with section 4.6 of the agreements
- Provide the Comptroller's Office, within three months of certification of final completion, a certified statement, issued by the Licensee, detailing the actual costs of construction, and accompanying supporting documentation.
- Ensure that costs to fund County sponsored events are properly authorized by the legislature.

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- Record all revenues, expenditures, and accruals accurately and timely in the County's Financial System.
- Require that Dover submit schedules concerning operating days and hours, and proposed schedule of prices and rates for the services and products.
- Review gross sales supporting documentation such as cash register tapes or vending machine meter counts on a periodic basis; observe and evaluate Dover's cash registers and vending machine meters.
- Require that Dover submit a list of current employees including evidence that personnel who have regular contact with minors were adequately screened.

Dover Recommendations:

- Include all administrative service fees in gross sales receipts so that the correct license fee payments are remitted to the Parks Department.
- Remit New York State Sales and Use Tax, and any interest and penalties New York State Taxation and Finance may assess, in accordance with New York State Department of Taxation and Finance Guidance, including the past due amount of \$11,287.
- Take the necessary steps to complete the Capital Improvements as agreed upon in the License Agreements for Parks and Nickerson Beach or pay amounts to the County in lieu as license fees.
- Obtain written approval from Parks prior to any advertisement in connection with the Parks or Nickerson Beach Park.

The matters covered in this report have been discussed with the officials of Dover Gourmet Corporation and the Nassau County Department of Parks Recreation and Museums. On August 17, 2016 we submitted a draft report to both for their review. The Department of Parks provided their response on September 12, 2016 and Dover provided their response on September 28, 2016. Their responses and our follow up to their responses are included as Appendix E of this report.

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Introduction

Background

Nassau County (“County”) acting on behalf of the Department of Parks, Recreation and Museums (“Department of Parks”), entered into two separate licensing agreements with Dover Gourmet Corporation d/b/a Quick Snack/Carnival Ice Cream (“Dover”), granting Dover exclusive rights to provide catering, vending and concession services at various county parks and recreation facilities (“Parks”). One agreement pertains to Parks, and the other to Nickerson Beach Park (“Nickerson Beach”).

Dover has an exclusive license to operate snack bars, dining rooms and dining service, mobile trucks, golf cart food, vending machines, cafeterias, restaurants, special events¹, catering², event entertainment and banquet catering³, at the Licensed Premises (“Premises”) for the sale of hot and cold foods, beverages, candy and ice cream products, sundry items, and, where applicable, cabana service. Patrons visiting the parks may prepare their own food or purchase their own prepared food for use on the premises; however, no outside contractor, caterer or other entity is permitted to operate, sell food or beverages at the Premises unless the Premises are closed.

All approvals, permits, and other licenses required by federal, state, town, village and county laws, rules and regulations, which are necessary to lawfully operate on the Premises, are obtained by Dover. Additionally, Dover provides security for all catering events, at its own expense. We contacted the County Department of Health in July 2016 to determine whether all Licensed Premises had valid permits for the sale of, use of and storage of food, and if there were outstanding violations against the facilities. For the 20 facilities reviewed, we noted that all had valid permits and there were no outstanding critical violations. Critical Violations are noted for items that relate directly to factors which lead to foodborne illness and must receive immediate attention. For example, foods not protected from contamination, temperatures not measured and improper cooling of foods.

In addition to the two aforementioned Department of Parks license agreements, Dover has an agreement with the County to provide vending and concession services at County office buildings. Also, the County granted a land use permit to Dover for the use of land adjacent to Dover’s Coral House facility in Baldwin. Dover pays the County a monthly permit fee for the use of the land. Dover remits the office building license fee payments and the permit fees directly to the County’s Office of Real Estate Services.

Our audit is limited to the two license agreements to provide vending and concession services at Parks and Recreation and at Nickerson Beach. Nickerson Beach is operated five months per year, from May to September.

The term of the license agreements is for 10 years, January 1, 2010 through December 31, 2019. For our audit period, January 2013 through May 2015, Dover paid the Department of Parks license

¹ Private functions, such as, fairs, sporting event/tournaments, festivals and “ethnic” celebrations.

² Indoor or outdoor private catered functions, i.e., picnics, business meetings, weddings, and parties.

³ Large indoor private banquet catering functions, including weddings, Sweet 16 parties and anniversary celebrations.

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fees totaling \$439,900 including \$47,578 for Nickerson Beach. Dover's gross receipts (gross sales) for our audit period, were \$3.8 million for Parks and \$202,112 for Nickerson Beach.

On average, Dover's annual gross sales for Parks and Nickerson are \$1.9 million and \$101,000 respectively. Dover remits, in license fees to the Parks Department, approximately 10% of Parks Net Sales⁴, and 23% of Nickerson Beach Net Sales. Exhibit I below shows the Gross Sales Receipts, Net Sales, and License Fee payments to the County for years 2013 and 2014.

Exhibit I

	License Fee Payments To County Parks & Facilities/ Nickerson Beach Park*					
	Year 2013		Year 2014		TOTAL	
	PARKS	NICKERSON	PARKS	NICKERSON	PARKS	NICKERSON
Gross Sales Receipts	\$1,812,919	\$ 98,721	\$1,967,031	\$ 103,391	\$3,779,950	\$ 202,112
Less NYS Sales Tax	(104,938)	(7,609)	(116,624)	(7,921)	(221,563)	(15,530)
Net Sales	<u>\$1,707,981</u>	<u>\$ 91,112</u>	<u>\$1,850,407</u>	<u>\$ 95,470</u>	<u>\$3,558,388</u>	<u>\$ 186,582</u>
License Fees to County	<u>\$ 176,453</u>	<u>\$ 22,062</u>	<u>\$ 183,838</u>	<u>\$ 21,479</u>	<u>\$ 360,291</u>	<u>\$ 43,541</u>
Fees/Net Sales %	10.33%	24.21%	9.93%	22.50%	10.13%	23.34%

* Five-month Operation from May through September

Note : See Appendix A for the complete list of Parks and Facilities

Source: Dover's Monthly 2013 and 2014 Revenue Statements for Parks and Nickerson Beach Park

Audit Scope, Objectives and Methodology

Our review period was January 1, 2013 through May 31, 2015.

The specific objectives of this review were to:

1. Determine the Department of Parks' policies with respect to food service for events hosted by civic, religious, non-profit organizations regarding:
 - a) bringing and/or preparing their own food and beverages on premises on a large scale;
 - b) charging participants for such food service;
 - c) hiring vendors other than the Licensee; and
 - d) verifying implementation of applicable policies and investigate complaints from organizations.

⁴ Gross sales less New York Sales and Use Tax.

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2. Determine that Dover is remitting contract revenues to the County in accordance with the terms of the agreements as to amounts remitted and timeliness of remittances.
3. Review internal controls for cash transactions to determine adequacy of controls to prevent loss or misappropriation of funds and ensure accurate recording of revenues.
4. Determine that products and services are fairly priced.
5. Determine Department of Health (“DOH”) compliance for all Dover operations in all locations.
6. Determine that employees have undergone background checks and fingerprinting, as applicable, in accordance with the agreements’ terms, prior to employment.
7. Determine completion of Capital Improvements as per agreements, and reconciliation of expenditures for possible excess funds to be remitted to County.

We interviewed Dover and Parks Department personnel, and reviewed policies and procedures and available reports.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

Findings and Recommendations

Review Finding:

(1) Dover Did Not Remit Monthly License Fees Timely to the Parks Department

For our audit period, January 2013 through May 2015, we tested the accuracy and timeliness of submission for all 40 monthly license fee payments to the Parks Department. Of the payments remitted, 29 from Parks and 11 from Nickerson Beach, all except the May 2015 Nickerson Beach payment were made past the due date, which is on or before the 20th day of each month following the month of operation.

Under the terms of each agreement, Dover is required to remit a monthly statement of Gross Sales Receipts accompanied by the license fee payments to the Parks Department. The license fees consist of a combination of flat fees and/or varying percentages of gross receipts, as detailed in the respective agreements. Dover repeatedly made intermittent and/or partial payments to the Parks Department as follows:

- For Year 2013, license fees totaled \$198,515. As of December 31, 2013, Dover remitted \$31,631, approximately 16% of the total due for the year. As of the end of 2013, the outstanding balance due from Dover was \$166,884.
- Dover's non-payment continued from January 2014 to April 2014, bringing the total balance owed to \$177,050.
- In April 2014, the Parks Department entered into a one-time set-off agreement of \$84,077 with Dover (see Finding 7), an agreement that was not authorized by the license agreements. The agreement represented a settlement (set-off) of the 2013 amounts Dover owed the County, against the amount Dover claimed the County owed for County sponsored events at the licensed premises, leaving a current balance due of \$92,973 from Dover (all other payments in arrears due as of April 2014).
- From May to July 2014, Dover remitted payments totaling \$120,437, with a remaining balance due of \$35,219.
- From August 2014 through May 2015 (10-month period), Dover did not remit any license fee payments. The outstanding balance continued to accrue to \$185,554 by May 2015.
- From June 2015 to August 2015, as the audit began, Dover remitted, in four installments, an aggregate total of \$203,755, to pay off all monies due as of June 2015.

Dover's Principal Officer advised us that monthly license fee payments were withheld from September 2013 to May 2014, because the County did not timely remit payments for catered events on the County's behalf.

Findings and Recommendations

Dover did not provide an explanation as to the reason for its non-payment from August 2014 through May 2015 (10-month period), after the County provided Dover with a setoff credit of \$84,077.

Fee Schedules

Parks:

The fee schedule for Parks is as follows:

- 33% of Vending Machine Sales,
- 5% of Snack Bar/ Refreshment Stand and Dining Room Sales,
- 7% of Special Events Revenue,
- 10% of Catering Revenue,
- 15% of Banquet Catering Revenue, and
- 75% of Sponsorships and Promotion Revenues, including media rights.
- In addition to the fee schedule, there is an annual aggregate Minimum License Fee of \$90,000. To the extent that the aggregate annual payments are less than the Minimum License Fee amount, the shortfall amount is due and payable on January 20th immediately following the end of the said operating year.

Nickerson Beach Park:

Dover is required to pay a monthly flat fee of \$3,000, a vending flat fee, and a variable percent of gross receipts.

Review Recommendation(s):

We recommend that the Parks Department ensure that Dover submit Monthly Gross Sales Receipts and **full** fee payments on a timely basis, in accordance with the terms of the contract agreements.

Review Finding:

(2) Dover's Untimely Submission of Monthly Fee Payments Resulted in Unpaid Late Charges of \$22,800

During our audit period, January 2015 through May 2015, Dover did not pay the County any late charges for overdue license fees, percentage fees and flat fees. We calculated late charges of \$22,800 for the period. Late charges are assessed on overdue fees payable to the County as liquidated damages for the administrative cost and expenses incurred by the Parks Department. The Parks Department's failure to bill Dover for such late charges does not release Dover from any obligations under the agreements to pay such late charges. The agreements state that "No

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failure by Parks to bill Licensee for late charges shall constitute a waiver by Parks of such late charges or his/her right to enforce the provisions of this Article”.

