

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 1)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with City Parks Foundation, Inc. ("CPF") for operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage, Rumsey Playfield, Central Park, Manhattan. The Agreement will commence upon CPF's receipt of a written Notice to Proceed and, unless terminated sooner in accordance with the Agreement, shall terminate on June 27, 2018 (the same date as the Maintenance and Operation Agreement entered into by the City and CPF on June 28, 2013) (the "M&O Agreement") or the last day of any subsequent renewal period that is exercised pursuant to the Agreement ("Term"). Parks, in its sole discretion, shall have the option to renew the Agreement for one (1) additional five-year period, provided that Parks has renewed the M&O Agreement for the same period. In no event shall the Term, including any renewal period, exceed the term of the M&O Agreement. In lieu of a license fee, CPF shall use any revenue it receives from the operation of this concession to offset the cost of free events at Rumsey Playfield and the cost of operation and maintenance of Rumsey Playfield.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

April 11, 2016

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

*(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable) )*

<b>AGENCY:</b> New York City Department of Parks & Recreation ("Parks")	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>City Parks Foundation, Inc.</u> <b>Address:</b> <u>830 5<sup>th</sup> Ave, 2<sup>nd</sup> Floor, NY, NY 10065</u> <b>Telephone #</b> <u>212-360-8147</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>13-3561657</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> The Operation and Maintenance of a Food, Beverage, and Merchandise Concession at SummerStage, Central Park. <b>CONCESSION I.D. #</b> <u>M10-1-O</u>
<b># VOTES required for proposed action</b> = <u>4</u> <input type="checkbox"/> <b>N/A</b>		

**LOCATION OF CONCESSION SITE(S)\*** Address Rumsey Playfield, Central Park  **N/A**  
 \*Attach additional sheet **Borough** Manhattan **C.B.** 5, 7, 8, 10, 11 **Block #** 111 **Lot #** 1

**SELECTION PROCEDURE**  
 (\*CCPO approval of CRFA required)

Competitive Sealed Bids  
 Competitive Sealed Proposals\* ( FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_.)  
 Different Selection Procedure: \* ( Sole Source Agreement  Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on 02/11/15.  
 Negotiated Concession\*

**CONCESSION AGREEMENT TERM**

**Initial Term:** From Notice to Proceed to, unless terminated sooner in accordance with the License Agreement, June 27, 2018 (the same date as the Maintenance and Operation Agreement entered into by the City and Licensee on June 28, 2013) or the last day of any subsequent renewal period that is exercised pursuant to this License Agreement ("Term"). Parks, in its sole discretion, shall have the option to renew this License Agreement for one (1) additional five-year period, provided that Parks has renewed the Maintenance and Operations Agreement for the same period. In no event shall the Term, including any renewal period, exceed the term of the Maintenance and Operation Agreement.

**Total Potential Term:** ~7 Years

\* >20 years – FCRC unanimously approved term on \_\_\_/\_\_\_/\_\_\_

**ANNUAL REVENUE**  
 (Check all that apply)  
 Additional sheet (s) attached)

**Annual Fee(s)** \_\_\_\_\_  
 **% Gross Receipts** \_\_\_\_\_ %  
 **The Greater of Annual Minimum Fee(s of \$ \_\_\_\_\_ v. \_\_\_\_\_ % of Gross Receipts**  
 **Other** In lieu of a license fee, City Parks Foundation, Inc. shall use any revenue it receives from the operation of this concession to offset the cost of free events at Rumsey Playfield and the cost of operation and maintenance of the Playfield

**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**  **YES**  **NO**  
**If YES**, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_\_/\_\_\_/\_\_\_, which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_\_/\_\_\_/\_\_\_, which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 12/19/14, which was at least 40 days in advance of the FCRC meeting on 02/11/15 at which the agency sought and received approval to use a different selection procedure.

The Agency certifies that each affected CB/BP received written notice on \_\_\_/\_\_\_/\_\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such

notification to the members of the Committee within five days on \_\_/\_\_/\_\_.

The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on \_\_/\_\_/\_\_**

**Award is a major concession.**  YES  NO

**If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**

CPC approved on \_\_/\_\_/\_\_  City Council approved on \_\_/\_\_/\_\_ or  N/A

**AUTHORIZED AGENCY STAFF**

**This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.**

**If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:**

The concession was approved by the FCRC on \_\_/\_\_/\_\_.

The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** Alexander Han **Title** Deputy Director of Concessions

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

**This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.**

**Signature** \_\_\_\_\_ **Date** \_\_/\_\_/\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:  
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The Operation and Maintenance of a Food, Beverage, and Merchandise Concession at SummerStage, Central Park, Manhattan

***Instructions:*** Provide all information requested below; check all applicable boxes.

**A. SELECTION PROCEDURE**

Sole Source

Other *Describe:*

**B. NEGOTIATIONS**

***Instructions:*** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

Following FCRC approval to enter into negotiations with the City Parks Foundation, Inc. ("CPF" or "Licensee"), the New York City Department of Parks & Recreation ("Parks") and CPF conducted meetings to discuss the terms of this License Agreement ("License Agreement"). In lieu of a license fee, CPF shall use any revenue it receives from the operation of this concession to offset the cost of free events at Rumsey Playfield and the cost of operation and maintenance of Rumsey Playfield.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

CPF is the only independent, nonprofit organization to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which is celebrating its 31<sup>st</sup> anniversary in 2016. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings more than 100 free performances to parks throughout the five boroughs reaching more than 280,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and

theater, the festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

In August 2009, Parks entered into a license agreement with CPF for the maintenance and operation of SummerStage at Rumsey Playfield ("M&O Agreement"). This agreement was renewed in June 2013. The total cost of the free events, maintenance and operation of Rumsey Playfield, and administrative expenses directly related to SummerStage at Central Park is approximately \$3.5 million annually. The revenue produced by SummerStage through the M&O Agreement does not cover these costs. The revenue generated from the sale of food, beverages and merchandise at SummerStage through this concession will help CPF offset the high costs of maintenance and operations of Rumsey Playfield, free public programming, as well as the administrative expenses associated with this very popular series. Parks anticipates that any revenues in excess of the amount attributable to covering the cost of the free events, for maintenance and operation of Rumsey Playfield, and administrative expenses directly related to the operation of SummerStage will be strictly used for additional free public programming at Rumsey Playfield.

**D. PUBLIC HEARING                       N/A – Subject award NOT a significant concession]**

**1. Publication & Distribution of Public Hearing Notice**

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_/\_\_/\_\_.

- \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_
- \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

**OR**

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 3/25/16, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 3/25/16, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 3/25/16.

- Our Town*, a NYC local newspaper published in the affected borough(s) on 3/31/16 and 4/7/16.
- NY Post*, a NYC citywide newspaper on 3/29/16 and 4/5/16.

## 2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on 04/11/16.

**OR**

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on \_\_\_/\_\_\_/\_\_\_ and sent a copy of that notice to all Committee Members.

**RECOMMENDATION FOR  AWARD/  RENEWAL  
OF CONCESSION AGREEMENT: RESPONSIBILITY DETERMINATION**

<b>AGENCY:</b> <u>Department of Parks &amp; Recreation</u>	<b>CONCESSIONAIRE:</b> <u>City Parks Foundation, Inc.</u>	<b>CONCESSION I.D. #</b> <u>M10-1-O</u>
<p>This is to certify that I have determined that the subject concessionaire has the capability in all respects to perform fully the concession requirements and the business integrity to justify the private use of city-owned property and is therefore responsible.</p> <p align="center"><b>AUTHORIZED AGENCY STAFF</b></p> <p>Name <u>Alexander Han</u> Title <u>Deputy Director of Concessions</u></p> <p>Signature _____ Date <u>___/___/___</u></p>		

**SOURCES OF INFORMATION**

On-line VENDEX vendor inquiry (cautions, liens, warrants) conducted on: 03/16/16

VENDEX filings dated: 11/10/14 or  **N/A** *[Value of concession, when aggregated with value of all other contracts/concessions held by subject concessionaire, <\$100 K]*

Certificate of No Change/  
Changed Questionnaire dated: 01/28/16 or  **N/A**

DOI Report dated: 02/17/16 or  **N/A**

Doing Business Data Form dated: 02/01/16  **N/A** *[CSB without prequalification]*

If the subject action is new concession award awarded pursuant to CSP and award is based on initial proposals, VENDEX Questionnaires also submitted from the second highest rated proposer.  **Yes**  
 **No** *[Explain]*

**Technical Qualifications/Experience/Resources**

Basis for determination that proposed concessionaire has the organization, material, equipment, facilities and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments:

City Parks Foundation, Inc. ("CPF" or Licensee) has extensive experience offering park programs throughout the five boroughs of New York City. In total, CPF's programs take place in hundreds of parks, in every neighborhood of the city, and reach hundreds of thousands of people annually. The food, beverage, and merchandise concession will operate in conjunction with their larger operations at SummerStage, currently maintained and operated by CPF pursuant to a Maintenance and Operations agreement between CPF and Parks, dated June 28, 2013.

**Record of Satisfactory Performance**  **N/A** *[Subject concessionaire is not the current concessionaire and/or has no other comparable concessions and/or contracts with the City]*  
Basis for determination that proposed concessionaire has a satisfactory record of performance:

CPF currently conducts other operations at Rumsey Playfield pursuant to a Maintenance and Operations agreement dated June 28, 2013 between CPF and Parks, and has successfully operated free public programming

including concerts and other live events at the Rumsey Playfield for many years, including the ancillary provision of services, such as food and beverages.

### **Financial Resources/Adequate Accounting & Auditing Procedures**

Basis for determination that proposed concessionaire has sufficient financial resources and adequate accounting and auditing procedures to control property, funds or other assets, accurately delineate costs, and attribute them to their causes:

A review of CPF's existing internal controls indicate sufficient auditing and accounting procedures to satisfy all of the requirements and obligations set forth in the proposed agreement. CPF will be subject to auditing by Parks, the New York City Comptroller and Parks-authorized auditors.

### **Business Integrity**

Basis for determination that proposed concessionaire has a satisfactory record of business integrity:

A review of the New York State, Department of State, Division of Corporations Website revealed no New York State Tax Warrants, or Federal Tax Liens. A search of VENDEX revealed no New York City tax liens or warrants. In addition, a search of the U.S. Department of Labor's OSHA website revealed no open or closed violations for CPF within the last five (5) years. A LexisNexis search also revealed no bankruptcies for CPF.

