

## **PUBLIC NOTICE**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held on May 6, 2019, at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, commencing at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to the 34<sup>th</sup> Street Partnership, Inc. (“Partnership”), whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018, to provide for the operation, management, and maintenance of a pedestrian plaza located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The License will provide for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT.

A draft copy of the License may be reviewed or obtained at no cost, commencing April 18 through May 3, 2019, between the hours of 10am and 4pm, excluding weekends and holidays at the NYC Department of Transportation, located at the NYC Department of Transportation, Office of Cityscape & Franchises, 55 Water Street, 9th Floor, NY, NY 10041.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor’s Office of Contract Services (MOCS) via e-mail at [DisabilityAffairs@mocs.nyc.gov](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability. 

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

**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) )*

<p><b>AGENCY:</b> NYC Department of Transportation (DOT)</p> <p><b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> N/A</p>	<p><b>RECOMMENDED CONCESSIONAIRE</b>  <b>Name:</b> <u>34<sup>th</sup> Street Partnership, Inc. ("Partnership")</u></p> <p><b>Address:</b> <u>1065 Avenue of the Americas, Suite 2400, New York, NY 10018</u></p> <p>Telephone # <u>212-719-3434</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3629973</u></p> <p><b>Not-for-Profit Organization Certified by DSBS as M/WBE</b> <span style="float:right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p>	<p><b>CONCESSION TITLE/ DESCRIPTION:</b>  <u>Concession to operate, manage and maintain pedestrian plaza located on Broadway and 6th Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan</u></p> <p><b>CONCESSION I.D.#</b>  <u>2017Con2</u></p>
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**LOCATION OF CONCESSION SITE(S\*) Address:** The pedestrian plaza is located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan ("Licensed Plaza")  N/A

\*Attach additional sheet **Borough:** Manhattan C.B.: 5 **Block #** N/A **Lot #** N/A

**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 05/10/2017.  
 Negotiated Acquisition\*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Initial Term: From</b> <u>Notice to Proceed (NTP)</u> <b>To</b> <u>One (1) year from NTP</u></p> <p><b>Renewal Option(s) Term:</b> <u>Up to three (3) additional five-year terms, exercisable at the sole discretion of DOT</u></p> <p><b>Total Potential Term:</b> <u>16 years</u></p> <p><input type="checkbox"/> * &gt;20 years – FCRC unanimously approved term on ___/___/___</p>	<p align="center"><b>ANNUAL REVENUE</b> (Check all that apply) (<input type="checkbox"/> Additional sheet (<input type="checkbox"/>s) attached)</p> <p><input type="checkbox"/> <b>Annual Fee(s)</b> \$ _____</p> <p><input type="checkbox"/> <b>% Gross Receipts</b> _____%</p> <p><input type="checkbox"/> <b>The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</b></p> <p><input checked="" type="checkbox"/> <b>Other:</b> <u>The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.</u></p>
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**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 the 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 03/28/2017, which was at least 40 days in advance of the FCRC meeting on 05/10/2017 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 04-17-2019**

**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 05/08/2019.
- 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** \_\_\_\_\_ **Title** \_\_\_\_\_

**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 New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into a Sole Source License Agreement ("License") with the 34th Street Partnership, Inc. ("Partnership").

***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.

The License would permit the Partnership to operate, manage and maintain the pedestrian plaza located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan (the "Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Partnership, and other similar merchandise within the Licensed Plaza. The License will provide for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

It should be noted that during the course of negotiations the Licensed Plaza boundaries were slightly revised to include an additional block. The Step 1 documents proposed the Licensed Plaza to be located on Broadway and 6<sup>th</sup> Avenue between West 33<sup>rd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan. DOT now seeks FCRC approval for the Licensed Plaza to be located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan.