The agreements require that a monthly late charge be imposed when license fees, percentage fees, and flat fees become overdue for 15 days following the date on which such fees are due, and then an additional charge for each already past due payment. Fees are due on or before the 20th day following each month of operation. The terms of the agreements with regards to late charge are as follows:

Parks License Agreement:

- \$100 per month on fee payments overdue for 15 days following the date on which such fees are due; and
- If all arrearages (including late charges) are not paid in full, or is already past due, an additional charge of \$100 for each overdue payment is collectable with the next license fee installment.

Nickerson Beach:

- \$100 per month on fee payments overdue for 15 days following the date on which such fees are due;
- \$100 per month on overdue percentage payments which such fees are due;
- \$75 per month on overdue flat fee payments; and
- If all arrearages (including late charges) are not paid in full, or is already past due, an additional charge of \$100 for each percentage payment and \$75 for each overdue flat fee payment is collectable with the next license fee installment.

Review Recommendation(s):

We recommend that the Parks Department immediately bill Dover for the \$22,800 of late charges due for late payments between January 2013 and May 2015.

Review Finding:

(3) Dover’s Underreporting of Cash Sales Receipts Resulted in Non-Payment of over \$11K New York Sales Tax and over \$27K Loss of Fee Revenues to the County

Dover charges its catering customers a mandatory service fee of 18% of the bill, but excludes such service fees from its monthly Gross Sales Receipt⁵ submitted to the Parks Department. During our audit period, January 2013 - May 2015, Dover did not include \$130,861 of catering service fees in

⁵ Includes Gratuities and federal, state or local sales taxes; Includes all funds received for orders placed with Licensee or made outside or away from the Licensed Premises for services to be rendered by Licensee.

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sales receipts. The agreements state that gratuity would be excluded from Gross Receipts if the gratuity “*is paid over by Licensee in total to its employees who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests*”.

Dover’s bill to customers states “*The Service Fee does not represent a gratuity or tip for the service employees of Dover Caterers.*” Had the service fee represented a gratuity or tip for service for its employees (and paid to employees), then Dover would not have had to include such fees as gross sales revenues.

Dover’s Principal Officer told us that the wording “*The Service Fee does not represent a gratuity or tip for the service employees of Dover Caterers*” on the customers’ receipts is as a result of the new labor law, but the service charge is being paid in its entirety to employees. Dover did not provide us or the Parks Department with any documentation to support this statement. The agreement specifically states that “*Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their Regular Salaries ...*”

Additionally, we found seven instances where ice cream sales totaling \$3,395 were not reported in July and August 2013 gross sales receipts. Since Dover is required to remit 10% of catering revenues, in accordance with the Parks fee schedule, \$13,425 (\$13,086+\$339) of license fees is due the County.

We also noted that Dover did not include any County event payments in its Monthly Gross Sales Receipts. In 2013, the County paid Dover \$195,000 for rentals, entertainment, and food for County sponsored events. According to the agreements, “*Gross Receipts shall include all funds received for orders placed with licensee or made outside or away from the Licensed Premises for services to be rendered at the Licensed Premises*”. By omitting these event sales from its Gross Sales, Dover does not pay the County license fees on these amounts. Based on the fee payment schedule of 7% for Special Events, Dover underpaid the Parks Department \$13,650 (\$195,000 X 0.07).

The Parks Department advised us that Dover refuses to pay license fees on County event sales since Dover charges the County a discounted rate.

Furthermore, we noted that Dover did not charge New York State Sales Tax (“NYS Sales Tax”) on service fee amounts billed to its customers. During our audit period, NYS Sales Tax totaling \$11,287 should have been applied to the total service fee of \$130,861, and remitted to the State.

According to New York Sales and Use Tax Bulletin⁶, a mandatory gratuity is not taxable if “*.....the business gives the entire separately stated gratuity amount to its employees*”. Dover’s service fee, as noted in the contract with its customers, is not a gratuity or tip for the service of Dover’s employees.

⁶ New York State Department of Taxation and Finance, Sales and Use Tax Bulletin TB-ST-320, issued February 23, 2012.

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Review Recommendation(s):

We recommend that:

- a) Dover include all Administrative Service Fee in Gross Sales Receipts so that the correct license fee payments is remitted to the Parks Department;
- b) Dover remit New York State Sales and Use Tax and any interest and penalties New York State Taxation and Finance may assess in accordance with New York State Department of Taxation and Finance Guidance, including the past due amount of \$11,287 mentioned above;
- c) the Parks Department bill Dover \$27,075 for the underreporting of service fee revenues;
- d) the Parks Department review statements of gross receipts for accuracy, and bill Dover, if necessary; and
- e) ensure that Dover is properly including all County sales in its Gross Sales Receipts.

Review Finding:

(4) Dover Did Not Submit Annual Aggregate Reports in Compliance with the License Agreements

During our audit period, January 2013 through May 2015, Dover did not submit the required Annual Summary of Gross Sales Receipts to the Parks Department. A summary of the prior Operating Year sale receipts categories, such as snack bars, mobile trucks, vending machines and events, is required to be submitted within 30 days of the end of each Operating Year of the License.

In addition, Dover did not submit the Annual Income and Expense Statement⁷ pertaining to operations under the License. In accordance with the provisions of the agreements, the Income and Expense Statement, signed and verified by an Officer of Dover and a member of a Certified Professional Accounting firm, is required to be submitted to the Parks Department on or before the 30th day following each Operating Year.

An income statement is a financial statement that measures a company's financial performance over a specific accounting period. Financial performance is assessed by giving a summary of how the business incurs its revenues and expenses through both operating and non-operating activities. It also shows the net profit or loss incurred over a specific accounting period, typically over a fiscal quarter or year. Since this statement discloses information about revenues and expenses that are a direct result of the regular business operations, it would be useful to the Parks Department and Comptroller's Office in gauging the various revenue categories and total revenues.

⁷ In the context of financial reporting, the income statement (also called profit and loss statement /income and expense statement) is a financial statement that measures a company's financial performance over a specific accounting period. It summarizes a company's revenues (sales) and expenses quarterly and annually for its fiscal year.

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We inquired whether any of these reports were submitted and reviewed by the Parks Department. Parks officials told us that Dover has not submitted any of these reports over the years of doing business with the Parks Department. The License agreements state that *“The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this agreement within thirty (30) days of its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Agreement or the existence of any unexplained discrepancy in the amount of fees to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five (5) percent in any two out of three consecutive months or more than ten (10) percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder”*.

Furthermore, we also noted that none of the Monthly Gross Sales Receipts submitted by Dover were signed by an officer of Dover as required by the agreements. The agreements require that the statement of Gross Receipts be *“signed and verified by an officer of Licensee.”*

Review Recommendation(s):

We recommend that the Parks Department enforce the submission of signed Monthly Gross Sales Receipts, signed Annual Summary of Gross Sales Receipts and signed and certified Annual Income and Expense Statement.

Review Finding:

(5) Parks Department Did Not Levy Liquidated Damages Against Dover for Repeated Incidents of Non-compliance

According to the agreements, in the event the Parks Department reasonably determines that Licensee (Dover) has failed to comply with specific provisions of the License agreement, the Licensee may be subject to a charge of \$500 with respect to each incident of non-compliance as liquidated damages. The provisions contained in Sections 4.1 through 4.4 are as follows:

- consistently remitting license fee payments after the date due (due on or before the 20th day of each month following the month of operation);
- non-payment of late charges on payments that is overdue for more than 15 days;
- non-submission of a summary report of Gross Sales Receipts for each Operating Year within 30 days of the end of each Operating Year; and
- non-submission of a certified income and expense statement on or before the 30th day following each Operating Year.

Based on our review, and outlined above in Findings 1 through 4, we have verified that Dover has failed to comply with all of these provisions. We believe that the Parks Department should provide Dover written notice of any such non-compliance and take the necessary action, as outlined in the

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agreement, if Dover fails to rectify such non-compliance. The agreements state that Dover has 30 days after the receipt of a written notice to remedy the non-compliance or be subject to the liquidated damages.

Review Recommendation (s):

We recommend that the Parks Department provide written notice to Dover with regards to late payments, late fees, non-submission of aggregate reports and certified income statement. In the event any such non-compliance is not remedied within 30 days of the written notice, levy liquidated damages in accordance with section 4.6 of the agreements.

Review Finding:

(6) \$295,635 in Capital Improvements Not Started Should be Remitted to the County

Dover was required to complete a scheduled list of capital improvements, within a specified timeframe, at Parks and Nickerson Beach, at an estimated cost of up to \$175,000 and \$150,000 respectively. In accordance with the Parks agreement, all capital improvements must be completed on or before December 31, 2014 (5th anniversary of the commencement date of the agreement). For Nickerson Beach, the improvements are required to be completed by Dover within one year after its receipt in writing from the County of all sign-offs, consents, and approvals.

As of the date of this report, none of the capital improvements noted in the agreements for Parks and Nickerson Beach have been initiated or completed. According to the agreements, in the event the Licensee performs all capital improvements for less than the amount specified in the agreement, any excess monies shall be remitted to the County as additional license fees within 30 days following the County's determination of Final Completion.

The Parks Department officials told us that "some renovations were planned but never got off the ground, and that some adjustments were made to Nickerson Beach Capital Improvements Schedule, as it was discovered that underground pipes would be damaged by the originally planned improvements." However, as of the date of this report, the Parks Department has not provided any documentation regarding our requests for the list of completed improvements, or improvements in the pipeline awaiting the Parks Department's approval. Additionally, the Parks Department has not provided us with any plans submitted for approval or plans that have been rejected by the Nassau County Department of Public Works⁸ ("DPW").

Dover's principal officer told us that "there are capital funds to be spent, but no one knows how and on what to spend it on." He stated that only minor fixes to roofs and doors have been done so far, but nothing of substance, and that he is concerned since no improvements have been done in

⁸ Prior to the commencement of Capital Improvements, plans and a detailed description of work to be performed must be submitted to the Nassau County Department of Public Works ("DPW") for applicable code compliance and approval.

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over five years and the agreement expires in 2019. He also said that Dover is willing to do some improvements, like wanting to build a snack bar at Nickerson Beach, “but is not getting the necessary approvals from the County”. We asked Dover to provide the letters/notices sent to the Parks Department for approval; however, as of the date of this report, we have not been provided with any project letters forwarded to the Parks Department.