### **Other Sources of Responsibility Information (Indicate \*)**

A search of the following databases revealed no adverse business integrity information: LexisNexis Public Records Database, Department of State website, OSHA, and Google.

(\* Examples: LexisNexis; Google; Department of State website; records or certificates of compliance with EEO laws and executive orders enforced by DSBS/DLS; publications; suppliers, subcontractors and/or customers of the prospective concessionaire; financial institutions, other government agencies, business and trade associations.)

## **DISPOSITION**

ADVERSE INFORMATION IDENTIFIED?  NO  YES, described & addressed below

### **ADVERSE INFORMATION**

*Instructions: Check all applicable box(es) indicating types of adverse information found. Provide the information requested and explain basis for the award notwithstanding adverse information. Attach explanatory sheets, as necessary.*

**ADVERSE INFORMATION INDICATED IN VENDEX VENDOR INQUIRY &/OR ON MOST RECENT VENDEX QUESTIONNAIRES.** *Describe each item by type, date & current status (include outcome, if disposed of).*

**ADVERSE INFORMATION IN DOI REPORT.** *Attach DOI report (include all attachments to report); describe each adverse item therein by date of occurrence and current status (include outcome, if disposed of).*

**ADVERSE PERFORMANCE EVALUATION INFORMATION.** *Describe problem(s) by type, date & current status; if problem(s) pertains to your agency, provide statement that agency has approved concessionaire's Corrective Action Plan, and/or that problem category has been corrected, as applicable; if rating pertains to another agency, identify agency, describe problem and describe resolution of problem.*

**ADVERSE FINANCIAL RESOURCES/AUDIT INFORMATION.** *Describe each such problem; provide statement that agency has approved the concessionaire's Corrective Action Plan.*

**ADVERSE BUSINESS INTEGRITY INFORMATION** *Describe each such problem; provide statement that agency has approved the concessionaire's Corrective Action Plan.*



NYC Parks

Mitchell J. Silver, FAICP  
Commissioner

T 212.360.1305  
F 212.360.1345

E mitchell.silver@parks.nyc.gov

City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, NY 10065  
www.nyc.gov/parks

## MEMORANDUM

**TO:** Hon. Gale Brewer, President of the Borough of Manhattan  
Mr. Wally Rubin, District Manager, Manhattan Community Board 5  
Ms. Penny Ryan, District Manager, Manhattan Community Board 7  
Ms. Latha Thompson, District Manager, Manhattan Community Board 8  
Mr. Andrew Lassalle, District Manager, Manhattan Community Board 10  
Mr. Angel D. Mescaín, District Manager, Manhattan Community Board 11

**FROM:** Santiago Zindel, Project Manager 

**SUBJECT:** Notice of Joint Public Hearing, April 11, 2016: Intent to Award as a Concession the Operation and Maintenance of a Food, Beverage, and Merchandise Concession related to the Presentation of Live Events at SummerStage, Rumsey Playfield, Central Park, Manhattan to the City Parks Foundation, Inc.

**DATE:** March 25, 2016

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation to be held on Monday, April 11, 2016 at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, at 2:30 p.m. relative to:

INTENT TO AWARD as a concession the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage, Rumsey Playfield, Central Park, Manhattan, for a potential term of approximately seven (7) years, to the City Parks Foundation, Inc. ("CPF"). Compensation to the City will be as follows: In lieu of a license fee, CPF shall use any revenue it receives from the operation of this concession to offset the cost of free events at Rumsey Playfield and the cost of operation and maintenance of Rumsey Playfield.

A draft copy of the agreement may be reviewed or obtained at no cost, commencing Monday, March 28, 2016, through Monday, April 11, 2016, between the hours of 9 am and 5 pm, excluding weekends and holidays at the New York City Department of Parks & Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

Individuals requesting Sign Language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

LICENSE AGREEMENT

BETWEEN

**CITY OF NEW YORK  
PARKS & RECREATION**

AND

**CITY PARKS FOUNDATION**

*for*

THE OPERATION AND MAINTENANCE OF A FOOD, BEVERAGE, AND  
MERCHANDISE CONCESSION RELATED TO THE PRESENTATION OF LIVE EVENTS  
AT SUMMERSTAGE, CENTRAL PARK

NEW YORK, NEW YORK

**M10-1-O**

DATED: \_\_\_\_\_, 2016

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**THIS LICENSE AGREEMENT ("License")**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 between the City of New York ("City"), a municipal corporation of the State of New York ("State") acting by and through the Commissioner of the Department of Parks & Recreation ("Commissioner" and "Parks", respectively), having an office at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and City Parks Foundation, Inc. ("CPF" or "Licensee"), a not-for-profit corporation organized in accordance with the laws of the State, with an office at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065.

**WITNESSETH**

**WHEREAS**, the Commissioner pursuant to Section 533 of the New York City Charter is charged with the duty to manage, maintain, and operate City parks, buildings, and recreation facilities under the jurisdiction of Parks for the beneficial use of the people of the City, and has the duty to plan, develop, conduct, and enter into arrangements on behalf of Parks and for the benefit of the public; and,

**WHEREAS**, Licensee was formed in 1989 for the purpose of offering various park programs throughout the five (5) boroughs of the City; and,

**WHEREAS**, Licensee supports City neighborhood parks that lack access to private resources by presenting free arts, sports, educational, and community building programs, and making City neighborhood parks a focal point for community development; and,

**WHEREAS**, the Commissioner has jurisdiction over the National Historic Landmark park known as Central Park, located in the Borough of Manhattan; and,

**WHEREAS**, since 1986, the SummerStage Program ("SummerStage"), one of the most popular arts programs in Central Park (and elsewhere throughout New York City), has contributed to the cultural heritage of the City by presenting performances by emerging and established musicians, dancers, and literary figures from around the globe; and,

**WHEREAS**, the Central Park portion of SummerStage runs from April 1<sup>st</sup> through October 17<sup>th</sup> each year ("Operating Season") and presents approximately thirty-five (35) days of free performing arts events to an average audience of one hundred sixty thousand (160,000) New Yorkers and visitors annually; and,

**WHEREAS**, the Commissioner has determined that the area known as Rumsey Playfield ("the Playfield"), located in Central Park near East Drive and the 72<sup>nd</sup> Street Transverse Road, is the most appropriate venue to host the Central Park portion of SummerStage; and,

**WHEREAS**, Licensee has assumed responsibility for the management and operation of SummerStage since 1993; and,

**WHEREAS**, in June 2013, Parks and Licensee entered into a license agreement ("Maintenance and Operation Agreement") for the management and operation of SummerStage at the Playfield; and,

**WHEREAS**, the total cost of the free events and the maintenance and operation of the Playfield is approximately three million five hundred thousand dollars (\$3,500,000.00) annually and the revenue generated from the Maintenance and Operation Agreement does not cover these costs; and,

**WHEREAS**, Licensee desires to operate and maintain or provide for the operation and maintenance of a food, beverage, and merchandise concession at the Licensed Premises, as defined herein below, related to the presentation of live events at SummerStage and use any revenue generated to offset the high costs of the maintenance and operations of the Playfield and programming free events thereon; and,

**WHEREAS**, the Commissioner and Licensee desire to ensure that the coordinated efforts of Parks and Licensee will continue to serve the best interest of the public; and,

**WHEREAS**, Parks and Licensee have collectively created an effective public-private partnership whereby Parks and Licensee complement each other's efforts in connection with ensuring that the public continues to have access to free programs on the Playfield; and,

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC"), has authorized Parks to use a different procedure to enter into this Sole Source License Agreement with CPF.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, the City and Licensee covenant and agree as follows:

### **GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks a non-exclusive license to maintain and operate a food, beverage, and merchandise concession at the Licensed Premises related to the presentation of live events at SummerStage and in accordance with the terms and conditions set forth herein, and to the satisfaction of the Commissioner (the "Concession"). Notwithstanding the foregoing, Parks agrees that, during each Operating Season

during the Term of this License, it shall not authorize operations similar to the Concession at the Licensed Premises without Licensee's prior written approval. The "Licensed Premises" shall mean the area within the Playfield as designated on the site plan attached hereto as **Exhibit A**. The Licensed Premises shall exclude the stage used for performances. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises.

**1.2** Licensee may, subject to the prior written approval of Parks, enter into sublicense agreements ("Sublicense Agreements") with third parties ("Sublicensees") to maintain and operate all or a portion of the Concession at the Licensed Premises during the Operating Season in accordance with the terms and conditions set forth herein. Prior to entering into any proposed Sublicense Agreement, Licensee shall submit to Parks a written request for approval, together with a copy of any proposed Sublicense Agreement, in a form reasonably acceptable to Parks. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed.

(b) Any Sublicense Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require said Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. Licensee shall require Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this License and indemnifying the City as set forth in Articles 18 and 19 of this License.

(c) No Sublicense Agreement may be assigned without Parks' prior written approval. If approved, any subsequent Sublicense Agreement(s) will be subject to the terms and conditions set forth in this License.

**1.3** During the Operating Season, Licensee shall sell only the concession items approved in advance by Parks, which approval shall not be unreasonably withheld or delayed. Licensee shall submit to Parks for approval the schedule of its proposed concession items and accompanying prices for the first Operating Season upon receipt of written Notice to Proceed; a copy of the approved concession items and prices (“Schedule of Approved Items and Prices”) for the first Operating Season shall be attached hereto as **Exhibit B**. For all other Operating Seasons during the Term, Licensee shall submit its proposed revisions to the schedule for Parks approval no later than one month prior to the Operating Season. Any increase in price or change in the Schedule of Approved Items and Prices is subject to Parks' prior written approval. Should Licensee decide not to charge the maximum allowable prices for the approved concession items, this shall in no way be interpreted as a waiver of rights to charge such maximum allowable prices at any other time during the Term of this License.

**1.4** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations, and orders which are or may become necessary to operate and maintain the Licensed Premises, in whole or in part, in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill in all material respects all of the obligations contained herein. Failure to fulfill in all material respects any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. Whenever any act, consent, approval, or permission is required of the City or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, the Commissioner, or

their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

## **DEFINITIONS**

**2.1** As used throughout this License, the following terms shall have the meanings set forth below:

(a) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include all Alterations and "Additional Fixed Equipment," as that term is defined in Section 2.1(d)(i) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of maintenance and operation of the Licensed Premises.