**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:**

Since the concession will not yield a profit to the Partnership it is in the City's best interest to enter into the License with the Partnership because this not-for-profit organization's mission is to enhance the neighborhood in which the Licensed Plaza is located. The Partnership was created and is funded by the property owners directly adjacent to the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. The Partnership has twenty-eight years of relevant experience performing the activities necessary to operate, manage and maintain public

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Calendar No. \_\_\_\_)

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) 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 (“License”) with the 34<sup>th</sup> Street Partnership, Inc. (“Partnership”) to provide for the operation, management, and maintenance of a pedestrian plaza located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License will provide for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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

May 8, 2019

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

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

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

**THIS LICENSE**, made as of \_\_\_\_\_, 20\_\_ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and the 34th Street Partnership, Inc. ("PLAZA PARTNER"), a New York not-for-profit corporation.

**WITNESSETH**

**WHEREAS**, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

**WHEREAS**, PLAZA PARTNER was formed in 1992 to enhance the 34<sup>th</sup> Street area in the borough of Manhattan, City and State of New York, including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, DOT has jurisdiction over the pedestrian area located on Broadway and 6<sup>th</sup> Avenue between West 32<sup>nd</sup> and West 36<sup>th</sup> Streets, New York, NY ("Licensed Plaza"), as illustrated in **Exhibit A** and such Licensed Plaza was designated as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

**WHEREAS**, the City, at its sole cost and expense, designed and constructed the Licensed Plaza, which includes the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

**WHEREAS**, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

**WHEREAS**, from 2012 through 2017 PLAZA PARTNER operated and managed the Licensed Plaza, and assisted DOT to maintain and/or repair certain amenities within the Licensed Plaza; and

**WHEREAS**, PLAZA PARTNER desires to operate and manage the Licensed Plaza again, and assist DOT to maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza for the benefit of the public as specifically set forth in this License; and

**WHEREAS**, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the 34<sup>th</sup> Street Area; and

**WHEREAS**, DOT recognizes the PLAZA PARTNER will be able to significantly assist DOT's plaza program; and

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER, to provide for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, including through City-approved events, sponsorships and subconcession(s), including but not limited to

providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or PLAZA PARTNER, and other similar merchandise “Subconcession(s)” as described in Section 7 herein) within the Licensed Plaza.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows:

## 1. SCOPE OF LICENSE

A. DOT hereby grants to PLAZA PARTNER and PLAZA PARTNER hereby accepts from DOT this non-exclusive License to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza while this License is in effect. PLAZA PARTNER shall provide, or cause to be provided, services for the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza (which may be amended from time to time upon mutual consent of the parties) as specifically set forth in this License (collectively the “Services”) and as more specifically described in Section 3 below. Services shall not include any capital improvements or Alterations as described in Section 14 below.

B. As more particularly set forth in this License, PLAZA PARTNER shall be permitted to:

- (1) manage and operate a Subconcession(s) pursuant to Section 7 herein;
- (2) hold Plaza Events at the Licensed Plaza pursuant to Section 8 herein; and
- (3) accept gifts and sponsorships pursuant to Section 9 herein.

C. As more fully provided in Section 5 below, any revenue received from the management and operation of the Licensed Plaza shall be used by PLAZA PARTNER for Services at the Licensed Plaza.

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to 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 for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza, in accordance with the terms of this License. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this

instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this License, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DOT in accordance with this License.

## 2. TERM

A. The term of this License (“Term”) shall be one (1) year, commencing upon written Notice to Proceed (“Commencement Date”). This License may be renewed for up to three (3) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days’ advance written notice of its intent to renew.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DOT upon twenty-five (25) days written notice to PLAZA PARTNER.

## 3. SERVICES

A. PLAZA PARTNER shall provide, or cause to be provided the Services at the Licensed Plaza for the benefit of the public. PLAZA PARTNER shall only be required to provide the maintenance and/or repair as expressly set forth in this License for the amenities described below and in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. PLAZA PARTNER shall not be required to repair any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary. For the avoidance of doubt, PLAZA PARTNER shall not be required to maintain and/or repair any amenity within the Licensed Plaza not listed in **Exhibit B**.