Parks Agreement

Dover is required to complete renovation and capital improvements at an estimated cost of up to \$175,000. In accordance with the agreement, all capital improvements must be completed on or before December 31, 2014 (5th anniversary of the commencement date of the agreement) and comply with applicable building codes. The schedule of capital improvements is as follows:

- Parks Refurbishment/Annual Updating of all currently operational Park refreshment stands including, installing and maintaining awnings and updating equipment.
- Parks construction of New Snack Bar at Cantiague Park Golf Building including, installing seamless wall coverings, replacing lighting and ceiling, updating electrical service, and installing signage, menu boards and awnings.
- Parks Construction of Picnic Pavilion at Eisenhower and Cantiague Parks
 - purchase and install 30’x 60’ wooden picnic shelters with pitched roofs, and
 - provide fixture for water and electrical service.

Nickerson Beach Agreement

The schedule of capital improvements for Nickerson Beach is as follows:

- Purchase of 20 recycled plastic picnic tables
- East Terrace (Main Concession) include:
 - Update exhaust and Ansul Systems⁹ to applicable fire code specifications,
 - Repaint interior surfaces and floors,
 - Install new cooking and service equipment, including grills, fryers, refrigeration, and freezer equipment, preparation and service equipment and cash registers.
- West Terrace: Construction of a free-standing snack bar at a location approved by the County
- Purchase and installation of a 30 x 60 foot covered picnic pavilion, at a location approved by the County.

Review Recommendation(s):

We recommend that Dover and/or the Parks Department:

⁹ Fire detection/suppression systems.

Findings and Recommendations

- a) take the necessary steps to complete the Capital Improvements as agreed upon in the License Agreements for Parks and Nickerson Beach or pay amounts to the County in lieu as license fees; and
- b) provide the Comptroller's Office, within three months of certification of Final Completion, a certified statement, issued by Licensee, detailing the actual costs of construction. Such statement should be accompanied by supporting documentation such as, construction documents, bills, invoices, labor time books, daily reports, bank statements, and cancelled checks.

Review Finding:

(7) Parks Department Offset \$84,077 of License Fee Revenues Against County Expenditures Resulted in Loss of License Revenues and Unauthorized Expenditures

In 2014, Parks Department officials recorded \$82,807 of the 2013 revenue and offset the remaining balance of \$84,077 against amounts Dover claimed the Parks Department owed (See Appendix B for the 14 County events that were offset). The County regularly incurs a cost for hosting events¹⁰, catered by Dover, at various county parks. Some of the 2013 events were NY State Empire Games, Summer Recreation Program, and the Long Island Fair.

Since the Parks Department elected to offset incoming revenues against its expenditures, this indirect payment of \$84,077 to Dover was not recorded in the County books. As a result of the offset, both the Parks Department revenues and expenditures were inaccurately reported in the County's books. In addition, the County Sponsored Event payments were not processed through the Comptroller's Office, specifically, the Vendor Claims Unit, as such the proper procedures for processing, auditing and approving a vendor invoice were not followed. The Vendor Claims Unit is tasked with reviewing all claims against the County, including all supporting documentation and calculations before invoices are approved and vendor payments are made.

Separate from the 14 events noted above, the Parks Department had a personal service contract for \$24,900 to make direct payments to Dover for two events in 2013, Empire State Games, and NC Holiday Spectacular/LI Philharmonic. The cost of the two events totaled \$21,595. These two invoices were audited and approved by the Comptroller's Vendor Claims Unit.

We believe that all revenues and expenditures, including accruals, should be accurately and timely recorded in the County's financial system and all vendor payments to Dover processed through the Claims Unit.

¹⁰ Chair and Tent Rentals/Catering from Dover.

Findings and Recommendations

Review Recommendation(s):

We recommend that the Parks Department:

- a) collect the \$84,077 in license fees from Dover since the Parks Department was not authorized to enter into an agreement with Dover;
- b) direct the \$84,077 in vendor payments through the Comptroller's Vendor Claims Unit for processing;
- c) ensure that costs to fund County Sponsored Events are properly authorized by the legislature; and
- d) record all revenues, expenditures, and accruals accurately and timely in the County's Financial System.

Review Finding:

(8) Dover Did Not Remit the Accurate License Fees for Catering at Nickerson Beach Park Owning the County \$1,402

Nickerson Beach Agreement, Section 4.1, details the license fee percentages for various Gross Receipts. A reading of Section 4.1 (c) indicates that for catering and special events, an additional 15% license fee is due on top of the base Gross Receipts license fees of 5% and 7.5% for Years 2010 - 2014 and Years 2015 - 2019 respectively. This results in cumulative catering license fees of 20% and 22.5% for Years 2010 - 2014 and Years 2015 - 2019 respectively.

To date, Dover has remitted 15% on catering events at Nickerson Beach. Additional fees based on the higher rate structure, for our audit period, would have yielded \$1,402 in additional license fees for the period 2013 through 2015.

We believe that the license fee section 4.1 (c) should be amended to explicitly state the intent of the parties.

Review Recommendation(s):

We recommend that:

- a) the County Attorney's Office amend Section 4.1 (c) to *explicitly* express the intent of the parties; and
- b) the Parks Department bill Dover for the \$1,402 in underpayment.

Findings and Recommendations

Review Finding:

(9) Dover Did Not Have Parks Department Approval for Use of the County Seal for Advertisement of Dover's Private Businesses

In 2015, the Newsday County Fun Book included a four-page color insert from Dover displaying the County Seal on its cover, and included advertisement of Dover's private business locations without prior written approval from the County.

The agreements state that “...any sign posted by Licensee at the Licensed Premises, or any advertisement used in the connection with such facility, shall be subject to the prior written approval of Parks...”

Parks Department officials advised that “Dover might have received approval from the Office of the County Executive since the Parks Department did not approve the display of the Seal.

We asked Dover's Principal Officer if he had obtained written permission from the County/Parks Department prior to using the Seal. He stated that he would provide us with documentation to support the approval, and that the Seal is only used when advertising events sponsored and approved by the County Executive. As of the date of this report, Dover has not provided us with any documentation showing prior written approval was obtained from the County Executive's Office.

We contacted the County Attorney's Office in August 2015 for their clarification/input, but as of the date of this report, they have not responded. However, we noted that in the 2016 County Fun Book, Dover did not display the County seal in its advertisements.

Review Recommendation(s):

We recommend that Dover obtain written approval from the Parks Department prior to any advertisement use in connection with the Parks or Nickerson Beach Park.

Review Finding:

(10) Parks Department is Not Adequately Monitoring Dover: Did Not Review Dover's Gross Sales Backup Documentation- Points of Sale/Cash Register Tapes and Vending Machine Meters; Review Pricing

The Parks Department, since the inception of the agreements, has not monitored, observed or evaluated Dover's cash registers and vending machine meters. It has not reviewed any gross sales supporting documentation such as register tapes or vending machine meter counts. The

Findings and Recommendations

Agreements state that *“throughout the Term, Licensee shall work with the County to monitor and evaluate Licensee’s cash registers and vending machine meters, to maintain their accuracy”*.

In addition, Dover does not submit to the Parks Department schedules concerning operating days and hours, and proposed schedule of prices and rates for the services and products to be provided under the License during the forthcoming Operating Year. According to the agreements, the pricing schedule should include a proposed menu and prices showing all food and beverage items to be sold.

The proposed schedules could reduce or avoid the Parks Department scheduling conflicts, enable the Parks Department to reasonably project fee revenues, and allow for prior approval of food and beverage prices for the public.

The Parks Department stated that Dover does not provide any schedule to Parks Department in advance of each operating year, but that all prices are posted at the points of sale.

Review Recommendation(s):

We recommend that the Parks Department:

- a) require that Dover submit schedules concerning operating days and hours, and proposed schedule of prices and rates for the services and products during the forthcoming Operating Year; and
- b) review gross sales supporting documentation such as cash register tapes or vending machine meter counts on a periodic basis. In addition, on a sample basis, observe and evaluate Dover’s cash registers and vending machine meters.

Review Finding:

(11) Parks Department Did Not Ensure That Dover Employees Having Contact with Minors on County Premises Were Fingerprinted by the Police Department

We contacted the Parks Department to obtain a complete list of all Dover Employees who worked at the Licensed Premises during our audit period. Our objective was to determine whether background checks and other screening, such as reference checks, were performed for prospective personnel.

Department officials informed us that the Parks Department did not have a listing of the names of Dover employees who worked under the license agreements, and furthermore, that it is not stated in the agreements that Dover provide such a list to the Parks Department. The Parks Department is responsible for ensuring that Dover adequately screens its employees, especially all current and prospective employees who have regular and substantial contact with minors. The agreements

Findings and Recommendations

state: “Consistent with Local Law 14-2003, and prior to the commencement of services, the Department shall ensure that all current and prospective personnel who, in carrying out the License, will have unsupervised or regular and substantial contact with minors are fingerprinted by the Nassau County Police Department.”

According to the agreements, at a minimum, Dover is required to screen all of its personnel, including the checking of each prospective personnel against the Statewide Sexual Offenders Registry. The agreements state that “..... prior to the commencement of services, **Licensee** shall ensure that all current and prospective personnel who, in carrying out the contract, will have unsupervised or regular and substantial contact with minors, are fingerprinted by the Nassau County Police Department.”

Since the Parks Department did not monitor the criminal history record of any Dover personnel, there is no assurance that employees were adequately screened, and were not convicted of a felony or crime of moral turpitude.

Review Recommendation(s):

We recommend that the Parks Department:

- a) require that Dover submit a list of current employees including evidence that they were adequately screened; and
- b) require written notice from Dover when any changes that involve adding or removing personnel who have unsupervised or regular and substantial contact with minors occur.

Review Finding:

(12) Summary Finding – Dover Owes Nassau County \$430,989 Due to Non-Compliance with County License Agreements

Our review of the above mentioned licensed agreements found that the Parks Department was underpaid over \$430,000 in license fee revenues due to late fees not levied and other non-compliance such as, underreporting of Service Fees and Capital Improvements not performed.

Exhibit II below shows a breakdown of the revenue due the County as a result of fee underpayments and non-compliance findings.