(b) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Additional Fixed Equipment.

(c) Intentionally Omitted.

(d) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date hereof.

(ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

## **TERM**

**3.1** This License shall commence upon CPF receiving written Notice to Proceed from Parks ("Commencement Date") and, unless terminated sooner in accordance with this License, shall terminate on the same date as the Maintenance and Operation Agreement (June 27, 2018) or the last day of any subsequent renewal period that is exercised pursuant to this License ("Termination Date"). The period between the Commencement Date and the Termination Date, including any exercised renewal period, shall be the "Term". There shall be one (1) five-year renewal option, exercisable at Parks' sole discretion, provided that Parks has renewed the Maintenance and Operation Agreement for the same period. In no event shall the Term, including any renewal period exceed the term of the Maintenance and Operation Agreement.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective upon twenty-five (25) days' written notice to Licensee. The City, its employees, and its agents shall not be liable for damages to Licensee if this License is terminated by Commissioner as provided for in this Section 3.2.

## **NO LEASE**

**4.1** It is expressly understood that the City has title to the Licensed Premises and that no land, building, space, improvement, or equipment is leased to the Licensee, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Moreover, except as herein provided, Licensee shall have the right to occupy and operate the Concession only so long as each and every term and condition in this License is properly complied with in all material respects and so long as this License is not terminated by the Commissioner in accordance with this License.

## **MAINTENANCE AND REPAIR**

**5.1** Licensee shall provide maintenance and repair of the Licensed Premises and comply with the standards as set forth in Paragraph 10 of the Maintenance and Operation Agreement. A copy of Paragraph 10 of the Maintenance and Operation Agreement is attached hereto as **Exhibit C**.

**5.2** Licensee shall, at its sole cost and expense, operate and maintain the Licensed Premises in a good, clean, and orderly condition, ordinary wear and tear excepted, and shall be responsible for all daily maintenance of the Licensed Premises during the Operating Season to the reasonable satisfaction of the Commissioner. Any and all such maintenance and repair shall be performed in a good and workman-like manner.

**5.3** Such maintenance shall include, but not be limited to:

**(a)** Cleaning.

(1) Licensee shall keep the Licensed Premises and the area within one hundred (100) feet of the Licensed Premises, neat and clean, free of all waste, garbage, refuse, rubbish, litter, dirt, debris, and obstructions at all times. The parties agree that the use of waste and recycling receptacles provided by the Central Park Conservancy (“CPC”) is approved, and Licensee shall have the receptacles emptied each day there is an event during the Operating Season. Rubbish removal schedules, and the location and placement of all waste receptacles, are subject to Parks' prior written approval;

(2) Licensee shall maintain the cleanliness of all walkways, sidewalks, improvements, and facilities, on the Licensed Premises;

(3) At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises during the Term of this License. Such graffiti removal shall

be commenced promptly after the appearance of any such graffiti and shall continue until such graffiti is removed; and,

(4) Licensee shall provide regular cleaning and maintenance schedules, which are subject to Parks' approval.

**(b) Recycling.**

(1) In compliance with all City, State, and Federal regulations regarding recycling, Licensee shall provide patrons with appropriately labeled, sized, and well-positioned recycling bins or receptacles for glass, metal, and plastic, and bins or receptacles for paper and cardboard. Licensee shall provide adequate recycling receptacles, approved by Parks, and have those receptacles emptied after each live event during the Operating Season. The location and placement of all recycling receptacles is subject to Parks' prior written approval. The parties agree that the use of recycling receptacles provided by CPC is approved.

**(c) Pest Control.**

(1) Licensee shall conduct regularly scheduled pest control inspections and extermination at the Licensed Premises and its adjacent areas, as needed and in concert with CPC. All pest control methods are subject to the prior written approval of CPC and Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

**(d) Other Maintenance.**

(1) Licensee shall maintain all equipment and areas of the Licensed Premises in good condition and good working order at all times.

**5.4** Licensee shall periodically inspect the Licensed Premises, and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, the erection of warning signs and temporary barriers. Should the Commissioner, in the Commissioner's sole judgment, decide that an unsafe or emergency condition exists at the Licensed Premises, after written notification, Licensee shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If such unsafe or emergency condition cannot be remedied within the specified time frame, the Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in the Commissioner's sole discretion, may extend such period of time in order to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed.

#### **MAINTENANCE AND REPAIR STANDARDS**

**6.1** Licensee shall perform, or cause to be performed, maintenance and repair activities to the reasonable satisfaction of the Commissioner, and shall comply with the rating standards for all applicable enumerated categories set forth in the Parks Inspection Program ("PIP") to the extent such standards and categories apply to the Licensed Premises. Notwithstanding this provision, Licensee shall maintain the Licensed Premises in accordance with Parks' standards, including, but not limited to, the applicable categories as set forth in the PIP Manual and/or any other standards that Parks may require in the future. The PIP Manual is attached hereto as **Exhibit D**.

**6.2** Licensee shall, at all times, operate and occupy the Licensed Premises in accordance with all applicable law and the provisions of any required licenses or permits, and shall, at its sole cost

and expense, obtain all licenses and permits that may be required to operate the Concession in accordance with applicable law.

## **OPERATIONS**

**7.1** Licensee, at its sole cost and expense, shall operate the Concession for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations, and orders of government agencies having jurisdiction, including but not limited to the New York City Paid Sick Leave Law, attached hereto as **Exhibit I**. The Commissioner retains the right, throughout the Term of this License, to approve or disapprove any and all rates, fees, and price to be charged by Licensee. Licensee shall accept the Licensed Premises in its "as is" condition. Licensee shall provide the necessary number of personnel having the requisite skills to perform the following services at the Licensed Premises:

- (a) operate the Concession; and
- (b) continuously perform such ongoing and preventive maintenance activities as are necessary to keep the Licensed Premises in good order and repair and in accordance with industry standards to the reasonable satisfaction of the Commissioner.

**7.2** The Concession is for the sale of food, beverage, and merchandise. Licensee agrees that it shall sell food, beverage and merchandise of high grade and good quality. The operation of the Concession shall be in such a manner so as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating. No polystyrene foam products shall be utilized in connection with services or merchandise offered under this License. The sale of any items from glass bottles or the use of Styrofoam is strictly prohibited.

**7.3** The Concession shall be opened, operated, and staffed during the Operating Season, for such days and hours as the Commissioner shall reasonably approve. All employees of Licensee shall be qualified for their respective functions to conduct Licensee's operations and shall be made to wear appropriate uniforms, subject to the reasonable approval of the Commissioner. Licensee will submit to Parks for approval its staffing plan upon receipt of written Notice to Proceed; a copy of the approved staffing plan shall be attached hereto as **Exhibit E**.

**7.4** Licensee shall notify the Commissioner within five (5) business days whenever Licensee tentatively schedules any private use of the Licensed Premises which would close the Licensed Premises to the general public. Any such use shall require prior written approval of the Commissioner, which approval shall not be unreasonably withheld or delayed. In no event shall Licensee close the Licensed Premises to conduct private activities during general public hours of use, as defined under Parks' rules and regulations, except when such activities are specifically approved in advance or are sponsored by Parks. Any closure of the Licensed Premises that Licensee has received approval to schedule, during public hours of use, must be announced to the general public, by posting notification of such closure, at the Licensed Premises at least five (5) business days in advance of the closure.

**7.5** Licensee shall submit to Parks for approval a schedule of hours for the Licensed Premises upon receipt of a written Notice to Proceed; a copy of the schedule of approved hours ("Schedule of Approved Hours") for the Licensed Premises shall be attached hereto as **Exhibit F**. Any changes to this schedule at any time during the Term of this License must be approved in writing by the Commissioner, such approval not to be unreasonably withheld or delayed. Following the approval of such schedule, Licensee shall, at its sole cost and expense, print, frame, and prominently display, in a place and manner designated by the Commissioner, the current Schedule of Approved Hours.

**7.6** Licensee may request to decrease or reduce its Schedule of Approved Hours during the Term of this License in such instances where there is either a lack of patronage or the hours of operation do not yield a significant profit. Such request may be granted in the sole and absolute discretion of the Commissioner. If the request is granted, the Licensee will continue to be responsible for all other obligations under this License Agreement.

**7.7** Licensee shall record all sales transactions involved in the operation of this License and keep books and records as required and in compliance with the provisions set forth in Paragraphs 21 and 25 and as deemed acceptable by the Commissioner.

**7.8** Licensee shall designate an officer or representative to personally operate this License or employ an operations manager ("Manager"), qualified to manage operations of the Concession in a manner that is reasonably satisfactory to the Commissioner. The Manager or other representative must be available by telephone during all hours of operation, and Licensee shall provide the Commissioner and the Parks Enforcement Patrol ("PEP") Communications Division with a twenty-four (24) hour pager or cellular telephone number through which Parks may contact the Manager or other representative in the event of an emergency. Licensee shall replace any Manager, officer, employee, sublicensee, or subcontractor whenever reasonably requested by Commissioner.

**7.9** Licensee shall, at its sole cost and expense, provide equipment which will provide security for all monies received. Additionally, Licensee shall provide for the transfer of all monies collected to Licensee's designated banking institution and bear the loss of any lost, stolen, misappropriated, or counterfeit monies derived from operations under this License.

**7.10** Licensee shall, at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including, but not limited to:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises;
- (c) conducting and supervising all activities of the Concession; and,
- (d) securing the Licensed Premises.

**7.11** Licensee shall provide safe and accessible opportunities at the Licensed Premises for everyone, including people with disabilities as required by all City, State, and Federal laws. Licensee shall meet and exceed the minimum accessibility requirements whenever possible. Such accessibility shall be clearly indicated by signs and included in all advertising. Licensee shall include in its advertising and promotion program, described in Paragraph 10 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disability Act ("ADA") and regulations pertaining thereto as applicable.

**7.12** Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises and surrounding parkland and shall provide for a twenty-four (24) hour per day security system at the Licensed Premises in accordance with plans that have received the prior written approval of Parks. The Licensed Premises and any other equipment used shall be secured every evening before closing for the day in a manner reasonably approved by the Commissioner.