(1) For the purposes of this License, the term “maintain” shall mean cleaning, sweeping, trash removal, snow and ice removal, landscaping, and graffiti removal.

(2) For the purposes of this License, the term “repair” shall mean fixing an amenity with the purpose of returning it to a good condition. This shall not include any capital improvements, which are permanent improvements that add value to the Licensed Plaza, prolong the useful life of the Licensed Plaza, or adapt the Licensed Plaza to new uses.

(3) For the purposes of this License, the term “good condition” shall mean an amenity that is fully functioning, safe, clean, and attractive.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and/or

repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically required by this Section to the reasonable satisfaction of DOT.

(1) Maintenance:

(a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza as reasonably necessary.

(b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza shall be routinely maintained as reasonably necessary.

(c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.

(d) Drains and surface gratings shall be maintained regularly to prevent clogging.

(e) Planters and planting beds shall be free of litter and debris.

(f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be maintained as reasonably necessary.

(g) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be maintained as reasonably necessary.

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

(i) Snow and ice shall be removed from all walkways within a reasonable period of time in accordance with the snow map illustrated in **Exhibit C**. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

(k) Signs shall be posted throughout the Licensed Plaza cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Plaza may be closed due to such snow and/or ice conditions.

(l) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

(m) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.

(n) Seasonal or annual pruning of shrubs and plantings.

(o) To the extent that PLAZA PARTNER applies pesticides to the Licensed Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.

(2) Repair:

(a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair damaged benches or other seating listed in **Exhibit B** as needed within a reasonable time.

(b) Moveable Street Furniture: All Moveable Street Furniture listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(c) Facilities/Structures: All facilities, structures, equipment, subconcession structures, and subconcession areas listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(d) Painting: All amenities listed in **Exhibit B** with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) Planters: All planters listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(f) Plantings: Re-seed and/or re-sod grass-covered areas as needed. Seasonal or annual planting of varied plant life (excluding trees), including some flowering plants, such that at no time are planters or planting beds empty of plant life.

(g) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in **Exhibit B** as “DOT Standard” shall be repaired as needed within a reasonable time.

(h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use best efforts to facilitate discussions between the appropriate parties, and DOT shall make good faith efforts so that such construction warranties provide the PLAZA PARTNER with third-party enforcement rights.

(i) PLAZA PARTNER shall not be required to repair and/or replace any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary.

(j) For the avoidance of doubt, the City shall retain responsibility for the repair and replacement of any amenity that is listed in **Exhibit B** as “DOT Standard” and for any City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

(k) For the avoidance of doubt and notwithstanding anything to the contrary, the parties further acknowledge that PLAZA PARTNER shall not be responsible, or bear any repair or other obligations or liabilities, for any damage in or to the Licensed Plaza to the extent caused by the City, another governmental entity or public authority, a utility company or other permitted third-party (such as providers of sewer, water, gas, heat, electricity, cable, broadband, and telephone) except when such permitted third party is acting at the direction of the Plaza Partner or its contractors, subcontractors or agents or subconcessionaire(s) or subconcessionaire(s)’ contractors, subcontractors or agents.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Plaza Event as set forth in Section 8 of this License, other City-approved events, or a DOT-approved subconcession agreement.

D. PLAZA PARTNER must comply with all recycling regulations and must obtain any and all additional permits required by law.

E. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.

F. Advertising (other than in a form identifying PLAZA PARTNER with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

G. DOT makes no representations regarding the adequacy of utilities currently in place at the Licensed Plaza. DOT makes no representation regarding the availability of electricity, water or other utilities at the Licensed Plaza or that any entity can or will make such services available. PLAZA PARTNER, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Licensed Plaza to conduct its operations. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by its employees, agents, contractors and subconcessionaire(s) at the Licensed Plaza and shall procure at PLAZA PARTNER’s own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. PLAZA PARTNER shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services, other than subconcessionaires. PLAZA PARTNER shall not tap into DOT’s electricity without prior DOT written approval. If generators are used, PLAZA PARTNER shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, Permittee shall comply with all City directives and restrictions.

H. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

(1) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).

(2) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

I. PLAZA PARTNER shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza for which PLAZA PARTNER has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Licensed Plaza for which PLAZA PARTNER does not have repair responsibility under this License, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

J. DOT shall have the right at all times to have representatives of the City, the State and/or federal government present at the Licensed Plaza for any purpose, including but not limited to conducting routine inspections, routine repair work, emergency inspections and emergency repair work.

#### **4. BUDGET**

A. On or before April 1<sup>st</sup> of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in

**Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2019 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License; and reasonable administrative costs, including but not limited to insurance costs, a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

C. The PLAZA PARTNER Licensed Plaza budget shall not be final until DOT provides written approval. Such approval or denial shall occur within 30 days from the date the budget is submitted. However, DOT will endeavor to respond within 10 business days from the date the budget is submitted.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems necessary.

## 5. REVENUE

A. PLAZA PARTNER shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to PLAZA PARTNER under this License, including:

- (1) any funds collected for Services under Section 3;
  - (2) any funds collected under a Subconcession described in Sections 6 and 7;
  - (3) any funds collected for Plaza Events under Section 8; and
  - (4) any funds collected for sponsorships under Section 9
- (collectively referred to herein as "Revenue").

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole

discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. PLAZA PARTNER may withdraw and use Revenue as defined herein from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to Plaza Partner's operation of the Licensed Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, maintaining and repairing the Licensed Plaza and as described in Sections 1 and 3.

C. No withdrawals shall be made from the Special Account other than as provided in this License.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by Plaza Partner (such as grants, donations, bequests and contributions) other than in the course of Plaza Partner's use or operation of the Licensed Plaza. Applicable law governs Plaza Partner's use of such other revenues.

F. Subject to paragraph (G) below, in no event shall the total annual Revenue from managing and operating the Licensed Plaza during the Term of the License exceed the cost of providing the Services and reasonable administrative costs.

G. At the end of each fiscal year in which the License is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this License, the Accrual Fund contains an amount that is more than three times the DOT-approved Licensed Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services in the Licensed Plaza. At the end of the Term of this License or if this License is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services.

## 6. SUBCONCESSION(S)

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals (“RFP”) or a Request for Bids (“RFB”) approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 (“Threshold”). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT’s approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER’s written request for approval.

F. (1) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)’s contractors, subcontractors and agents, and PLAZA PARTNER’s contractors, subcontractors and agents that perform operations involving the Licensed Plaza to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein.

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)’s contractors, subcontractors and agents, and PLAZA PARTNER’s contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless. Any subconcession agreement(s) and/or other agreements that involve operations in the Licensed Plaza shall include the following, provided that the terms “SUBLICENSEE” and “PLAZA PARTNER” shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:

(a) SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the PLAZA PARTNER, City or others from damage, loss, injury resulting from any and all operations under this Agreement.

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), 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) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(c) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.

(d) SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

G. The subconcession agreement(s) may not be assigned without the prior written approval of DOT. Such approval or denial shall not be unreasonably delayed. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

## **7. OPERATION OF THE SUBCONCESSION(S)**

A. PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

(1) Operate the Subconcession(s) as provided herein; and

(2) Continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s), consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall

be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30<sup>th</sup>) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30<sup>th</sup>) day following the termination of this License or the subconcession agreement(s), or June 30<sup>th</sup>, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene (“DOHMH”) inspection rating.