Findings and Recommendations

Exhibit II

**Summary of Revenue Due the County:
Underpayments and Non-Compliance
For the Period: January 1, 2013 through May 31, 2015**

<u>Payment Description</u>	<u>Amount Due County</u>
Payment in lieu of Capital Projects not executed (Parks \$175,000 & Nickerson \$120,635) -- Finding #6	\$ 295,635
Offset agreement between Dover and Parks Department was not authorized -- Finding #7	84,077
Underpayment of Service Fee Revenues -- Finding #3	27,075
Late Fees due to Untimely Monthly Payments -- Finding #2	22,800
Underpayment of Catering Fees Due to an Unusual Interpretation of the Agreements -- Finding #8	1,402
Total Amount Due Nassau County	\$ 430,989

NASSAU COUNTY PARKS AND FACILITIES LICENSED PREMISES

Food and Beverage Concessions (as defined in this License Agreement) at the following Parks and Facilities:

- The property, buildings and facilities known as Eisenhower Park (excluding the Carlton in the Park and the Public Safety conversion).
- The property, buildings and facilities known as The Nassau County Aquatic Center.
- The property, buildings and facilities known as the Eisenhower Golf facilities.
- The property, buildings and facilities known as Wantagh Park.
- The property, buildings and facilities known as Christopher Morley Park.
- The property, buildings and facilities known as Cantiague Park.
- The property, buildings and facilities known as N Woodmere Park.
- The property, buildings and facilities known as Cow Meadow Park.
- The property, buildings and facilities known as Mitchell Athletic Complex.
- The property, buildings and facilities known as Old Bethpage Village Restoration (except the Fair Ground Building, other than during the Long Island Fair, shall be on a non-exclusive basis). In the event the County executes a contract for this property, building, and/or facility with another vendor, based on the Request For Proposal issued prior to the Commencement Date, within 9 months from the Commencement Date, then this property, building, and/or facility shall be excluded from this license.
- The property, buildings and facilities known as Inwood Park.
- The property, buildings and facilities known as Grant Park.
- The property, buildings and facilities known as Bay Park.
- The property, buildings and facilities known as Centennial Park.
- The property, buildings and facilities known as Rev Mackey Park.
- The property, buildings and facilities known as Cedar Creek Park.
- The property, buildings and facilities known as Washington Avenue Park in Seaford.
- The property, building and facilities known as Garvies Point Museum and Preserve (except catering on a non-exclusive basis).
- The property, building and facilities known as Tackapausha Museum (except catering on a non-exclusive basis).
- All preserves (except Elderfields, Baileys Arboretum, the Holocaust Center at Welwyn, Sands Point Preserve, Chelsey, and Cedarmere) and pocket parks operated by the County (if service is needed).

Appendix B

**\$84,077 OF 2013 PARKS EXPENDITURES (COUNTY EVENTS) OFFSET AGAINST
LICENSE FEE PAYMENTS DOVER OWED COUNTY**

Exhibit "A" – Credit Amount

EVENT	INVOICE #	INVOICE DATE	AMOUNT
NC PARKS – TENT PURCHASE	1852	4/30/13	\$10,000.00
NC PARKS – TABLE RENTAL	1900	5/18/13	\$1,500.00
NY STATE EMPIRE GAMES-2013	1859	5/29/13	\$8,355.62
NC SUMMER RECREATION PROGRAM	1985	6/28/13	\$11,300.00
Comm. FOSKEY'S FAMILY FUN DAY	2103	7/14/13	\$3,000
LONG ISLAND FAIR	2057	9/13/13	\$18,900.00
INFLATABLES PURCHASE	2104	9/10/13	\$9,757.00
NC CAR SHOW-ENTERTAINMENT-LABOR	2070	9/27-30/13	\$9,625
LONG ISLAND FAIR @OBVR -LABOR	2105	9/20-29/13	\$2,592.00
OKTOBER FEST 2013-LABOR	2135	10/5-6/13	\$1,358.00
HAUNTED HOUSE EVENT	2145	10/11-30/13	\$5,039.00
NASSAU COUNTY CAR SHOW	96548	8/25/2010	\$150.00
WANTAGH TIKI EVENT	96941	7/28-9/1/2013	\$2,000.00
NC CONCERT @ LAKESIDE GLORIA GAYNOR	96961	10/19/2013	\$ 500.00
GRAND TOTAL			\$84,076.62

Appendix C – Parks Response

EDWARD P. MANGANO
COUNTY EXECUTIVE



BRIAN NUGENT
CHIEF DEPUTY
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PARKS, RECREATION & MUSEUMS
EISENHOWER PARK - EAST MEADOW, NEW YORK 11554
www.nassaucountyny.gov/parks

September 30, 2016

Nassau County Office of the Comptroller
George Maragos, Comptroller
240 Old Country Road
Mineola, NY 11501

Re: Audit Draft of Dover Gourmet Corporation

Dear Mr. Maragos:

The Nassau County Department of Parks, Recreation and Museums ("Parks") has reviewed the draft of your audit respecting Dover Gourmet Corporation ("Dover") dated August 17, 2016. As requested, Parks is providing its written response to each finding of the draft audit below:

1. Dover Did Not Remit Monthly License Fees Timely to the Parks Department:

Park's Department will endeavor to have Dover submit Monthly Gross Sales Receipts and applicable fee payments on a timely basis, as required by the license agreement.

2. Dover's Untimely Submission of Monthly Fee Payments Resulted in Unpaid Late Charges of \$22,800:

Parks has had a working business relationship with Dover for several years. Parks is required to purchase goods and services under separate service contracts from Dover pursuant to the terms of the license agreement between the County and Dover. It is not uncommon for Parks to owe Dover significant amounts as a result of the events Parks presents to the general public. At times it is Dover who owes the County percentage fees based upon the license agreement. As an example, within a few weeks' time Parks has several events wherein they must utilize the services of Dover, thereby incurring additional amounts owed by Parks to Dover.

At no time during this business relationship has Dover demanded late payments on those amounts owed by Parks to Dover. It is a reasonable business strategy to forego late payment charges under these circumstances. In addition to the back and forth nature of

Appendix C – Parks Response

this business relationship, there are times when Parks needs equipment/catering at the last second. If Dover knows both: (a) it will have to wait to be paid, without charging a late fee to the County; and (b) that in return, Dover will be charged a late fee regarding the amounts it owes, it becomes increasingly unlikely that Dover will respond to an “emergency”. In short, reciprocal accommodations are made by the parties, and any attempt to unilaterally impose late fees would destroy the working relationship now enjoyed by the parties.

Parks believes that “late charges” described by the Comptroller, were, in effect, never due to the County since the reciprocal relationship between Parks and Dover respecting payments by implication removed the late fee charges.

3. Dover’s Under reporting of Cash Sales Receipts Resulted in Non-Payment of Over \$11K New York Sales Tax and over \$27K Loss of Revenues to the County:

(a) Each of the audited contracts provides that gratuities shall not be included in the reports respecting Gross Receipts. Upon information and belief, Dover has distributed those amounts described as a “Service Fee” to employees, which service fee, according to Dover, is akin to a gratuity and therefore not to be included as “Gross receipts.” It is beyond Parks’ capability to monitor these distributions. In this instance the Comptroller and or the County Attorney is better suited to determine whether Dover’s disbursements are in effect, gratuities.

(b) As to the ice cream sales, Parks agrees with this finding and Dover has been requested to remit payment.

(c) Throughout the course of this Agreement, Dover charged the County for the goods and services provided to the County at a significant discount when compared to the prices charged to park patrons. Parks was aware that Dover was providing this discount to the County. If, in fact, Dover was required to pay gross percentage fees on the amounts Dover received from the County for these goods and services, Dover would then have increased its charges to the County to reflect the gross percentage fees Dover would have been required to pay to the County. Significantly, this would have had a negative effect on the programs and events that Parks offers such as the Veterans BBQs, Games For The Physically Challenged and others, thereby reducing the ability of Parks to provide services and entertainment to the public.

4. Dover Did Not Submit Annual Aggregate Reports in Compliance with the License Agreements:

Dover always submits the monthly reports to parks in compliance with the Agreement. More importantly, Dover does submit annual financial reports. When Comptroller asked Parks for these reports, Parks supplied the reports to Comptroller. However, the request was made after the date of the Audit draft.

Parks believes that this satisfies Review Finding (4).

Appendix C – Parks Response

5. Parks Department Did Not Levy Liquidated Damages Against Dover for repeated Incidents of Non-Compliance:

It is Parks' determination that, due to the untimely payments made by County, and the delivery of monthly and yearly reports, Dover is in substantial compliance of the terms of the Agreement and that the imposition of Liquidated damages was, and is, unwarranted.

6. \$325,000 of Capital Improvements not Started Should be Remitted to the County:

Schedule A (Capital Improvements) of the County's general agreement with Dover with respect to County parks requires Dover to complete certain renovations and Capital Improvements at an estimated cost of *up to* (emphasis added) \$175,000, which includes "Parks Refurbishment/Annual Updating of all currently operational Park refreshment stands." *This includes: repaint all locations; update equipment; install new menu boards and signage; and install and maintain awnings* (emphasis added). Dover states it has expended approximately \$95,550 towards these capital improvement items. Pursuant to the Comptroller's request, Dover is to supply the itemized statement of expenditures respecting. Dover did attempt to construct the picnic pavilion at Eisenhower Park. However, live steam lines were discovered under the proposed site for the pavilion. Again, Comptroller has requested copies of all correspondence from Dover respecting this statement. Parks and Dover never agreed to an alternate site.

Schedule A (Capital Improvements) of the Nickerson agreement requires Dover to complete certain renovations and Capital Improvements at an estimated cost of *up to* (emphasis added) \$150,000. Dover claims that all of the required capital money was spent on renovations and equipment at Nickerson. A snack stand was, in fact, constructed at Nickerson Beach. Comptroller has requested the itemized backup from Dover as to monies expended. Additionally, Nickerson required significant repairs after Super Storm Sandy, with said repairs being completed by Dover. Comptroller has demanded the itemized backup from Dover. According to Dover, all of the Nickerson initial required capital improvements were performed other than the picnic pavilion. The itemized backup is to be supplied to Parks and Comptroller.

As the contract progressed, several projects had been discussed but as of this date there has been no project agreement between the parties. The parties held discussions regarding the construction of a control room and concession at the miniature golf portion at Nickerson with an estimated cost of \$125,000. The County decided against proceeding with the project. Plans were discussed and then discarded respecting the construction of a clam bar at the Marina in Wantagh Park. Other projects were similarly discussed and discarded by the County. Attached are documents indicating a willingness on Dover's part to complete the Capital improvements, including plans for a building.

Dover has stated that they are ready to abide by the terms of the license agreements.

Appendix C – Parks Response

Parks will meet with Dover to develop capital improvement plans that will satisfy the remaining capital improvements required under the Licenses. The parties will develop a mutually agreed to timeline for the completion of the approved projects.

7. Parks Department Offset \$84,077 of License Fee Revenues Against County Expenditures resulting in the Loss of License revenues and Unauthorized Expenditures:

Prior to entering into the Set-off agreement with Dover, an opinion was sought from the County Attorney's Office. The County Attorney's Office stated that "under the totality of the circumstances, it would be permissible for Parks to allow the \$81,426.62 offset in this limited instance." (Opinion attached). There has been no demonstration that this set-off resulted in a net loss of License Revenue. Additionally, Parks reviewed each item claimed by Dover in its submission and found that each item was properly submitted. The Master License requires Parks to use Dover as the exclusive concessionaire for those items, and it is Parks who determines how to utilize its resources when incurring expenditures. Significantly, this was a one-time set-off. Moving forward, the aforementioned expense contracts have been in place to avoid this situation.