**7.13** Licensee shall maintain close liaison with PEP, the New York City Police Department ("NYPD"), and other police officials, and cooperate with all efforts to remove any illegal vendors from the Licensed Premises and its adjacent areas.

**7.14** The Commissioner shall have the right to reasonably approve the days and times on which deliveries to the Licensed Premises may be made.

**7.15** Licensee shall be responsible for finding off-site parking. No trucks or storage containers may be stationed at the Licensed Premises.

## **COMPENSATION**

**8.1** In lieu of a license fee, Licensee shall use any revenue it receives from the operation of the Concession, as contemplated in Paragraph 1 herein, to offset the cost of free events at the Playfield and the cost of operation and maintenance of the Playfield ("Operating Costs"). In no event shall the revenue received by Licensee from the operation of the Concession during any Operating Season exceed the difference between the Operating Costs and the revenue received by Licensee from sources other than the Concession ("Other Revenue Sources") that is applied to the Operating Costs (the "Difference"). If at any time revenue received from the operation of the Concession is projected by Parks to exceed the Difference, Parks shall direct Licensee in writing to either: (1) suspend all Concession operations at the Licensed Premises; or (2) continue its Concession operations, provided it is determined that there is sufficient time within the current Operating Season for Licensee to implement a plan to provide additional services at the Licensed Premises, including but not limited to additional free events, subject to the prior written approval of Parks. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License and as such will be subject to immediate termination. Operating Costs shall include any and all administrative expenses directly related to the cost of events at the Playfield and operation and maintenance of the Playfield, including, but not limited to:

- (a) any allocation of Licensee's office rent or overhead;
- (b) any portion of the salary of the Executive Director or development professionals employed by Licensee; and,

(c) any other cost, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this License.

**8.3** No later than sixty (60) days after the end of each Operating Season, Licensee shall deliver to Parks an accounting setting forth its calculation of annual Operating Costs ,Other Revenue Sources, and revenue received by Licensee from the operation of the Licensed Premises for the preceding Operating Season, in accordance with Article 21 herein.

### **SIGNS**

**9.1** Licensee shall display, at its sole cost and expense and with the Commissioner's reasonable approval, such signs as may be needed to guide and inform the public as to the location, purpose, hours of operation, and related fees of the Licensed Premises. Licensee shall maintain such signs in good condition and repair and shall also include the Parks logo and indicate that the Licensed Premises are operated by CPF through a license agreement with Parks. All signs must face inward towards the Licensed Premises and not out towards the other areas of Central Park, except those required for directional or instructional purposes.

**9.2** Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. Licensee shall, obtain any necessary approvals or permits from any governmental agency with jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Playfield. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval.

### **ADVERTISING**

**10.1** Licensee may establish an advertising and promotion program, subject to Parks' prior

approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner, in the Commissioner's discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior approval as to design and distribution of all advertising and promotional materials, which approval shall be exercised within twenty-four (24) hours of a request or such approval shall be deemed given. The Commissioner shall have prior approval as to design and distribution of all full-season advertising and promotional materials, such as season brochures, which approval shall be exercised within a reasonable period of time following such request.

**10.2** Licensee shall not advertise any product brands without Parks' prior approval. Under no circumstances shall advertisements be permitted on the exterior of the Licensed Premises or on any external surface of any building or structure on the Playfield. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. No advertisements shall be placed at the Licensed Premises without the prior written approval of Parks.

**10.3** Smoking of tobacco or electronic cigarettes at the Licensed Premises is strictly prohibited. The display or placement of tobacco or electronic cigarette advertising shall not be permitted. In connection with the Licensed Premises, the Licensee shall not advertise or accept sponsorships of any kind on behalf of any kind of tobacco or electronic cigarette products. Licensee shall adhere to and enforce this policy which may include the placement of signage as may be necessary to comply with this provision.

**10.4** The advertising of alcoholic beverages shall not be permitted. It is understood that simply listing alcoholic beverages on menus or lists of beverage offerings in connection with the Concession shall not constitute “advertising” for the purposes of this Section 10.4.

**10.5** In the event advertising is allowed, the following standards will apply: any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services, or activities, or which is otherwise unlawful, including, but not limited to, advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks.

#### **ALCOHOLIC BEVERAGES**

**11.1** Licensee, or Sublicensee(s) approved by Parks, may sell alcoholic beverages at the Licensed Premises, provided that Licensee or such Sublicensee shall, prior thereto, obtain at its sole expense, all permits and licenses applicable to the sale of alcoholic beverages from the New York State Liquor Authority and any other governmental agency having jurisdiction thereof. Alcoholic beverages shall be served in recyclable cups and must be consumed within the designated areas of the Playfield, subject to the prior approval of Parks.

#### **MARKETING PARTNERSHIP AGREEMENTS**

**12.1** Licensee must obtain the prior written approval of Parks prior to entering into any marketing or sponsorship agreement. In the event that Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City’s interests.

#### **ALTERATIONS**

**13.1** Licensee may alter the Licensed Premises only in accordance with the requirements of Sub-paragraph (b) of this Section. Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing.

(a) "Alteration" shall mean (excepting ordinary repair and maintenance):

(i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

(ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises; or

(iii) any work or construction which would or might affect in any manner, or have any impact whatsoever upon the structure, character, appearance or design of any portion of the Playfield.

(b) In order to alter the Licensed Premises, Licensee must:

(i) Obtain the Commissioner's written approval, which shall not be unreasonably withheld, for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings that may pertain to contemplated purchases and/or work;

(ii) Ensure that work performed and Alterations made at the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Sub-paragraph (i), in a good and workmanlike manner, and within a reasonable time; and,

(iii) Notify the Commissioner of the completion of, and the making of final payment for, any Alterations within ten (10) days after the occurrence of said completion or final payment.

(c) All Alterations to the Licensed Premises undertaken by Licensee, its agents, employees, or contractors shall be at Licensee's sole cost and expense.

(d) To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any Alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such alterations. Notwithstanding the above, to the extent than an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable

#### **ALTERATIONS BY PARKS**

**14.1** Parks may, in its sole but reasonable judgment and upon reasonable notice to Licensee, make additions, Alterations, repairs, decorations, or improvements to the Licensed Premises at the City's expense, but nothing herein contained shall be deemed to obligate or require Parks to make any additions, Alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair Licensee's obligations under this License in any respect.

**14.2** Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by the Commissioner, in the Commissioner's sole discretion, at the Licensed Premises at any time during the Term of this License. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its best efforts to give Licensee at least fourteen (14) days written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily

close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner.

**14.3** In the event that Parks' work will adversely impact Licensee's operation at the Licensed Premises or if Licensee must close the Licensed Premises because of such Parks construction, then Licensee shall be entitled to propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including, but not limited to, a suspension of all financial obligations of this License. Licensee shall be responsible for security of all property related to the operation of the Licensed Premises at all times. Parks shall be solely responsible for any claims, damages, and injury resulting from its work hereunder, except to the extent such claims, damages, and injury is caused by the negligence or willful misconduct of Licensee and/or its Sublicensee.

#### **FIXED AND EXPENDABLE EQUIPMENT**

**15.1** Licensee shall, at its sole cost and expense, and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment necessary for the operation of this License (except the City shall be responsible for equipment owned by the City), and put, keep, repair, preserve, and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

**15.2** The City has title to all Fixed Equipment at the Licensed Premises as of the date of the written Notice to Proceed. Title to any Fixed Equipment affixed to the Licensed Premises subsequent to the date of execution of this License ("Additional Fixed Equipment"), and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which such option may be exercised at any time after the affixing of said equipment or such construction, renovation, or improvement. To the extent the

City chooses not to exercise such option, Licensee shall at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment, other than Fixed Equipment, and restoring the Licensed Premises to the satisfaction of the Commissioner after the expiration or earlier termination of this License.

**15.3** Licensee shall supply at its own cost and expense all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by the Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment the Commissioner reasonably determines is necessary to the operation of this License.

**15.4** Licensee must, at its sole cost and expense, acquire, replace, repair, install, or affix any equipment, materials, and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by the Commissioner.

**15.5** Title to all Expendable Equipment obtained by Licensee (other than that applied toward Capital Improvements) shall remain in Licensee. Licensee shall remove such Expendable Equipment upon the expiration or earlier termination of this License. In the event such equipment remains in the Licensed Premises following such expiration or earlier termination, the Commissioner may treat such property as abandoned and Licensee shall be charged all costs and expenses incurred in the removal thereof.

**15.6** Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties, or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee shall accept them in their present condition “as is.”

**15.7** The equipment to be removed by Licensee pursuant to this License Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

## **UTILITIES**

**16.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Licensee shall pay, and to the extent that Parks approves Licensee to sublicense any portion of the operations under this License, Licensee shall cause its Sublicensee to pay, at its sole cost and expense, all utility costs associated with the operations of the Licensed Premises, including but not limited to all Department of Environmental Protection (“DEP”) water and sewer charges. Licensee shall, at its sole cost and expense, install or cause to be installed, and maintained, all utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this license and pay all utility costs. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other Federal, State, or City agencies or entities as have jurisdiction over the operation of the Licensed Premises and/or the Playfield. Licensee shall remove any unsuitable existing materials as required.

## **PROHIBITIONS ON USE**

**17.1 Nuisance and Waste.** Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

**17.2 No Combustibles.** Licensee shall not use or permit the storage of any illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, poly or other similar substances, or explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New York.

**17.3** Licensee should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. As such, the following terms and conditions shall apply:

(a) If the Licensee wants to sell merchandise that uses the City's trademark, Licensee shall purchase such merchandise from authorized licensees of the City of New York.; and,

(b) The knowing sale of counterfeit or unlicensed merchandise by this Licensee will result in the immediate termination of this License Agreement.

**17.4** Parks will not permit the sale of merchandise promoting sports figures, cartoon characters, commercial products, or non-park-related events.

**17.5** Licensee shall not use or allow the Licensed Premises to be used or occupied for any unlawful purpose or in violation of the provisions on the use of the Licensed Premises as set out in this License.

## **INSURANCE**

### **18.1 Licensee's Obligation to Insure**

(a) From the date this License is executed through the date of its expiration or termination, Licensee shall ensure that the types of insurance indicated in this Article 18 are obtained and remain in force, and that such insurance adheres to all requirements herein.