(1) PLAZA PARTNER shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) PLAZA PARTNER shall require its subconcessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager (“Manager”) with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)’ banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), 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:

- (1) Collect and safeguard all monies generated under this License;
- (2) Maintain the Subconcession(s) in accordance with this License;
- (3) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) Secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)’ sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT. Such approval or denial will not be unreasonably delayed.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's prior written approval. Such approval or denial will not be unreasonably delayed.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell wine and beer only with the appropriate license from the State Liquor Authority ("SLA"). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil

lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, and arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(3) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

(4) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(5) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(6) During the term of this License, PLAZA PARTNER shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(7) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

(8) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

(9) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) and any subconcession structure is substantially completed, and DOT shall inspect the Subconcession(s) and/or any subconcession structure within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(10) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) and/or any subconcession structure for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

(12) PLAZA PARTNER shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subconcession structure.

(13) PLAZA PARTNER shall keep DOT fully informed of PLAZA PARTNER's progress in the construction of the Subconcession(s) and/or any subconcession structure.

(14) All risks of construction of the Subconcession(s) and/or any subconcession structure are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) and any subconcession structure will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER's expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay all municipal fees and impositions in connection therewith.

W. Upon DOT's prior written approval, PLAZA PARTNER may use DOT's Standard Plaza Kiosk (as approved by the New York City Public Design Commission and as more particularly described in **Exhibit D**) to operate the Subconcession(s). Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, at its sole cost and expense, shall furnish all interior fixtures and equipment for the operation of the Subconcession(s). PLAZA PARTNER shall not apply any Revenue to any such interior fixtures and equipment. Ownership title of the Standard Plaza Kiosk belongs to and shall remain with the City throughout the Term.

X. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

- (1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or
- (2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

Y. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.

## **8. PLAZA EVENTS**

A. The Licensed Plaza may be used for Plaza Events (as defined in Section 1-01 of Title 50 of the Rules of the City of New York), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit an application to the Street Activity Permit Office (“SAPO”) within the City’s Office of Citywide Event Coordination and Management (“CECM”) for any proposed Plaza Events to be held at the Licensed Plaza by the PLAZA PARTNER pursuant to SAPO’s applicable rules.

C. PLAZA PARTNER may hold Plaza Events at the Licensed Plaza subject to:

(1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in Section 1-01 of Title 50 of the Rules of the City of New York;

(2) the City’s right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

(3) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary;

(4) If applicable, PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with its own Plaza Events at the Licensed Plaza;

(5) all Plaza Events shall be open to the public and at no cost; and

(6) PLAZA PARTNER understands that the Licensed Plaza is public property and that activities at the Licensed Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore: (a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Licensed Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Licensed Plaza that may be protected by the First Amendment.

D. The City may use the Licensed Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event.

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Plaza Events, and DOT shall pay for any such fees or royalties relating to DOT’s events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Licensed Plaza in connection with a Plaza Event, shall be appropriately located, and shall state that the Licensed Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. In addition to the SAPO permit fee collected by CECM, PLAZA PARTNER may collect a concession fee from the event sponsor or holder for any Commercial/Promotional events (as defined in Section 1-01 of Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of PLAZA PARTNER’s Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be

amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5, such sponsorships shall be considered Revenue. Sponsorships generated for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval and shall not be considered Revenue. However, if portions of such general sponsorships are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this subsection. Any such sponsorships shall be restricted in size, quantity and location as deemed appropriate by DOT.

(2) All sponsorships benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

### **B. Gifts**

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept gifts solely for the benefit of the City and the Licensed Plaza. For purposes of this License, such gifts shall not be considered Revenue. Gifts obtained for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be subject to the provisions of this subsection.

(2) All gifts benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.

(3) PLAZA PARTNER shall prepare and provide to DOT bi-annual reports detailing any such gifts benefiting the City and the Licensed Plaza, in a format reasonably acceptable to DOT.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Licensed Plaza without DOT's written approval. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, upon twenty-four (24) hours' notice, shall remove any and all unauthorized notice or signage placed in or on the Licensed Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

E. For the avoidance of doubt, sponsorships and gifts as contemplated in this Section are not considered Plaza Events and are not subject to SAPO's rules.