8. Dover Did Not Remit the Accurate License Fees for Catering at Nickerson Beach Park Owing the County \$1,402:

Section 4.1(c) of the Nickerson agreement provides "In addition to the foregoing, Licensee shall pay to the County fifteen (15%) percent of that part of the gross receipts derived from catering and Special Events at the Licensed Premises." It was never the intent of the parties to charge this fee in addition to the standard gross percentage fees. Rather, it was clearly the intent to charge Dover the 15% in lieu of the standard Gross Receipts Percentage. Evidence of this intent can be found in the "Parks" Master License agreement with Dover. Schedule B of the Parks license lists a Gross Percentage Fee of 15% for Banquet Catering, 10% for Catering, and only 7% for Special Events. This is more in line with the 15% stated in the Nickerson license, thereby demonstrating a meeting of the minds between the County and Dover as it pertains to the Nickerson Catering Gross Percentage Fees.

Parks will consult with the County Attorney's Office respecting amending the contract as recommended.

9. Dover Did Not Have Parks Department Approval for Use of County Seal for Advertisement of Dover's Private Businesses:

Parks will ensure that Dover obtain written approval from the County prior to any advertisement use in connection with the Parks or Nickerson Beach Park.

10. Parks Department is Not Adequately Monitoring Dover: Did Not review Dover's gross Sales Backup Documentation – Points of Sale/Cash Register Tapes and Vending Machine Meters: Review Pricing:

Appendix C – Parks Response

Dover has always been in compliance in reporting its sales, and consistently submits documentation in excess of what is required under the Agreement, whether from Catering, Point of Sale or Vending Machines. Additionally, it is not a Parks function to audit backup documentation since it lacks the expertise and wherewithal to conduct such audits. Rather, under section 5.1 of both Dover Agreements, the Comptroller has the right to audit the books and records of Dover and the Comptroller is in a much better position to perform this type of review. In fact, Comptroller has performed this type of review, as Parks is now responding to Comptroller's Draft Audit. Significantly, it should be pointed out that the exhaustive review by the Comptroller demonstrated that Dover had accurately submitted gross receipts reports, as no discrepancies were found respecting this issue.

As to the price review, Dover has submitted price lists to Parks for the last several years for its review and approval. Moreover, these price lists have been submitted to Comptroller when claim vouchers are submitted.

Parks believes that going forward, if the Comptroller has an issue with this backup documentation, they should contact Dover with its concerns.

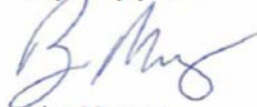
11. Parks Department Did Not Ensure That Dover Employees Having Contact with Minors on County premises Were Fingerprinted by the Police Department:

Due to the way the Agreement was drafted, there are two sections pertaining to hiring personnel. To be sure, Section 8.2(b), which does require fingerprinting of prospective employees to determine if any have been found guilty of a crime of moral turpitude. However, this clause has been removed from more recent County contracts and only language similar to 8.2(c) are incorporated in these agreements. This language requires the contractor to check the Sexual Offenders Registry. Dover has complied with this requirement.

Parks will consult with the County Attorney respecting amending the Agreement.

Please feel free to contact me with any questions or advises.

Very truly yours,



Brian Nugent
Chief Deputy Commissioner
Parks, Recreation and Museums

Cc: Carnell T. Foskey, County Attorney

As discussed

Daniel P. Grippo, Chief, Municipal Transactions
 Nassau County Attorney's Office
 516-571-4375

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From: Grippo, Daniel P
Sent: Monday, December 30, 2013 1:49 PM
To: Foskey, Carnell
Subject: FW: Dover/ Dream Events Invoices Due Dover Group / Percentage Fees Due County

INFORMAL OPINION IN RESPONSE TO REQUEST FROM ACTING COMMISSIONER NUGENT:

You have asked whether Parks may allow Dover to offset amounts due from Parks to Dover for equipment, entertainment and other "Catering" expenses against revenues owed by Dover to Parks under the exclusive license agreement with Dover dated as of December 2009 (the "Master License"). My understanding is that the offset totals \$81,426.62 and consists of the items set forth in the table below. For the reasons set forth below, the answer is yes, with the caveat that this offset is limited to a one-time offset of \$81,426.62 and is not intended to allow any offsets in the future.

The Master License grants Dover the exclusive license to provide "Catering" at specified parks. The term "Catering" includes not just food and beverages, but also equipment rentals and entertainment. On occasion during 2013, Parks has ordered "Catering" from Dover in connection with various public events presented by the County at various parks. Dover has invoiced Parks for the items. The items are for equipment such as tents and tables, entertainment, and related labor. Parks has reviewed the invoices. Parks has acknowledged that the amounts are duly owing and that the charges are reasonable. Dover has requested that it be allowed to offset \$81,426.62 against the revenues due from Dover to the County under the Master License. In an effort to effectuate a timely and efficient settlement of the charges incurred by Parks in 2013, and to settle up with Dover for 2013, Parks would like to allow the offset.

The Master License is silent on whether Dover has a right to offset. Significantly, there is no prohibition in the Master License against allowing Dover to offset charges incurred by Parks for Catering. Rather, it would appear that Parks has some discretion in terms of how revenues are reported, supporting the view that Parks has the authority to allow the requested offset against revenues as part of its discretion. For instance, Dover is obligated to provide Parks with a statement of Gross Receipts under Section 4.3(a) of the Master License, which statement must be "in a form reasonably satisfactory to Parks." Section 4.3(a) could be read reasonably to allow Parks, acting in its discretion, to determine that the form of the Gross Receipts statement must include an itemization of any amounts due from Parks to Dover requested to be offset against revenues.

Apart from the language of the Master License, there is no question that Parks ordered the equipment and other Catering from Dover, as exclusive licensee, pursuant to Dover's concession granted in the Master License. The Master License itself is the contract supporting and governing Parks' purchase of the equipment. Section 8.5 ensures that the prices must be reasonable. Article V includes the County's right to audit. There is no question that the Catering was actually received, and that the charges are reasonable. Dover has provided Parks with invoices and other documentation supporting the charges, all of which have been reviewed to the satisfaction of Parks. Finally, Parks would like to settle the Master License revenues in a timely manner to maintain smooth relations with its caterer who has expressed some urgency in receiving payment for Catering provided some time ago.

Under the totality of the circumstances, it would be permissible for Parks to allow the \$81,426.62 offset in this limited instance. In the future, Parks should endeavor to make payment closer to when Catering is provided.

Please contact me should you have any questions regarding the foregoing.

EVENT	INVOICE #	INVOICE DATE	AMOUNT
NC PARKS – TENT PURCHASE	1852	4/30/13	\$10,000.00
NC PARKS – TABLE RENTAL	1900	5/18/13	\$1,500.00
NY STATE EMPIRE GAMES-2013	1859	5/29/13	\$8,355.62
NC SUMMER RECREATION PROGRAM	1985	6/28/13	\$11,300.00
Comm. FOSKEY'S FAMILY FUN DAY	2103	7/14/13	\$3,000
LONG ISLAND FAIR	2057	9/13/13	\$18,900.00
INFLATABLES PURCHASE	2104	9/10/13	\$9,757.00
NC CAR SHOW-ENTERTAINMENT-LABOR	2070	9/27-30/13	\$9,625
LONG ISLAND FAIR @OBVR –LABOR	2105	9/20-29/13	\$2,592.00
OKTOBER FEST 2013-LABOR	2135	10/5-6/13	\$1,358.00
HAUNTED HOUSE EVENT	2145	10/11-30/13	\$5,039.00

<https://bearchiver.nassaucountyny.gov/cgi-mod/openwebmail/openwebmail-read.pl?user=...> 8/23/2016

DOVER GOURMET CORPORATION

27 St. John's Place
Freeport, New York 11520
516-933-4444
Facsimile 516-933-0117
dovergroupny.com

September 28, 2016

Hon. George Maragos
Comptroller
County of Nassau
240 Old Country Road
Mineola, New York 11501

Re: Review of License Agreements

Dear Mr. Maragos:

This letter is submitted in reply to yours of August 17, 2016.

We address your Draft Findings in the order in which they appear in Exhibit II.

- **Finding #6** of the Report is entirely incorrect. We **do not** owe \$325,000.00 and we are in full compliance of our agreement all documented.
- **Finding #7** of the Report is incorrect. We **do not** owe \$84,000-we were directed by the County to do an offset, all documented.
- **Finding # 3** of the Report is incorrect. We **do not** owe \$27,000 in fees and taxes, we are within the NYS Law and all is documented.
- **Findings #1 and #2** of the Report is incorrect. All payments we made in concurrence with County payment to us all approval by County officials. We paid the County when the County paid us as agreed.
- **Finding #8** of the Report is incorrect. Not true, your office is mis-interrupting the contract language. The County attorney and Parks Department concurred with our interpretation.

It is noteworthy that the two (2) License Agreements which are the subject of the Comptroller's report were bid out and awarded to Dover by the prior Nassau County administration, and became effective on the very day on which the new leadership took office. This perhaps explains the differences between the priorities expressed in the Agreement and those recognized by the new administration.

It should also be noted that Dover provided sales information for millions of dollars of sales to its patrons and all sales reporting were found to be correct. The only a short fall of \$339.50 is due and owed by Dover to Nassau County. Dover was also found to have all permits and licenses in effect with no issue or lapses.

EXPLANATION:

With respect to **Finding #6** of the Report, the time period within which our capital improvements are to be completed was extended to the end of our contract term, by the County of Nassau. Thus, we have in no way failed in our obligation to the County of Nassau. We note that all of the capital improvements which were required under our License Agreement at Nickerson Beach was completed in a timely manner. In fact, Dover was required to virtually repeat all of this work as a result of the massive damage to the food service facility which was occasioned by Superstorm Sandy.

This storm-related work was completed in such a fashion that the facility was fully open to the public by Memorial Day weekend, in 2013.

Proof of such completion was long ago provided to the Nassau County Department of Parks, Recreation and Museums (hereinafter "Parks.")

In fact, all of this information was provided to Mr. Abe Farber of your office, on his first visit to this office.

With respect to the Dover License Agreement for the other Nassau County Park facilities, the following work was completed, and proof of such completion was provided to Parks:

See attached documentation.

Two of the projects which were specified in our Agreement (new Snack Bar at Cantiague Golf Building and Picnic Pavilions at Cantiague and Eisenhower Parks) were not undertaken because the new Parks administration determined that these projects were not desirable. Infact the Cantiague Golf project was stated by us in 2010 and stopped by the County. The new administration felt that the area around the Golf Building was unsuitable for a new snack bar. Similarly, they did not want a picnic pavilion at Cantiague due to the location adjacent to maintenance yards, and determined that a live steam pipe ran beneath the proposed site of the proposed Eisenhower picnic area pavilion.

It must be remembered that our License Agreements were negotiated by a prior County administration and executed by the new County leadership, which had its own ideas about adding amenities to the parks.

We were first asked to build a control concession building at a proposed mini golf course at Nickerson and Morley parks both idea were scrapped.

We were asked to explore the possibility of creating a Clam Bar at Wantagh Park. After much discussion, this proposal was scrapped by Parks.