(b) Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

## **18.2 Commercial General Liability Insurance**

(a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Three Million Dollars (\$3,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name the City and the CPC, together with their officials and employees, as Additional Insureds for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. "Blanket" or other forms are also acceptable if they provide the CPC and the City, together with their officials and employees, with coverage at least as broad as ISO Form CG 2026.

## **18.3 Workers' Compensation, Employers Liability, and Disability Benefits Insurance**

Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

#### **18.4 Commercial Automobile Liability Insurance**

With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### **18.5 Liquor Law Liability Insurance**

(a) In the event the Licensee or any Sublicensee or contractor shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name the City and CPC, together with their officials and employees as Additional Insureds, with coverage at least as broad as the most recent edition of ISO Form CG 2026. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

#### **18.6 General Requirements for Insurance Coverage and Policies**

(a) Policies of insurance required under this Article 18 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.

(b) Policies of insurance required under this Article 18 shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) Wherever this Article 18 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article 18 unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 18, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

(e) The City’s limits of coverage for all types of insurance required under this Article 18 shall be the greater of (i) the minimum limits set forth in this Article 18 or (ii) the limits provided to Licensee under all primary, excess and umbrella policies covering operations under this License.

(f) All required policies, except for Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the New York City Department of Parks & Recreation, Attn: General Counsel, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty

(30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(g) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

### **18.7 Proof of Insurance**

(a) Certificates of Insurance for all insurance required in this Article 18 must be submitted to and accepted by the Commissioner prior to or upon execution of this License.

(b) For Workers' Compensation, Employers Liability Insurance, and Disability Benefits, the Licensee shall submit one of the following:

- a. C-105.2 Certificate of Worker's Compensation Insurance;
- b. U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance;
- c. Request for WC/DB Exemption (Form CE-200);
- d. equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City.  
ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article 18 other than Workers Compensation, Employers Liability, and Disability Benefits, Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include (i) Certificates of Insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (ii) the additional insured endorsement(s) in Licensee's policy/ies (including its general liability policy) naming the City and CPC as Additional Insured or loss payee, as required herein; and (iii) a duly executed

“Certification by Broker or Agent” in the form required by the Commissioner, attached hereto as **Exhibit H**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee’s obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Licensee’s liability for its failure to do so.

(f) Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

### **18.8 Miscellaneous**

(a) Licensee may satisfy its insurance obligations under this Article 18 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(b) In the event Licensee requires any contractor to procure insurance with regard to any operations under this License and to name Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also name the City and CPC, including their officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

(c) Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article 18, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than twenty (20) days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(e) Licensee's failure to secure and maintain insurance in complete conformity with this Article 18, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article 18 shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(f) Insurance coverage in the minimum amounts provided for in this Article 18 shall not relieve Licensee of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

(g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 18, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, Licensee waives all rights against the City and CPC, including their officials and employees, for any damages or losses that are covered under any insurance required under this Article 18 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also name the City and CPC, including their officials and employees as Additional Insureds with coverage at least as broad as ISO form CG 20 26.

(j) In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article 18 shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Licensee shall immediately forward a copy of such notice to both the New York City Department of Parks & Recreation, Attn: General Counsel, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

**RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND  
INDEMNIFICATION**

**19.1 Licensee Responsibility**

(a) Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

(b) Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

(c) Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of at the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in

the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

## **19.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and CPC, their officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself had been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or CPC, their officials and employees, from being completely indemnified by Licensee, the City and CPC, their officials and employees, shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee's obligation to defend, indemnify and hold the City and CPC, their officials and employees, harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or CPC, their officials and employees, to avail themselves of the benefits of such insurance..

## **ASSUMPTION OF RISK**

**20.1** Licensee assumes all risk in the operation of this License.

## **INSPECTION OF RECORDS AND AUDITS**

**21.1** Licensee will establish and maintain accurate records and accounts, in a manner satisfactory to the Commissioner, which sufficiently and properly reflect all revenues and direct

and indirect costs of any nature resulting from Licensee's operations pursuant to this License, and set forth, in a manner reasonably acceptable to the Commissioner, its expenditures in any way connected to Licensee's Operating Costs. Such records must include, but not be limited to, the details of how Licensee has applied the revenue it received in connection with its operation of the Concession to the Operating Costs as further described in Article 8. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

**21.2** Licensee shall furnish to the Commissioner a detailed income and expense report for each fiscal year during the Term of this License. Such statements shall be prepared by an independent Certified Public Accountant retained at the sole cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than sixty (60) days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner. In addition, Licensee shall provide the Commissioner within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as an annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each Operating Season, Licensee shall provide the Commissioner with detailed statements concerning Other Revenue Sources and any revenue generated at the Licensed Premises, and detailed statements to the Commissioner's reasonable satisfaction, concerning the expenses that Licensee has incurred in connection with the Operating Costs as described in Article 8. Licensee shall submit to Parks its projected figures for the first Operating Season upon receipt of written Notice to Proceed; a copy of Licensee's projected figures for the first Operating Season shall be attached hereto as **Exhibit G**. No later than ninety (90) days prior to the commencement of the second Operating Season and subsequent Operating Season thereafter, subject to the prior written approval by Parks, Licensee

shall submit a detailed projection of the Operating Season's proposed budget and related expenses for operations of the Concession.

**21.3** Licensee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. Licensee, or if Licensee sublicenses any portion of the food, beverage, or merchandise sales authorized as part of the Concession in return for a sublicense fee based upon a percentage of such sales, such sublicensee, must maintain a revenue control system including, but not limited to, maintaining detailed sales information from each sales transaction recorded via a point-of-sale system or a manner acceptable to Parks. Specifically, sales information in the form of Gross Receipts (as defined Section 21.3(a) of this License) must be recorded electronically or in a manner acceptable to Parks, and must include details on each sales transaction, including the item(s) sold, time, date of sale, and price of the item(s) sold. Licensee must also establish a dedicated bank account for all deposits related to the Concession's revenue. The books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and local tax returns and schedules Licensee's records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises, whether maintained in hard copy or in electronic form, sales slips, daily dated sales receipts, sales books, and duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form. Licensee shall provide copies of its statement of Gross Receipts as described in this Section 21.3 to Parks within thirty (30) days of the end of each Operating Season.

(a) "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Licensee, without deduction or set-off of any kind, from the sale of food, beverages, or merchandise of any kind at the Licensed Premises, provided that Gross Receipts

shall exclude the amount of any Federal, State, or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee. Gross Receipts shall include all funds received for any orders placed with Licensee or made at the Licensed Premises, although delivery of food, beverages, and merchandise, may be made outside, or away from the Licensed Premises, and shall include all receipts from the Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefore may be made at some other place, and although delivery of food, beverages, or merchandise sold or services rendered at the Licensed Premises may be made at a location other than at the Licensed Premises.

(b) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(c) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided herein, provided that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees.

(d) Gross Receipts shall include sales made for cash or credit regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts. Credit sales shall be included in Gross Receipts as of the date of the sale of food, beverages, and merchandise. Gross Receipts shall not include uncollected sales debts known to be bad. Upon request, Licensee shall provide to Parks documentation of its efforts to collect such bad debts.

**21.4** Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks or the Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures of Licensee prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct, and entire business conducted by Licensee. Licensee shall maintain each year's records, books of account, and data for a minimum of ten (10) years from the date of creation of the record, book of account, or data.

**21.5** The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article 21 within thirty (30) days after 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 Article 21 or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) 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, which shall entitle Parks, at its option, to terminate this License. Licensee shall make available to the office of the Comptroller, and/or Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of the Comptroller and/or Parks

**21.7** Notwithstanding the foregoing, the parties hereto acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised or abridged in any way.

**NO REMOVAL OF RECORDS FROM THE LICENSED PREMISES**

22.1 Where performance of this License may involve the use by Licensee of Parks’ papers, files, data, or records at Parks’ facilities or offices, Licensee shall not remove any such papers, files, data, or records, therefrom without the prior approval of Parks.

**ACCESS AND INSPECTION AT LICENSED PREMISES**

23.1 Parks’ inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine in good faith whether or not Licensee is in compliance with the terms of this License Agreement in all material respects. Based on their inspections, Parks may issue directives regarding deficiencies the Licensee shall rectify in a timely fashion. Violations of the terms and conditions of this License may also result in the assessment of liquidated damages and/or suspension or termination of this License Agreement. Parks may impose a two hundred and fifty dollar (\$250) administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

<b>Provision</b>	<b>Liquidated Damage Per Occurrence</b>
Unauthorized menu items or merchandise	\$150.00
Missing or unauthorized price or rate list	\$250.00
Overcharging	\$350.00
Expanding	\$350.00
Blocked exits	\$350.00
Improper disposal (Noxious liquids, debris, etc.)	\$350.00
Structure or equipment obviously damaged or in poor repair	\$250.00
Graffiti	\$350.00
Unauthorized Advertising	\$350.00
Improper storage	\$350.00
Failure to provide designated spaces for persons with	\$250.00

disabilities	
Vending without valid DOHMH Permit	\$350.00

**23.2** If Licensee receives an assessment for one of the above violations, there is a process by which the assessments may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

(a) Filing an Appeal.

If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee’s appeal (such as photographs, documents, witness statements, etc.) should also be included. If no appeal is received within ten (10) days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee.

(c) Adjudication of Appeal.

The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at The Arsenal, Central Park 830 Fifth Avenue, New York, New York 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks. The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

**23.3** Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises.

## **SOUND**

**24.1** Licensee or its Sublicensee(s) shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers, ("ASCAP"), Broadcast Music, Inc. ("BMI"), Society of European Stage Authors and Composers ("SESAC") or other such entity as it may require for such music. Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels. Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-244, and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sound and/or music from its operation of the Concession is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

## **RETENTION OF RECORDS**

**25.1** Licensee agrees to retain all books, records, and other documents relevant to this License for ten (10) years from the date of the creation of the record. City, State, and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

## **PERSONNEL**

**26.1** All personnel of Licensee are employees of Licensee and not of the City, and Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged in connection with this License. Nothing included in this section or in any other provision of this License shall be construed to impose any liability or duty upon the City to persons, firms, or corporations employed or engaged by Licensee as consultants, experts, or independent

contractors, or in any other capacity whatsoever or as employees, servants, or agents of Licensee, or to make the City liable to any person, firm, corporation, association, or to any government for the acts, omissions, liabilities, obligations, and taxes of whatsoever nature, including unemployment insurance of Licensee or its consultants, experts, employees, servants, agents, or independent contractors.