## **10. INSPECTION AND AUDIT OF RECORDS**

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), it shall incorporate such provisions, appropriately modified to apply to the subconcessionaire(s), into any subconcession agreement(s).

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this License, and set forth, in a manner satisfactory to DOT, its expenditures in any way connected to the Services under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all activities concerning the Accrual Fund subject to Section 5(G) above.

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;

(5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and

(6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT 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 annual report to be filed with the Charities Bureau or any successor report). Finally, no more than sixty (60) days after the end of each fiscal year which is subject to the terms and conditions of this License, PLAZA PARTNER shall provide DOT with detailed statements, to DOT's reasonable satisfaction, concerning any revenue generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that PLAZA PARTNER has incurred, in connection with its maintenance responsibilities under this License.

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

- (1) all federal, state and local tax returns and schedules of PLAZA PARTNER;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and

(4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within (30) days of the end of each quarter during the Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER 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 PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, PLAZA PARTNER agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

K. Notwithstanding anything else to the contrary contained in this License, the parties 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.

L. This Section shall survive the expiration or earlier termination of this License.

## **11. INSURANCE**

### **A. PLAZA PARTNER's Obligation to Insure**

(1) Upon written Notice to Proceed through the date of expiration or termination of this License, PLAZA PARTNER shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. PLAZA PARTNER shall ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such service of alcohol.

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

### **B. Commercial General Liability Insurance**

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. This insurance shall protect the insureds from claims 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 00 01, shall contain no exclusions other than as required by law or as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured 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 Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they

provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

- (a) Contractual liability coverage insuring the contractual obligations of the insureds;
- (b) Employers' liability coverage for liability assumed by the Licensee under an "insured contract";
- (c) Coverage for claims arising under New York Labor Law; and
- (d) The applicability of Commercial General Liability coverage to the Additional Insured in respect of liability arising out of any of the following claims: (i) claims against the Additional Insured by employees of a PLAZA PARTNER or employees of the entity required to maintain the insurance hereunder; or (ii) claims against the City, including its officials and employees, by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing; or (iii) claims against the City including its officials and employees arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

#### C. Workers' Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits Insurance

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

#### D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER 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 (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) If vehicles are used for transporting hazardous materials, such Commercial 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.

#### E. Liquor Law Liability Insurance

(1) In the event PLAZA PARTNER shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, PLAZA PARTNER shall

carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name PLAZA PARTNER and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

#### F. General Requirements for Insurance Coverage and Policies

(1) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Rating rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(2) With the exception of coverage required by the Workers' Compensation law, policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Whenever this Section 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 alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT 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, PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(5) The City's limits of coverage for all types of insurance required under this Section shall be the greater of: (i) the minimum limits set forth in this Section or (ii) the limits provided to PLAZA PARTNER under all primary, excess and umbrella policies covering operations under this License. The City reserves the right to increase the required limits of Commercial Property Insurance upon the Commissioner's determination that the existing limits do not adequately protect the City from financial risk due to potential claims for injury or property damage.

(6) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

G. Proof of Insurance

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

(2) Within 10 Days of award of this License or as otherwise specified by the DOT, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), PLAZA PARTNER shall submit proof of PLAZA PARTNER's workers' compensation insurance and disability and paid family leave benefits insurance (or proof of a legal exemption) to DOT in a form acceptable to the New York State Workers' Compensation Board and the Certificate Holder shall be City of New York, c/o Department of Transportation General Counsel, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (g) Form CE-200 – *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

(4) Certificates of Insurance confirming renewals of insurance shall be submitted to the DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.

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

(6) PLAZA PARTNER shall be obligated to provide the City with a copy of any policy of insurance required under this Section upon request by the DOT Commissioner or the New York City Law Department.

#### H. Miscellaneous

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

(2) PLAZA PARTNER 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.