We attach e-mails and our architect's plans for construction of the west snack bar at Nickerson Beach, only to have the County change its intentions with regard to this locations.

We now suggest the outfitting of a new Snack Bar at Twin Rinks, as well as new construction at the Barn at OBVR to facilitate cooking and storage. This will add a significant revenue stream to the County. The improvements at OBVR are warranted because of the fact that our marketing efforts have successfully converted the Barn into a very active event space which is currently generating revenue for the County. In fact, for 2016 we have already generated \$150,000 in site rentals and compared to 2013 the County collected "0".

Notwithstanding the foregoing, the bulk of the \$175,000 capital commitment under this License Agreement has been spent. Explanation of these expenditures was provided to Mr. Farber of your staff, on his first visit to this office.

Furthermore, prior to the first operating season under this agreement, Dover performed pre-season repair to each of the fifteen (15) refreshment stand facilities [three (3) Halfway House, a stand at Eisenhower Golf course, Batting Cage stand, Lakeside Theater stand, Mitchel Field and Aquatic Center stands at Eisenhower Park, two (2) stands at Nickerson Beach, and stands at Wantagh, Cantiague, North Woodmere, Christopher Morley Parks and Old Bethpage Village Restoration] which it operates under these agreements with the County of Nassau.

This work included the re-painting of floors, walls and doors, repair of screens and doors, minor carpentry, as well as roof work. Electrical switches and outlets were repaired and replaced as needed. Plumbing repairs such as leaking sinks, drains and waste lines were performed as necessary. At the end of the season, these facilities are winterized. If we use a very simple cost of \$3,000.00 (for each location) which is not much to remove debris, fix and paint each location as an average we started at \$45,000 spent all work done by Dover staff.

In November of 2014, one month prior to the 5th year anniversary of our Parks Agreement with the County, we sent a letter to the County, requesting that the 5-year period within which our capital improvements were to be completed be extended. We asked that this completion date be moved to the end of our contract term.

This request for an extension was approved and documented by County Officials.

With regard to **Finding #7**, Dover did in fact deduct from its commission payment to the County the sum of \$84,077 which was owed to Dover by the County for services rendered at various County functions. This offset was authorized by the County Attorney's Office and by Parks officials. Dover did not unilaterally make this offset. (See e-mail attached)

It must be noted that in many cases the money which was owed to Dover by the County was payment for services performed more than a year prior to the date of the deduction. It is unreasonable to expect a business to wait more than a year for payment, when the services provided were duly authorized and properly performed.

With respect to **Finding #3** of the Comptroller's report:

- a) The omission of Service Fees from Dover's calculation of "Gross Sales" for the purpose of the calculation of the commission which is due to the County of Nassau was based on recent legal determinations by the New York State Department of Labor.

As you are no doubt aware, the New York State Department of Labor requires that gratuities which are collected by employers must be distributed to the service staff which is working at events. The Department of Labor then permits an employer to take a "tip credit" against the wages of said employees when they are provided with their tips, so long as their hourly wage is equivalent to or greater than the minimum wage. Notably, Dover does *not* take such a credit against its employee's wages. Instead, Dover ensures that it pays its employees the full and appropriate wages.

However, the Department of Labor also allows employers to collect a "service" or "administrative" charge on contracts for catering services. While these administrative charges are not gratuities, it is Dover's policy to implement such a charge in connection with its catering agreements, and to in turn use these fees to help pay for the catering event, including the payment of employee wages. By treating the administrative charge in this manner, Dover is able to hire additional staff to work its events, which in turn generates additional jobs for County residents.

We have previously discussed this charge with the Parks Department. In fact, in 2010, we explicitly asked that they treat the charge as non-commissionable, and was abide, as these monies are distributed to employees rather than serving as profits for Dover. Thus, just as the County does not charge a commission against gratuities, it should not charge a commission against the administrative charge in Dover's contracts. (See letter attached). This is was agreed too.

We trust that you will find this request agreeable and move forward with amendments to Dover's contracts, since it is clear that commission should not be paid on this category of revenue.

- b) Dover concurs with the Comptroller's findings with respect our inadvertent omission of Ice Cream sales in the amount of \$3,395 resulting in \$339.50 in commission due to the County from Dover's commission report. It should be noted that it was Dover's principal who brought this error to the attention of the Comptroller's auditors during one of the numerous meetings which were conducted at the Dover office. Dover has amended its internal paperwork to prevent a re-occurrence of such an error.

- c) Dover provides catering, equipment rental and special events services to the County at prices which are substantially discounted from regular rates and thus did not pay a commission to the County on these very same discounted invoices. In addition, Dover is routinely expected to wait a year or more to receive payment for these discounted services.

It has been agreed to provide a minimum of 10% discount on all County work and no commission to be paid. This is how we operated since inception. If the County chooses we can remove the 10% discount and we will pay the 7% commission.

With regard to **Finding #2**, Parks leadership and the County Attorney's Office granted us permission to delay our remission of payments to the County in view of the fact that the County owed us considerable sums of money for past services rendered, and these sums were outstanding for a considerable period of time. One again, Dover did not unilaterally delay its commission payments to the County.

We respectfully dispute the Comptroller's interpretation of the language in Dover's Nickerson Beach License Agreement, in **Finding #8**. We interpret the subject language to mean that the County derives a 15% commission on sales which are attributable to catering and special events. This interpretation was provided to Dover by the attorney who negotiated the Nickerson Beach Agreement on behalf of Dover.

The subject paragraph 4.1 © states:

In addition to the foregoing, Licensee shall pay to the County fifteen (15%) percent of that part of the Gross Receipts derived from catering and Special Events at the Licensed Premises. See also Schedule B hereto.

The words "in addition" clearly refer to this paragraph as serving as an extension of paragraph 4.1 (b).

The Comptroller's staff never asked Dover about its practices and procedures with respect to checking potential employees through the Sex Offender Registry which is operated by the New York State Division of Criminal Justice Services. Dover does this check on a regular basis.

Dover furnishes Parks with a monthly report of all of its sales and activities, for every month in operation.

If there is any questions on this submission please feel free to contact me.

Sincerely,



Butch Yamali
President

Appendix D – Dover Response

ATTACHMENTS:

- A) Dover letter to Commissioner Nugent dated 11/13/2014
- B) Dover letter to Commission Nugent dated 12/18/2014
- C) E-mail to Mr. Dwyer dated 2/22/2010
- D) DPW letter dated 6/6/2013
- E) Nickerson Beach Capital Work
- F) Parks Capital Work
- G) Capital Improvement Explanation and List of Missing Invoices
- H) Dover letter to Commission Dwyer dated 2/10/2010

Auditor's Note:

Dover's attachments E and F consisted of 49 pages of invoices as part of their response. These documents are kept on file in the Comptroller's Office and may be viewed at any time.

DOVER GOURMET CORPORATION

27 St. John's Place
Freeport, New York 11520
516-933-4444
Facsimile 516-933-0117
dovergroupny.com

November 13, 2014

Brian Nugent,
Commissioner
Nassau County Department of Parks,
Recreation and Museums
Eisenhower Park
East Meadow, New York 11554

Dear Commissioner Nugent:

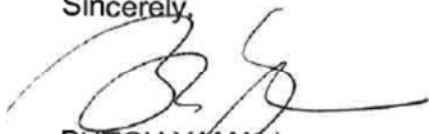
As you suggested I am submitting this letter to request an extension of the time period within which Dover must complete the capital improvements which are required under its Agreements with Nassau County Parks.

As you are aware, there are many reasons why Dover has not completed its capital construction. Rather than spending this money in a hasty manner, we would prefer to work with your staff to plan improvements which will benefit the County, improve service to the public, and enhance revenue.

We request that the time for us to complete our capital commitment be extended until the end of the contract term.

Thank you for your early attention to this request.

Sincerely,



BUTCH YAMALI
President

BY HAND DELIVERY

Appendix D – Dover Response

DOVER GOURMET CORPORATION

27 St. John's Place
Freeport, New York 11520
516-933-4444
Facsimile 516-933-0117
dovergroupny.com

December 18, 2014

Brian Nugent,
Commissioner
Nassau County Department of Parks,
Recreation and Museums
Eisenhower Park
East Meadow, New York 11554

Dear Commissioner Nugent:

This letter will summarize the capital expenditures which we have made, pursuant to the terms of our 2009 Agreement with the County of Nassau:

Eisenhower Park

Red Course: replace/repair of doors, roof, and counter; bi-annual painting of floor; installation of menu boards and signage; replacement of hot water heater
Cost: \$9825.00

White Course: replace/repair of doors, roof, and counter; bi-annual painting of floor; installation of menu boards and signage; installation of new roll-up gate
Cost: \$8800.00

Blue Course: replace/repair of doors, roof, and counter; bi-annual painting of floor; menu boards and signage
Cost: \$ 5450.00

Cart Barn: replace/repair of doors, roof, and counter; bi-annual painting of floor; installation of menu boards and signage; complete demolition and replacement of floor, including support beams
Cost: \$10,550.00

Aquatic Center: replacement of roller grill; replacement of oven
Cost: \$4125.00

Batting Cage: replace/repair of doors, roof, and counter; bi-annual painting of floor; menu boards and signage; replacement of awning
Cost: \$5500.00

Appendix D – Dover Response

Lakeside Theater: replace/repair of doors, roof, and counter; bi-annual painting of walls and floor; menu boards and signage, installation of service window; replacement of grill and fryer (2012); installation of new awnings and water heater; installation of new lighting; replacement of hot water heater
Cost: \$13,820.00

Christopher Morley Park: annual repair of doors and counter; bi-annual painting of walls; installation of menu boards and signage; replacement of ice cream freezer unit; repairs to service window and rear entry door
Cost: \$8910.00

Woodmere Park: annual repair of doors, roof, and counter; bi-annual painting of walls; floor repairs; installation of menu boards and signage; installation of new roll-up gate
Cost: \$7450.00

Cantiague Park: annual repair of doors, roof, and counter; bi-annual painting of floor; installation of menu boards and signage; installation of new Ansul and exhaust system; replacement of grill and fryer; installation of new water heater; installation of electrical connection
Cost: \$21,525.00

At all locations, we performed routine electrical and plumbing repairs as the need arose. Following Superstorm Sandy, we performed roof repairs as required, in order to mitigate further damage to the facility and our equipment.

As you are aware, the fire alarm system at the snack bar at Cantiague Park is still inoperative. Our efforts to construct a new snack bar at the Cantiague Park Golf Building went as far as to start demolition, at which time the previous administration decided that they did not want us to continue this project.

We attempted to construct a large, enclosed picnic pavilion on the Merrick Avenue side of Eisenhower Park, just south of the Women's Sports building. This project was halted when it was determined that live steam lines ran directly beneath this location.

In 2010, we were directed to pursue the creation of a miniature golf facility at Nickerson Beach Park which was to have included a Snack Bar. We made contact with one of the nation's leading miniature golf course designers, only to have this project postponed in favor of other construction priorities.