### **NO DISCRIMINATION**

**27.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 27 shall be a material breach of this License.

### **WAIVER OF COMPENSATION**

**28.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharge the Commissioner, the Commissioner's agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

**28.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this License is terminated by the Commissioner earlier than the fixed Term because the Licensed Premises are

required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **INVESTIGATIONS**

**29.1 (a)** The parties to this License shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

**(b) (i)** If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

**(ii)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance

under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

(A) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 29.1(d) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties which may attach after a final determination by Commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or

termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

**(d)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 29.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 29.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

**(i)** The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

**(ii)** The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

**(iii)** The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

**(iv)** The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 29.1(b)(ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or

entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

(e) (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(iv) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License..

## NOTICE

**30.1** Licensee shall prepare and provide to Parks operational status reports as reasonably requested by the Commissioner. In addition, Licensee shall immediately, or within twenty-four

(24) hours of occurrence or notice thereof, report major and/or unusual incidents in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage, or theft which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

**30.2** Licensee shall promptly notify Parks of any unusual conditions that may develop in the course of the operation of the Concession, including, but not limited to, fire, flood, casualty, and substantial damage of any character. Licensee shall also notify Parks to the extent it is aware of any such unusual conditions.

**30.3** All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the Office of the Revenue Division, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee shall be dispatched in the same manner, and delivered to Licensee at The Arsenal, Central Park, 830 Fifth Avenue, 2<sup>nd</sup> Floor, New York, NY 10065, Executive Director, or such other address as may be notified from time to time.

### **PARKS' RIGHT TO TERMINATE**

**31.1** Parks may terminate this License for cause as follows:

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation, or order affecting the License or

the Licensed Premises with regard to any and all matters, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to respond in a reasonable manner to the Commissioner, substantially comply with such written notice, or commence, in good faith and with due diligence, efforts to comply with such order within the time frame set forth in said notice from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee and notwithstanding any other provisions herein, then this License may immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this License. Such revocation and termination shall be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) days' notice:

(i) the appointment of any receiver of Licensee's assets;

(ii) the making of a general assignment for the benefit of creditors;

(iii) the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; and,

(iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(c) Nothing contained in Sub-paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the Commissioner may terminate this License.

(d) Upon expiration or earlier termination of this License by the Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against the Commissioner or City.

(e) In the event the Commissioner terminates this License for reasons related to Sub-paragraphs (a) or (b) above, any property of Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the Concession during the balance of the Operating Season and may be held and used thereafter until all debts incurred by Licensee hereunder, at the time of termination of this License, are paid in full.

(f) Licensee agrees that upon the expiration or earlier termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or earlier termination of this License, the City reserves the right to take immediate possession of the Licensed Premises.

(g) Licensee shall within thirty (30) days following the expiration or earlier termination of this License, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or earlier termination of this License is intended to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should all possessions fail to be removed from the Licensed Premises within thirty (30) days following the earlier expiration or date of termination of this License. All obligations of Licensee hereunder will remain in effect until the Licensed Premises are fully vacated and all property has been removed.

(h) If this License is terminated as provided herein, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary

without being liable to indictment, prosecution, or damages therefore and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

### **RESPONSIBILITY FOR PROPERTY AFTER TERMINATION**

**32.1** Licensee shall be held responsible for the condition of all property belonging to the City upon the earlier termination or expiration of this License, ordinary wear and tear excepted. Upon such earlier termination or expiration, Licensee shall quit the Licensed Premises and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

### **COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

**33.1** Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and invitees to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

### **REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**34.1** Licensee makes the following representations and warranties:

- (a) Licensee is a not-for-profit corporation duly organized, validly existing and in

good standing under the laws of the State of New York and has all requisite and authority to execute, deliver, and perform this License.

(b) This Agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding, and enforceable obligation of Licensee.

(c) The execution and delivery of this License, and compliance with the provisions herein, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any statute, order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(d) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this License.

(e) Licensee has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of this License.

**34.2** Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

#### **CONFLICT OF INTEREST**

**35.1** Licensee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

#### **PROHIBITION AGAINST ASSIGNMENT**

**36.1** Subject to the terms of this Article 36, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The

Commissioner may request any additional information she deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 36.

**36.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent or more of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

**36.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 36 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

### **FEDERAL EMPLOYER IDENTIFICATION NUMBER**

**37.1** Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts. The Federal Employer Identification Number of Licensee is 13- 3561657.

### **PARKS' RESERVATION OF RIGHTS AND INTERESTS**

**38.1** Public Events. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

**38.2** Public Communications. In any statement or release made to the public relating to the subject of this License, Licensee will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

**38.3** Publications. If Licensee publishes a work discussing any aspect of performance of any service covered by this License, Licensee will acknowledge therein the involvement, if any, of

the City, when appropriate, and the City will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such publication.

**38.4** Intentionally Omitted.

**38.5** Parks reserves the right to use the Licensed Premises for events or programs sponsored or permitted by Parks, upon consultation with Licensee and with reasonable advance notice to Licensee, provided that Parks shall use reasonable efforts to ensure that such use will not alter unreasonably Licensee's performance schedule at the Playfield, including load-in, performance, and breakdown. In the event such use is required by Parks, Parks and Licensee will negotiate in good faith to determine what reimbursement, if any, Licensee should receive for any additional costs reasonably incurred thereby, provided Licensee presents written documentation of such actual additional costs satisfactory to Commissioner or Commissioner's designee.

#### **WAIVER OF JURY TRIAL**

**39.1** Licensee hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Licensed Premises or any matter whatsoever in any way connected with this License, including, but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or earlier termination of this License.

#### **USE OF NAME**

**40.1** The parties will not use the name of the other party, its subsidiaries, or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the

written consent of the other party, such consent not to be unreasonably withheld or delayed. This provision will survive any termination of this License.

#### **CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

**41.1** This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States (“Federal Courts”) located in New York City or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York. To effect this License and intent, it is understood:

(a) If the City initiates any action arising out of this License against Licensee in Federal Court or in New York State Court, service of process may be made on Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to Licensee as their address is set forth in this License, or to such other address as Licensee may provide to the City in writing;

(b) With respect to any action arising out of this License between the City and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they might otherwise have to:

- (i) move to dismiss on grounds of forum non conveniens;
- (ii) remove to Federal Court; or,
- (iii) move for change of venue to a New York State Court outside New York County.

(c) With respect to any action arising out of this License between the City and

Licensee in Federal Court located in New York City, Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(d) If Licensee commences any action arising out of this License against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York, or if the court where the action is initially brought will not or cannot transfer the action, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

#### **CLAIMS AND ACTIONS THEREON**

**42.1** No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License Agreement or in any way connected with this License unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

**42.2** No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

**42.3** In the event any claim is made or any action brought in any way relating to this License other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

### **CLAIM AGAINST OFFICERS OR EMPLOYEES**

**43.1** No claim whatsoever shall be made by Licensee against any officer, agent, employee, or volunteer of the City for, or on account of, anything done or omitted in connection with this License.

### **ALL LEGAL PROVISIONS DEEMED INCLUDED**

**44.1** It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

### **SEVERABILITY**

**45.1** If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

### **HEADINGS AND TABLE OF CONTENTS**

**46.1** The article headings and Table of Contents contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

## **ENTIRE AGREEMENT**

**47.1** This License constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Commissioner and Licensee.

## **MODIFICATION**

**48.1** This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

## **JUDICIAL INTERPRETATION**

**49.1** Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

## **COUNTERPARTS**

**50.1** This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License.

**IN WITNESS WHEREOF**, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

CITY PARKS FOUNDATION, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
Certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

Dated: \_\_\_\_\_



**EXHIBIT A - SITE PLAN**



**EXHIBIT B - SCHEDULE OF APPROVED ITEMS AND PRICES FOR THE FIRST  
OPERATING SEASON**

Licensee to provide on Notice to Proceed

**EXHIBIT C - "MAINTENANCE AND REPAIR" PARAGRAPH 10 OF THE  
MAINTENANCE AND OPERATION AGREEMENT**

d) All revenues generated by CPF through Summerstage shall be used strictly to cover the cost of the Free Events and for maintenance and operation of the Site and administrative expenses directly related to the operation of SummerStage or other free performing arts programming in City parks agreed upon by CPF and Parks.

e) Licensee shall keep books of account and records of all expenses and revenues resulting from Licensee's operations pursuant to this License in a manner satisfactory to the Commissioner, and upon request shall allow an inspection of said accounts and records by the Commissioner or any governmental agency having jurisdiction. Additionally, Licensee shall furnish to the Commissioner a detailed financial statement for each fiscal year during the Term of this License, which subject to the Commissioner's reasonable approval may be satisfied by submission of Licensee's annual financial statement for the entire organization. Such statements shall include the salaries of all paid staff. Such statements shall be prepared by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than 120 days after the close of each fiscal year. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner.

**10. MAINTENANCE AND REPAIR**

a) During the Operating Season, CPF shall maintain the Site in a good, clean, and orderly condition and shall make all repairs necessary to keep the Site in good and safe condition in order to operate the Site for the purpose of this Agreement. Such ongoing maintenance and repairs shall include, but not be limited to: (i) keeping the Site and adjacent areas free from trash, litter, stickers, graffiti, and debris; and (ii) making all repairs to utilities, seating, stage, and dressing areas necessary to keep the Playfield in good and safe condition. CPF shall clean the

Site and adjacent areas each evening during the Operating Season and every morning following an event. CPF shall be responsible for repairing any damage caused to the Site by any third parties who were hired under contract by CPF to Parks' reasonable satisfaction. CPF shall cooperate with Parks and with the Police Department to restrict product sampling outside the Site. At such times during the Operating Season as the Site is under the control of Parks or its designees, Parks shall be responsible for the performance of the maintenance and repair work described hereinabove; however, CPF may perform such maintenance and repair work at the request of Parks and shall be reimbursed by Parks for the costs of performing the work requested by Parks provided CPF presents written documentation of such additional costs satisfactory to Commissioner or her designee. The Parties agree that they will perform a "walk through" of the Site with a representative of CPF and Parks at the beginning and end of the Operating Season to assess the condition of the Site.

b) During the Off-Season, except as otherwise operated by CPF pursuant to a separate special events permit, Parks shall be responsible for all maintenance and repair of the Site. In addition, Parks shall be responsible for the continuing care of fencing, turf, trees, plants, and landscaping adjacent to the Site at all times.

c) CPF is responsible for the clean up and removal from Central Park of refuse generated at the Site and Adjacent Areas during the Term pursuant to subsection (a) hereinabove.

d) Parks shall be responsible for all structural and other major reconstruction or renovation necessary to keep the Playfield in good and safe condition with the exception of CPF's responsibility under section 16. CPF must restore the Site to the original condition after each Operating Season, except for capital repairs to the asphalt pathways within the Site. Such restoration work cannot interfere with Parks use in the Off Season and a schedule of such work

must be provided to Parks prior to the end of each season.

e) All maintenance and repair efforts by CPF are subject to the review and approval of the Commissioner or her designated representative, which approval shall not be unreasonably withheld.

f) Parks shall be responsible for performing any work on or at the Playfield necessary to provide winterizing protection to the Playfield.