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER 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. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

(4) PLAZA PARTNER's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section 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.

(5) Insurance coverage in the minimum amounts provided for in this Section shall not relieve PLAZA PARTNER 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.

(6) 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 Section, PLAZA PARTNER shall at all times fully cooperate with the City with regard to such potential or actual claim.

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

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event PLAZA PARTNER requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name PLAZA PARTNER as an additional insured under such insurance, PLAZA PARTNER shall ensure that such entity also names the City, including its officials and employees, as an additional insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26). Such coverage as an additional insured shall not require privity of contract between the City, including its officials and employees, and the named insured.

(9) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

## **12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

### **A. PLAZA PARTNER Responsibilities**

(1) PLAZA PARTNER shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

(2) PLAZA PARTNER shall take 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.

(3) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza 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 the PLAZA PARTNER or the Licensed Plaza (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER's personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. 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.

#### B. PLAZA PARTNER Indemnification

(1) Notwithstanding any other provisions of this License, the maximum amount for which the PLAZA PARTNER is liable for third party bodily injury (including death) and property damage caused by the PLAZA PARTNER's operations under this License shall not exceed the Commercial General Liability limits required in Section 11(B) above ("Limitation of Liability"). The Limitation of Liability shall not apply to PLAZA PARTNER's contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)'s contractors, subcontractors or agents.

(2) To the fullest extent permitted by law, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees ("Indemnified Parties") 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) (hereinafter called "Liabilities"), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of this License. Such Liabilities shall include, without limitation, claims alleged to result from the following:

(a) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' negligence or failure to comply with any of the requirements of this License, including PLAZA PARTNER's maintenance and/or repair obligations set forth in Section 3 herein;

(b) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(c) PLAZA PARTNER's or any subconcessionaire(s)'s or any of their respective employees', servants', contractors', subcontractors' or agents' infringement, violation,

or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(3) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by PLAZA PARTNER, the Indemnified Parties shall be partially indemnified by PLAZA PARTNER to the fullest extent permitted by law.

(4) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, DOT shall give prompt written notice of such claim to PLAZA PARTNER. PLAZA PARTNER shall assume and prosecute the defense of such claim at the sole cost and expense of PLAZA PARTNER. PLAZA PARTNER may settle any such claim in its discretion without consent of DOT and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the PLAZA PARTNER indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from DOT and the Corporation Counsel. .

(5) PLAZA PARTNER's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by PLAZA PARTNER's obligations to obtain and maintain insurance under this License except as expressly provided in Section 12(B)(1), nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

C. To the extent Liabilities arise from the following, they shall be excluded from PLAZA PARTNER's indemnification and defense obligations under Section 12(B):

- (1) the design and construction of the Licensed Plaza;
- (2) any subsurface structural conditions at the Licensed Plaza; and
- (3) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of PLAZA PARTNER.

D. City of New York Indemnification

(1) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities of third parties for injury, including death, or property damage to the extent arising out of the negligent repair of the DOT Standard amenities listed in Exhibit B.

(2) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities of third parties for injury, including death, or property damage to the extent arising out of any Plaza Events not sponsored by the PLAZA PARTNER.

(3) Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER.

### **13. ASSIGNMENT**

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

B. Except for the subcontracts for supplemental services let pursuant to the processes set forth in PLAZA PARTNER's contract with the New York City Department of Small Business Services that are for district-wide services, PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

(1) that work performed by the subcontractor must be in accordance with the terms of the License between DOT and PLAZA PARTNER;

(2) that nothing contained in such agreement shall impair the rights of DOT;

(3) that nothing contained herein, or under the License between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;

(4) that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

(5) (a) that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

(c) that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

(d) that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of PLAZA PARTNER to obtain any required consent to any assignment shall be grounds for termination for cause, at DOT's option. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to PLAZA PARTNER, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City.