We were also asked to investigate and formulate a plan for the construction of a clam bar-type restaurant facility which was to be located at the Yacht Club building at Wantagh Park. This project was abandoned when it was determined that there were

Appendix D – Dover Response

serious DEC issues, because of the need to construct a grease trap and waste lines in and about open waters.

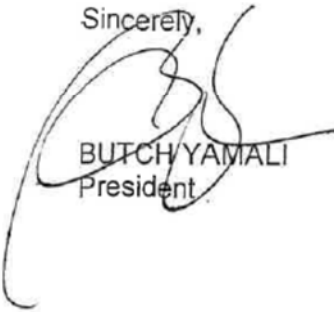
With respect to the four (4) above-described "projects" which never came to fruition, we have e-mails and other correspondence to document same.

We have thus far expended \$95,955.00, which is the majority of our capital obligation and request your assistance in identifying some other projects that make sense, from the viewpoint of providing further service to the park-using public. We do not want to waste the money on more false starts and would like these capital expenditures to be a true investment in the parks. We are also willing to increase our capital commitment in order to undertake some major projects, such as at the Exhibition Hall at Old Bethpage, with a view toward the granting of an extended term to our agreement in order to amortize these costs.

We request the opportunity to meet with you to discuss this issue at your earliest convenience.

Thank you for your assistance in this matter.

Sincerely,



BUTCH YAMALI
President

Appendix D – Dover Response

9/28/2016

Verizon | MyVerizon 2.0 | Verizon Message Center - Fwd: RE: Re: Attached Image


Verizon Message Center

Monday, Feb 22 at 3:39 PM

From: plkramer <plkramer@verizon.net>

To: bdwyer1@nassaucountyny.gov

Cc: byamali@optonline.net

Subject: Fwd: RE: Re: Attached Image

Hi Bob,

As discussed we have attached drawings of the proposed Snack Bar to be constructed on the West side of Nickerson Beach. Please give us your thoughts after you have reviewed same.

Best regards,

Pete

Feb 22, 2010 03:08:07 PM, ecfarrell@optonline.net wrote:

Attached, please find the revised concession per your comments.
Regards,
Edward Farrell, RA
D3 Architecture, pc
631-952-7005 x102

From: plkramer [<mailto:plkramer@verizon.net>]
Sent: Monday, February 22, 2010 1:04 PM
To: davedubi@gmail.com
Cc: ecfarrell@optonline.net; byamali@optonline.net
Subject: Re: Re: Attached Image

GREAT SUGGESTION!!

Feb 22, 2010 12:43:34 PM, davedubi@gmail.com wrote:
All:

Let's use asphalt roof shingles instead of cedar shakes, and eliminate the arch window, leaving instead just an arched opening. To save further cost, we might consider eliminating the stone veneer base all around.

Let me know your thoughts before we submit the formal submission.

Regards,
David Dubinsky, RA
(631) 952-7005 ext 111

On Feb 22, 2010, at 10:35 AM, plkramer wrote:

> Hi Ed,
>

https://mail.verizon.com/webmail/public/print.jsp?wid=vz_widget_MailOpen_8&type=mail&title=Verizon%20%7C%20MyVerizon%202.0%20%7C%20Verizon... 1/2

Appendix D – Dover Response

9/28/2016

Verizon | MyVerizon 2.0 | Verizon Message Center - Fwd: RE: Re: Attached Image

> Thank you for the Nickerson drawings. They look great.
> We made some minor changes, which are attached.
>
> Please revise your drawings as soon as possible.
> We also ask that you price this construction two (2) ways:
> completely finished and without plumbing/electric.
>
> Thank you for your help.
>
> Pete
>
>
> Feb 22, 2010 10:30:55 AM, joannagalioto@dovergroupny.com wrote:
> <1490_001.pdf>

https://mail.verizon.com/webmail/public/print.iso?wid=vz_widget_MailOpen_8&type=mail&title=Verizon%20%7C%20MyVerizon%202.0%20%7C%20Verizon.. 2/2

Appendix D – Dover Response

EDWARD P. MANGANO
COUNTY EXECUTIVE



SHILA SHAH-GAVNOUDIAS, P.E.
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PUBLIC WORKS
1194 PROSPECT AVENUE
WESTBURY, NEW YORK 11590-2723

June 6, 2013

The Dover Group
27 St. Johns Place
Freeport, New York 11520

Att: Butch Yamali

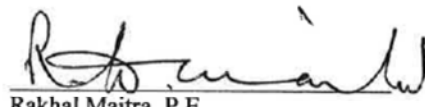
Re: Nickerson Beach Concession West Stand
Certificate of Completion

To Whom It May Concern:

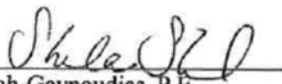
This is to certify that work performed in regard to this project has been inspected and found acceptable as of May 22, 2013. It should be noted however, that in regard to this facility, Dover Catering will be responsible for all upkeep and maintenance, and that the County of Nassau will not be responsible for any future repairs to this structure. Furthermore, Dover Catering will make arrangements with Nassau County Department of Public Works, Facilities Maintenance Unit to have the structure properly winterized annually.

RECOMMENDED FOR APPROVAL:


John O'Dougherty
Building Construction Inspector II


Rakhil Maitra, P.E.
Deputy Commissioner of Public Works

APPROVED AND ACCEPTED:


Shila Shah-Gavnaudias, P.E.
Commissioner of Public Works

SSG:RM:pl

- c: William J. Muller, Clerk of the Legislature
- Carnell Foskey, Commissioner, Department of Parks, Recreation and Museums
- Rakhil Maitra, Deputy Commissioner of Public Works
- Richard P. Millet, Deputy Commissioner of Public Works
- Brian J. Schneider, Assistant to Deputy Commissioner for Administration
- John O'Dougherty, Building Construction Inspector II

K:\Support Staff\Author\O'Dougherty, John\Nickerson Beach Concession Cert of Completion.jo.doc

Appendix D – Dover Response

CAPITAL IMPROVEMENTS

Dover operates a full maintenance facility and shop at the Malibu Shore Club adjacent to Nickerson Beach. We perform all maintenance, repair and capital improvements from that facility for all Dover locations. We also accept deliveries of material and equipment and store records related to these operations.

In October of 2012 the Hurricane wiped out the South Shore and resulted in the loss of equipment, damage to our buildings, loss of records and computer data. We had almost four feet of water in our facility.

We have gone through our files multiple times to try to find as much information as possible to supply you. We did find some of the copies of the invoices for the work performed but there are many missing ones. We contacted the various companies and suppliers for copies of invoices and are waiting for receipts.

We contacted our bank for copies of checks and found they only go back 18 months and can go back as far as 3 years upon written request so we are also waiting to see what they come up with.

All work performed by Dover was pre-approved by the County and all work was completed. Attached we supplied you with the invoices we were able to find. Other items we listed on the spreadsheet and gave the approximate cost of what was spent to complete the project.

We have also supplied you with two (2) letters, one dated November 13, 2014 and December 18, 2014. The first letter respectfully requested an extension of time to complete the capital improvements since we were at a standstill with the County. The second letter was a summary of capital expenditures that have been made up to that point. See exhibit.

The County did in fact approve this extensions of time since the delay was not our fault. For example we began the process to build the west terrace building at Nickerson Beach in February 2010 we did not get the letter of completion until June of 2013. So it took three (3) years for one simple project. (See attached e-mails). See exhibit.

With all of the investigating work in attempting to find documentation we realized that missing from Commissioner Nugent's summary letter of December 2014 of the following items is:

Appendix D – Dover Response

MISSING INVOICES (All numbers are approximate and were determined by our notes)

Nickerson West:

1) Roof	\$ 3,500.00-Initial roof and sheeting
2) Plumbing	\$ 4,500.00-Water lines, sewer lines, hook up and installation of equipment
3) Carpentry	\$35,000.00-Build out and finishing of building
4) Door Service	\$ 1,200.00-Service door
5) Door Entry	\$ 800.00-Steel door
6) Work After Sandy	\$ 3,000.00-Clean up, paint and electrical work
7) Roof After Sandy	\$ 2,500.00-New roof to replace after hurricane damage
8) Architect	\$ 8,500.00-Drawings and meetings
Total:	\$59,000.00

Nickerson East:

Re-do exterior due to storm & wind/ vandalism in 2015 \$2,500.00

Wantagh:

Initial Repair/Replace doors, Counter, Paint and work after Sandy \$9,200.00

Christopher Morley:

Ceiling tiles replace due to exterior leak in 2015 \$600.00

Batting Cage:

Ceiling tiles replaced due to exterior leak in 2015 \$900.00

OBVR:

Initial clean up/repair/install roll up tarps for sheds/plumbing work/carpentry work/shelves/walls/roof work \$15,000.00

Cantiague Golf Course:

Clean out and cement work on project stated and ceased in 2010 \$2,500.00

****Finally, we discovered that since January of 2010 Dover has paid for the gas utility usage at Nickerson Beach when in fact this charge is the responsibility of Nassau County. See paragraph 6.1 on page 12 and 13, the County owed Dover approximately \$12,000.00**

Appendix D – Dover Response

CAPITAL IMPROVEMENT APPROXIMATE TOTAL:

- Nickerson Contract (All work completed) Total spent approximately \$127,132.36
- Parks Contract Total spent approximately \$124,155.00

Appendix D – Dover Response

DOVER GOURMET CORPORATION

11 Skyline Drive
Plainview, New York 11803
516-933-4444
Facsimile 516-933-0117
dovergroupny.com

February 10, 2010

Mr. Robert Dwyer
Chief Deputy Commissioner
Nassau County Department of Parks and Recreation
Eisenhower Park
Administration Building
East Meadow, New York 11554

Dear Deputy Commissioner Dwyer:

As we discussed at our meeting, we are requesting that our Agreement be amended in the "Definitions" section, pages 2 and 3, subsections "L," "A," and "B" to include the words "Service Charge or Administrative Fee." We have attached these pages of the contract to this letter.

Because of changes in the Labor Law, our Labor attorney Keith Gutstein from the firm Kaufman, Dolowich Voluck summarizes the reason for the proposed change as follows:

"As you are no doubt aware, the New York State Department of Labor requires that gratuities which are collected by employers must be distributed to the service staff which is working at events. The Department of Labor then permits an employer to take a "tip credit" against the wages of said employees when they are provided with their tips, so long as their hourly wage is equivalent to or greater than the minimum wage. Notably, Dover does *not* take such a credit against its employee's wages. Instead, Dover ensures that it pays its employees the full and appropriate wages.