## **11. EQUIPMENT**

a) All lighting, props, or other equipment or paraphernalia utilized by CPF incident to the productions licensed hereunder shall be secured, maintained, and repaired at the sole cost and expense of CPF. Parks shall, however, be responsible for fixing or replacing any loss, damage, or injury caused to any equipment or property of CPF, directly, by the actions, conduct, or omissions of Parks or its designees, when the Playfield is being managed by Parks, with no operation or management by CPF or its designees, and to the extent that such damage is not caused by Licensee's negligence or willful conduct.

b) The scheduling and undertaking of the delivery and/or removal of all equipment and other paraphernalia utilized in connection with the productions permitted under this License shall be approved in advance by Parks. Such approval shall be based on scheduling information to be provided by CPF concerning the delivery and removal of such equipment and materials utilized by CPF at the Playfield, as may be supplemented by verbal communications between Parks and CPF.

c) All portable toilets shall be placed within the approved area as agreed upon in Exhibit

**EXHIBIT D - PIP MANUAL**

**EXHIBIT E - STAFFING PLAN**

Licensee to provide on Notice to Proceed

**EXHIBIT F - SCHEDULE OF APPROVED HOURS**

Licensee to provide on Notice to Proceed

**EXHIBIT G - PROJECTED FIGURES**

Licensee to provide on Notice to Proceed

## **EXHIBIT H - CERTIFICATION OF BROKER OR AGENT**

### **CERTIFICATES OF INSURANCE**

#### **Instructions to New York City Agencies, Departments, and Offices**

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.



## **EXHIBIT I - PAID SICK LEAVE LAW RIDER**

### **Introduction and General Provisions**

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The Concessionaire agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Concessionaire further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

### **Applicability, Accrual, and Use**

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage.

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<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

## Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

## More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 2)**

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Under Armour, Inc. (“Under Armour”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Under Armour to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

\_\_\_\_\_

Date: April 13, 2016

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

<b>AGENCY:</b> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2016-004
<b># VOTES required for proposed action = 4</b> <input type="checkbox"/> N/A	

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
  Competitive Sealed Proposals (CSP)\*  
 Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)  
 Negotiated Concession\*

Recommended Concessionaire: Under Armour, Inc.  EIN  SSN # 52-1990078  
 Attach Memo(s) \*

**CONCESSION AGREEMENT TERM**

**Initial Term:** to be negotiated  
**Renewal Option(s) Term:** to be negotiated  
  
**Total Potential Term:** to be negotiated

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**LOCATION OF CONCESSION SITE(S)\***  N/A  
 Address \_\_\_\_\_  
 Borough \_\_\_\_\_ C.B. \_\_\_\_\_  
 Block # \_\_\_\_\_ Lot # \_\_\_\_\_  
\*Attach additional sheet

**ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS**  
 (Check all that apply)

Additional description attached

Annual Minimum Fee(s) \$ \_\_\_\_\_  
 % Gross Receipts \_\_\_\_\_%  
 The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ v. \_\_\_\_\_% of Gross Receipts  
 Other formula: to be negotiated

**CONCESSION TYPE (Check all that apply)**

**> Significant Concession:**  
 NO  
 YES Basis:  
 Total potential term =>10 years  Projected annual income/value to City >\$100,000  Major Concession

**> Major Concession:**  
 NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

**Subject concession will be awarded by CSB or CSP.**  YES  NO

**If YES, check the applicable box(es) below:**

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.  
 The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.  
  
 The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.  
 The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

**If NO, check the applicable box below:**

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.  
 The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

the FCRC to waive advance written notice to each affected CB/BP.

- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

This is to certify that the information presented herein is accurate.

Name Andrew Schwartz Title Deputy Commissioner

Signature [Handwritten Signature] Date 4/6/16

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature [Handwritten Signature] Date 4/6/16

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

**A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS  N/A**

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

**The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:**

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Under Armour, Inc. ("Under Armour") pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

**B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS  N/A**

- 1. Briefly summarize the terms and conditions of the concession. *Add additional sheet(s), if necessary.***

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Under Armour.

- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals. *[Explain]***

Under Armour produces adult and children's apparel and accessories. Since being founded in 1996, Under Armour has established itself as one of the top sports apparel companies in the world. The combination of Under Armour's track record of creating innovative products, wholly owned branded store and elite level of brand awareness make for a unique business opportunity to reach a large mass of consumers who seek out products that are produced by Under Armour. It is in the City's best interest to negotiate a sole source agreement with Under Armour because through cobranded merchandise featuring the highly sought after Under Armour marks the City's brand will be exposed to a new market of sportswear consumers. This proposed non-exclusive license agreement will not bar opportunities for other apparel manufacturers.

- 3a. Briefly explain the selection procedure that will be utilized. *[Explain]***

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Under Armour. for the non-exclusive use of City-owned trademarks on apparel and accessories. Under Armour holds a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to Under Armour. At the time of the non-concession agreement with Under Armour was executed the parties anticipated that the revenue would not exceed administrative costs which are estimated to be \$8,500, however the products released by Under Armour were such a success that, the royalties for these items exceeded \$28,141. It was in the city's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and based on the information available at the time there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given that interest in the products has been successful and we now believe it is in the city's best interest to move to a concession agreement and as part of the forward looking concession, NYC & Company Inc./SBS seeks approval of the FCRC to negotiate a concession agreement with Under Armour that includes the excess revenue from the non-concession agreement. We intend to bring this matter before the FCRC on April 13<sup>th</sup>, 2016 ("Step 1"). Once

negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for (“Step 2”) approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

**3b. If the selection procedure is a negotiated concession, check the applicable box:  N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_/\_\_/\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]*  **N/A**

# Memo

**To:** NYC Borough Presidents  
NYC Community Board Presidents

**From:** Benjamin Ruiz *BR*  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Stephanie Ruiz  
Mayor's Office of Contract Services

Bryan Grimaldi  
NYC & Company Inc.

**Date:** March 4<sup>th</sup>, 2016

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Under Armour, Inc. for the non-exclusive use of city-owned trademarks on merchandise

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Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the Borough Presidents and Community Boards that NYC & Company Inc. on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Under Armour, Inc. for the non-exclusive use of city-owned trademarks on merchandise. If you have any questions, please contact me by e-mail at [bruiz@nycgo.com](mailto:bruiz@nycgo.com).

Best,



Benjamin Ruiz

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 3)**

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Only NY Inc. (“Only NY”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Only NY to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

\_\_\_\_\_

Date: April 13, 2016

Signed: \_\_\_\_\_

Title: Director of the Mayor's Office of Contract Services

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

<b>AGENCY:</b> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2016-003
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
  Competitive Sealed Proposals (CSP)\*

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire: Only NY Inc.  EIN  SSN # 26-1736134  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p>Initial Term: to be negotiated                  Renewal Option(s) Term: to be negotiated</p> <p>Total Potential Term: to be negotiated</p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>                  (Check all that apply)</p> <p><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: to be negotiated</p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A</p> <p>Address _____</p> <p>Borough _____ C.B. _____</p> <p>Block # _____ Lot # _____</p> <p><small>*Attach additional sheet</small></p>	

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**

NO  
 YES Basis:
  Total potential term =>10 years
 Projected annual income/value to City >\$100,000
 Major Concession

> **Major Concession:**

NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

**Subject concession will be awarded by CSB or CSP.**
 YES  NO

**If YES, check the applicable box(es) below:**

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

**If NO, check the applicable box below:**

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

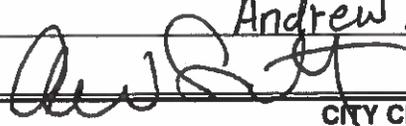
the FCRC to waive advance written notice to each affected CB/BP.

- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

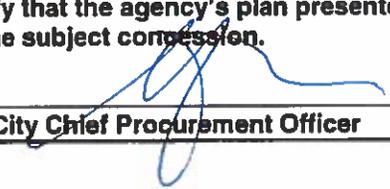
This is to certify that the information presented herein is accurate.

Name Andrew Schwartz Title Deputy Commissioner

Signature  Date 4/6/16

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature  Date 4/6/16  
City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

**A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS  N/A**

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

**The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:**

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Only NY Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

**B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS  N/A**

- 1. Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Only NY Inc.

- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

Only NY Inc. is recognized globally as a clothing brand that represents an authentic New York City aesthetic. Only NY Inc. has developed a large base of customers who seek out "Only NY" branded items and their first collection utilizing the City's marks was the most commercially successful utilization of Parks Department and DOT marks in the history of the City's Licensing program. For these reasons it is in the City's best interest to negotiate a sole source agreement with Only NY Inc. This proposed non-exclusive license agreement will not bar opportunities for other types of apparel manufacturers.

- 3a. Briefly explain the selection procedure that will be utilized.** *[Explain]*

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Only NY Inc. for the non-exclusive use of City-owned trademarks on apparel and accessories. Only NY Inc. holds a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to Only NY Inc. At the time of the non-concession agreement with Only NY Inc. was executed the parties anticipated that the revenue would not exceed administrative costs which are estimated to be \$8,500, however the products released by Only NY Inc. were such a success that, the royalties for these items exceeded \$12,736. It was in the city's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and based on the information available at the time there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given that interest in the products has been successful and we now believe it is in the City's best interest to move to a concession agreement and as part of the forward looking concession, NYC & Company Inc./SBS seeks approval of the FCRC to negotiate a concession agreement with Only NY Inc. that includes the excess revenue from the non-concession agreement. We intend to bring this matter before the FCRC on April 13<sup>th</sup>, 2016 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second

public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

**3b. If the selection procedure is a negotiated concession, check the applicable box:  N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]*  **N/A**

# Memo

**To:** NYC Borough Presidents  
NYC Community Board Presidents

**From:** Benjamin Ruiz  
NYC & Company Inc. BR

**CC:** Tia Pierce  
Department of Small Business Services

Stephanie Ruiz  
Mayor's Office of Contract Services

Bryan Grimaldi  
NYC & Company Inc.