However, the Department of Labor also allows employers to collect a "service" or "administrative" charge on contracts for catering services. While these administrative charges are not gratuities, it is Dover's policy to implement such a charge in connection with its catering agreements, and to in turn use these fees for the payment of employee wages. By treating the administrative charge in this manner, Dover is able

Auditor Follow-up to Nassau County Parks and Recreation (“Parks”) and Dover Gourmet Corporation (“Dover”) Audit Responses

Follow-up changes made to the Draft Report:

Revise Title of Finding (6)

*Auditors have changed the Title of Finding 6: **\$325,000 in Capital Improvements Not Started Should be Remitted to the County** to reflect the \$29,365 in invoices submitted by Dover for completion of the Nickerson Beach West project. We have revised the Title to read: **\$295,635 in Capital Improvements Not Started Should be Remitted to County.***

Revise Title of Summary Finding (12) and Corresponding Chart

Auditors revised Title of Summary Finding 12 and corresponding chart to reflect the \$29,365 in invoices submitted by Dover after issuance of the draft report.

(1) Dover Did Not Remit Monthly License Fees Timely to the Parks Department

See the Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

We are pleased that Parks will enforce the terms of the agreements by ensuring that Monthly Gross Sales Receipts and full fee payments are submitted on a timely basis.

(2) Dover’s Untimely Submission of Monthly Fee Payments Resulted in Unpaid Late Charges of \$22,800

See the Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

Auditors reiterate that Parks adhere to the terms of the license agreements and impose a monthly late charge when license fees, percentage fees, and flat fees become overdue for 15 days following the date on which such fees are due.

(3) Dover’s Underreporting of Cash Sales Receipts Resulted in Non-Payment of over \$11K New York Sales Tax and over \$27K Loss of Fee Revenues to the County

See the Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

With regards to NYS Sales Tax, Dover claims that the mandatory 18 % Service Fee (not tips) on catering is being used “**to help pay for the catering event, including the payment of employee wages.**” According to NYS Tax Bulletin ST-320, “....a mandatory gratuity is not taxable if **all** of these conditions are met:

- the charge is shown separately on the bill;
- the charge is identified as a gratuity; and
- **the business gives the entire separately stated gratuity amount to its employees.**

If any of these conditions is not met, the mandatory gratuity is taxable, along with the rest of the bill.

In addition, the license agreements specifically state that “License shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries.” Dover has not provided us or the Parks Department with any supporting documentation.

We reiterate our recommendation that the Parks Department bill Dover \$27,075 for the loss of fee revenues since Dover excluded all County event payments, all catering service fees, and some instances of ice cream sales from its Cash Sales Receipts.

(4) Dover Did Not Submit Annual Aggregate Reports in Compliance with the License Agreements

See Parks’ responses (Appendix C).

Auditor’s Follow-Up Response:

On August 23, 2016, the Parks Department sent us 2013 and 2014 financial reports of “DOVER GOURMET CORP. AND SUBSIDIARY AND AFFILIATES.” These reports listed assets and liabilities, and income and expenses from 13 of Dover’s private businesses. For example, Dover Gourmet Corporation 2014 financial net sales indicated \$12,738,409 while Parks and Nickerson Beach net sales for 2014 was \$1,967,919 and \$103,931 respectively. Section 4.4 of the License Agreements state, “ On or before the thirtieth (30th) day following Each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operation under this License, signed and verified by an officer of Licensee and a member of a Certified Professional Accounting Firm.”

We reiterate our recommendation that the Parks Department enforce the submission of signed Monthly Gross Sales Receipts, signed Annual Summary of Gross Sales Receipts, and signed and certified relevant Annual Income and Expense Statement, in compliance with the agreements.

Appendix E – Auditor’s Follow-up Response

(5) Parks Department Did Not Levy Liquidated Damages Against Dover for Repeated Incidents of Non-compliance

See Parks’ responses (Appendix C).

Auditor’s Follow-Up Response:

We reiterate our recommendation that the Parks Department levy liquidated damages against Dover for repeated incidents of non-compliance such as late payments, late fees, non-submission of aggregate reports and relevant certified income statement.

(6) \$295,635 in Capital Improvements Not Started Should be Remitted to the County

See the Parks and Dover responses (Appendices C and D).

After the issuance of our Draft Report, Dover provided the following:

- copies of invoices in connection with expenditures for ordinary repairs and maintenance, (not considered Capital Improvements);
- a **request** to the Parks Department for an extension of the time period within which Dover must complete the Parks Capital Improvements required under its agreement with the County (extension from December 2014 to December 2019 was requested);
- cost estimates of various routine electrical and plumbing repairs, and equipment replacement throughout the Parks;
- a Certificate of Completion from DPW indicating that the **Nickerson Beach Concession West Stand** (Nickerson West) had been inspected and found acceptable as of May 22, 2013, and accompanying invoices totaling \$29,365; and statement from Dover noting that due to Super Storm Sandy in October 2012, Dover suffered loss of records and computer data and as such, in most cases, could only provide the “approximate cost of what was spent to complete the project.” Dover estimates their total cost of this project at \$59,000; and
- Dover estimates that to date it has spent approximately \$127,132.36 for the Nickerson Agreement and \$124,155 for the Parks Agreement (with the exception of \$29,365 for the Nickerson West project all amounts unsubstantiated).

Auditor’s Follow-Up Response:

Our analysis of the documents reveal the following:

- *To date, Dover has completed **one** of the **five** Capital Improvement Construction projects required by the Parks and Nickerson Beach agreements. The remaining four projects that have not been started as of the date of this report are as follows: construction of New Snack Bar at Cantiague Park Golf Building, construction of Picnic Pavilions at Eisenhower and Cantiague Parks; and 30 x 60 foot covered picnic pavilion at a location approved by the county (Nickerson Beach).*

Appendix E – Auditor’s Follow-up Response

- *In connection with the completed project at Nickerson Beach, Dover has provided invoices totaling \$34,378.25 from 2009. We noted that these costs were incurred in 2009, for improvements prior to the commencement of the current agreement. Schedule B of the Nickerson agreement states that “Total license fees in the amount of \$13,426.82 would be owed by Licensee to the County under its 2009 Use and Occupancy Permit for Nickerson Beach; however, these fees are offset and exceeded by Licensee’s expenditures totaling \$34,378.25 for repairs and capital improvements at the premises. As such, all fees due by Licensee to the County for 2009 have been paid, in full.”*
- *With the exception of approximately \$29,000 (incurred between 2010-2016) in invoices submitted for Nickerson West, most of the invoices submitted were expenditures for ordinary repairs and maintenance, such as paint, fire and electrical inspections, and various supplies. According to section 9.3 of the agreement, “... total cost of the Capital Improvements shall be determined by the County based upon construction documents, invoices, municipal fee receipts, labor time sheets and such other supporting documents or other data as the County may require. **Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements...**”*
- *Dover/Parks Department has not provided any of the following: approved construction plans for any of the five projects, including the one completed (DPW approval required); **approval** for an extension of the time period within which Dover must complete the Parks Capital Improvements required under its agreement with the County; proof of compliance with section 9.2 of the Nickerson Agreement which states that “One-half of one percent of the total cost for all capital improvements activities will be charged to the Licensee for design review by DPW personnel (Design Review Fee), as follows. Upon the execution of this Agreement, Licensee shall pay to the County the amount of \$750, which is one half of one percent of the capital investment to which Licensee is committed in Section 9.1. Upon the final completion of construction, Licensee shall make a supplementary payment of one half of one percent of all capital invested...” (Note: the \$750 is based on the total capital improvement required times the one-half percent-\$150,000 x.005).*
- *As of the date of this report, the Parks Department has not reviewed any costs with regards to Capital Improvements. In response to our draft, the Parks Department stated that it has requested such documentation. In accordance with section 9.9 of the Agreements, “Licensee, within three months of certification of Final Completion, shall furnish Parks with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books accounts payable, daily reports, bank deposits, bank statements.....”*
- *Based on the invoices and records provided by Dover, we observed that the Nickerson West Project was initiated in 2013, after Super storm Sandy in October 2012; as such all records should have been intact and turned over to the Parks Department for their review.*

Appendix E – Auditor’s Follow-up Response

- *After nearly seven years into the agreements, only one of the projects was completed and none of the three Parks projects that should have been completed by 2014 have been started. Section 9.3 of the agreement states that “.... in the event Licensee performs all Capital Improvements for less than the amount listed in Section 9.1 herein, any excess monies shall be remitted to the County as additional license fees within thirty days following the County’s determination of Final Completion.”*

(7) Parks Department Offset \$84,077 of License Fee Revenues Against County Expenditures Resulted in Loss of License Revenues and Unauthorized Expenditures

See the Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

We are pleased that, moving forward, the Parks Department will ensure that it has expense contracts in place to facilitate the processing of County Sponsored Events payments through the Comptroller’s Vendor Claims Unit; however, we reiterate our recommendations to ensure that license fee payments be based on all sales receipts, and that all fee payment revenues, expenditures, and accruals are recorded timely in the County’s Financial System.

(8) Dover Did Not Remit the Accurate License Fees for Catering at Nickerson Beach Park Owing the County \$1,402

See the Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

With respect to the interpretation of the agreement, we concur with Parks to consult with the County Attorney’s Office regarding amending the terms of the agreement to reflect the intent of the parties.

(9) Dover Did Not Have Parks Department Approval for Use of the County Seal for Advertisement of Dover’s Private Businesses

See Parks’ responses (Appendix C).

Auditor’s Follow-Up Response:

We are pleased that Parks will ensure that Dover obtain written approval from the County prior to any advertisement use in connection with the Parks or Nickerson Beach Park.

(10) Parks Department is Not Adequately Monitoring Dover: Did Not Review Dover’s Gross Sales Backup Documentation- Points of Sale/Cash Register Tapes and Vending Machine Meters; Review Pricing

Appendix E – Auditor’s Follow-up Response

See Parks’ responses (Appendix C).

Auditor’s Follow-Up Response:

We reiterate our recommendations that the Parks Department review gross sales supporting documentation, observe and evaluate Dover’s cash registers and vending machine meters on a sample basis, and require that Dover submit proposed schedule of prices and rates for services and products for the forthcoming Operating Year.

Adequate oversight by the Parks Department ensures that the terms and conditions of the agreements are met, revenue due the County is collected, properly deposited and timely recorded.

(11) Parks Department Did Not Ensure That Dover Employees Having Contact with Minors on County Premises Were Fingerprinted by the Police Department

See Parks and Dover responses (Appendices C and D).

Auditor’s Follow-Up Response:

At the exit conference, Dover stated that prior to hiring an employee, Dover calls the NYS Sex Offender Registry (SCR) toll-free number to find out if the individual is listed on the registry. Since there is no evidence (audit trail) of the screening, we could not verify whether all employees who have contact with minors were screened. Dover also stated that it was not aware of section 21.1 (b) of the agreements that all current personnel who have substantial contact with minors be fingerprinted by the Nassau County Police Department.

*We reiterate our recommendations that the Parks Department **require** that Dover submit a list of current employees, including evidence that they were adequately screened (SCR and fingerprinted by the PD, and provide written notice when personnel are added or removed.*