**Date:** March 4<sup>th</sup>, 2016

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Only NY Inc. for the non-exclusive use of city-owned trademarks on merchandise

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Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the Borough Presidents and Community Boards that NYC & Company Inc. on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Only NY Inc. for the non-exclusive use of city-owned trademarks on merchandise. If you have any questions, please contact me by e-mail at [bruiz@nycgo.com](mailto:bruiz@nycgo.com).

Best,



Benjamin Ruiz

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 4)**

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Economic Development Corporation (“NYCEDC”), on behalf of the New York City Department of Small Business Services (“DSBS”), to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the concession agreement between the City of New York, acting by and through DSBS, and First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. (“FirstFlight, Inc.”) for the operation of the Downtown Heliport located at 6 E River Piers, New York, NY 10004, in the borough of Manhattan. NYCEDC anticipates that the amendment would extend the term of the existing concession agreement through April 30, 2021 with two one year renewal options exercisable at the sole discretion of the City and establish minimum annual guarantee amounts payable for the extended years of the term.

**BE IT FURTHER RESOLVED**, that NYCEDC, on behalf of DSBS, shall submit the amendment to the concession agreement that DSBS proposes to enter into with FirstFlight, Inc. to the FCRC for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE  
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

**April 13, 2016**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: Director of the Mayor’s Office of Contract Services

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**  
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

**AGENCY:** New York City Economic Development Corporation on Behalf of New York City Department of Small Business Services ("DSBS")

**CONCESSION TITLE/DESCRIPTION:** Operation of the Downtown Heliport located at 6 E. River Piers, New York, New York  
  
**CONCESSION IDENTIFICATION #** 83004

# VOTES required for proposed action = 4  N/A

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)  Competitive Sealed Proposals (CSP)\*

Different Procedure \* ( Sole Source Agreement  Other \_\_ Intent to negotiate an amendment to the concession agreement between the City of New York, acting by and through DSBS, and First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. ("FirstFlight, Inc.") for the operation of the Downtown Heliport.

Negotiated Concession\*

Recommended Concessionaire First Flight Heliports, LLC d/b/a Saker Aviation Services Inc.  EIN  SSN 26-2955312  
 Attach Memo(s) \*

**CONCESSION AGREEMENT TERM**

Initial Term: To be negotiated  
 Renewal Option(s) Term: To be negotiated

Total Potential Term: To be negotiated

**ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS**  
 (Check all that apply)

Additional description attached

Annual Minimum Fee(s) \$ \_\_\_\_\_

% Gross Receipts \_\_\_\_\_%

The Greater of Annual Minimum Fee(s of \$\_\_\_\_\_ v. \_\_\_\_\_% of Gross Receipts

Other formula: To be negotiated

**LOCATION OF CONCESSION SITE(S)\***  N/A  
 Address: 6 E. River Piers, New York, NY 10004  
 Borough Manhattan C.B. # 1  
 Block # 2 Part of Lot # 23  
 \*Attach additional sheet

**CONCESSION TYPE (Check all that apply)**

> Significant Concession:  
 NO  
 YES Basis:  
 Total potential term =>10 years  Projected annual income/value to City >\$100,000  Major Concession

> Major Concession:  
 NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

Subject concession will be awarded by CSB or CSP.  YES  NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan

pursuant to §1-10 of the Concession Rules.

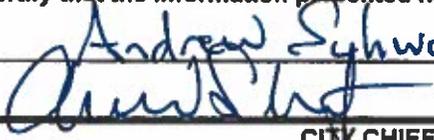
If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

This is to certify that the information presented herein is accurate.

Name

Andrew Schwartz  


Title

Deputy Commissioner

Signature

Date

3/30/16

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature

  
City Chief Procurement Officer

Date

4/4/2016

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

## A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

The New York City Economic Development Corporation (NYCEDC), on behalf of the New York City Department Small Business Services (DSBS) will be pursuing an amendment to the concession agreement between the City of New York ("City"), acting by and through DSBS, and First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. ("FirstFlight, Inc.") for the operation of the Downtown Heliport located at 6 E. River Piers, New York, NY 10004, in the borough of Manhattan pursuant to Section 1-16 of the Concession Rules of the City of New York ("different procedures") for the reasons listed in section (B)(2).

## B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

### 1. Briefly summarize the terms and conditions of the concession. *Add additional sheet(s), if necessary.*

To be determined at a later date – when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an amendment with FirstFlight, Inc. The existing concession agreement with FirstFlight, Inc. was entered into on July 23, 2008 and will expire on October 31, 2018. NYCEDC anticipates that the amendment would extend the term of the existing concession agreement through April 30, 2021 with two one year renewal options exercisable at the sole discretion of the City and establish minimum annual guarantee amounts payable for the extended years of the term as follows.

first year of the extended term: \$882,870.02

second year of the extended term: \$919,068.00

third year of the extended term: \$956,749.00

for the first option year: \$995,976.00

for the second option year: \$1,036,811.00

### 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals. *[Explain]*

Complaints of noise and concerns over perceived air quality issues have been raised with regard to the Heliport. Requests have been made to eliminate the helicopter tourism flights originating from the Heliport but concerns have been raised by the industry that elimination would have an adverse effect on jobs. In an effort to reach a compromise, NYCEDC, DSBS and FirstFlight, Inc. have come to an agreement whereby FirstFlight, Inc. agreed to the following:

1. Cessation of Sunday Tourist Flights/Cap on Saturday Flights
2. Cessation of Flights Over Governors Island and Cessation of Flights over Staten Island
3. 50% Reduction in Tourist Flight Operations by January 1, 2017
4. Air Quality Monitoring
5. Additional Mitigation

In addition, NYCEDC and DSBS have agreed to seek to amend the concession agreement to reflect those items reflected in B(1) above. .

**3a. Briefly explain the selection procedure that will be utilized. [Explain]**

NYCEDC, on behalf of DSBS, is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules, to negotiate an amendment to the concession agreement between the City and FirstFlight, Inc. which will go before the FCRC on April 13, 2016 ("Step 1") at the Public Meeting. Once negotiated and if determined by DSBS to be a significant concession, DSBS and the FCRC will hold a Public Hearing on the proposed amendment before presenting it to the FCRC for "Step 2" approval at a second Public Meeting. If DSBS determines the concession to be non-significant, NYCEDC will present the fully negotiated amendment with Firstflight, Inc. to the FCRC and request the required FCRC authorization for DSBS to enter into the amendment directly (without the need for an initial public hearing).

**3b. If the selection procedure is a negotiated concession, check the applicable box:  N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; [Explain]
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; [Explain]
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. [Explain]
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. [Explain]

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. [Explain]  N/A



New York City Economic Development Corporation

March 2, 2016

Manhattan Borough President Gale A. Brewer  
Office of Manhattan Borough  
1 Centre Street, 19<sup>th</sup> Floor  
New York, New York 10007

Phone: 212-669-8300

Fax: 212-669-4305

Email: [info@manhattanbp.nyc.org](mailto:info@manhattanbp.nyc.org)

Re: Franchise & Concession Review Committee approval of a different procedure to negotiate an amendment to the Concession Agreement between the City of New York ("City") and First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. for the operation, of the Downtown Heliport located at 6 E. River Piers, New York, New York and Block 2, p/o Lot 23 on the tax map of the County of New York, City of New York ("Downtown Heliport").

Honorable Borough President Brewer:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, please be advised that the New York City Economic Development Corporation, on behalf of the New York City Department of Small Business Services, intends to seek Franchise & Concession Review Committee approval of a different procedure to negotiate an amendment to the Concession Agreement with First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. for the operation of the Downtown Heliport. It is anticipated that the amendment would extend the term of the existing Concession Agreement through April 30, 2021 with two one year renewal options exercisable at the sole discretion of the City. This amendment pertains to a restructuring of tourist flights to and from the Downtown Heliport.

Sincerely,

Oscar Roman  
(212) 618-5714  
Asset Management Department

CC:

Manhattan Community Board No. 1 District Manager Mr. Noah Pfefferblit  
James Katz, NYCEDC  
Joshua Nelson, NYCEDC  
Patrick Thrasher, NYCEDC  
Randi Cohen, NYCEDC

March 2, 2016

Mr. Noah Pfefferblit, District Manager  
Manhattan Community Board No. 1  
1 Centre Street, Room 2202 North  
New York, New York 10007

Phone: 212-669-7970

Fax: 212-669-7899

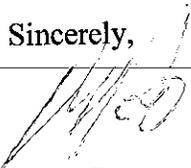
Email: [man01@cb.nyc.gov](mailto:man01@cb.nyc.gov)

Re: Franchise & Concession Review Committee approval of a different procedure to negotiate an amendment to the Concession Agreement between the City of New York ("City") and First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. for the operation, of the Downtown Heliport located at 6 E. River Piers, New York, New York and Block 2, p/o Lot 23 on the tax map of the County of New York, City of New York ("Downtown Heliport").

Dear Mr. Pfefferblit,

Pursuant to Section 1-16 of the Concession Rules of the City of New York, please be advised that the New York City Economic Development Corporation, on behalf of the New York City Department of Small Business Services, intends to seek Franchise & Concession Review Committee approval of a different procedure to negotiate an amendment to the Concession Agreement with First Flight Heliports, LLC d/b/a Saker Aviation Services Inc. for the operation of the Downtown Heliport. It is anticipated that the amendment would extend the term of the existing Concession Agreement through April 30, 2021 with two one year renewal options exercisable at the sole discretion of the City. This amendment pertains to a restructuring of tourist flights to and from the Downtown Heliport.

Sincerely,



Oscar Roman  
(212) 618-5714  
Asset Management Department

CC:  
Manhattan Borough President Gale A. Brewer  
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