D. This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

A. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Licensed Plaza by installing other amenities in addition to those already installed and listed in Exhibit B upon DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such capital improvements, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the PLAZA PARTNER plans to capitally improve the Licensed Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. PLAZA PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such alterations.

C. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work, excluding maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

E. DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Licensed Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair PLAZA PARTNER's obligations in any respect. DOT will coordinate with PLAZA PARTNER and provide reasonable notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA PARTNER's operations.

## **15. INSPECTION AT SITE**

DOT shall have the right at all times to have representatives of the City and/or the State or federal government present at the Licensed Plaza for any purpose.

## **16. PERSONNEL**

A. The parties agree that PLAZA PARTNER is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, assert the existence of any relationship or status on the part of PLAZA PARTNER, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

B. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this License. Nothing in this License, and no entity or person's performance pursuant to or in connection with this License, shall create any relationship between the City and PLAZA PARTNER's employees, agents, subconcessionaire(s), or subconcessionaire(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of PLAZA PARTNER, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity. Except as specifically stated in this License, nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

C. To the extent required by law, PLAZA PARTNER shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual

orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

## **17. INVESTIGATIONS CLAUSE**

A. The parties to this License agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State of New York ("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, or license that is the subject of the investigation, audit or inquiry.

B. (1) 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, 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 or 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

(2) 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 under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking 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

C. (1) DOT 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 days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) 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 subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any 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

(2) The cancellation or termination of all such 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, with 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.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) 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.

(2) 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.

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

(4) 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 subparagraph D 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 subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

## F. Definition of Terms

(1) 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.

(2) 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.

(3) 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.

(4) 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.

G. In addition to and notwithstanding any other provisions 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 PLAZA PARTNER fails promptly to 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 or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by PLAZA PARTNER, or affecting the performance of this contract.

## 18. NOTICE

All notices, except those related to Sections 11(H)(3) and 12(D)(3) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 34th Street Partnership, 5 Bryant Park, Suite 2400, New York, NY 10018 or such other address as may be notified from time to time.

## 19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six month written notice.

B. DOT shall have the right to terminate this License in whole or in part:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's

or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER becoming insolvent.

(4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.

(5) Upon DOT's determination that this License should be terminated without cause.

C. DOT shall give PLAZA PARTNER written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section, DOT shall provide written notice of such termination to PLAZA PARTNER, and this License shall terminate effective twenty-five (25) days from the date such notice is received by PLAZA PARTNER.

F. Force Majeure Event

(1) Subject to the remaining paragraphs of this Section 19(F), if PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event (as defined below), PLAZA PARTNER shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of the Services. The time for performance of such Services shall be extended commensurate with the nature of the Force Majeure Event.

(2) "Force Majeure Event" means any circumstance beyond PLAZA PARTNER's reasonable control and without PLAZA PARTNER's fault or negligence affecting the Licensed Plaza or a substantial portion thereof including:

(a) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom; and

(e) collapse of buildings, fire, explosion, or citywide blackout.

(3) If PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event, PLAZA PARTNER shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event, notify DOT of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License;

(b) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the Services under this License; and

(c) resume performance of the Services as soon as reasonably practicable after the removal of the Force Majeure Event.

(4) If the Force Majeure Event prevents, hinders or delays PLAZA PARTNER's performance of the Services for a continuous period of more than thirty-five (35) days, DOT may terminate this License by giving PLAZA PARTNER twenty-five (25) days' written notice.

G. Upon expiration or sooner termination of this License by DOT, all rights of PLAZA PARTNER herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

H. Upon such termination PLAZA PARTNER shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

I. PLAZA PARTNER agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations and cause any subconcessionaire(s) to cease all operations pursuant to this License and shall vacate and cause any subconcessionaire(s) to vacate the Licensed Plaza without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration, or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Plaza.

J. PLAZA PARTNER shall, or shall cause its subconcessionaire(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Plaza. PLAZA PARTNER acknowledges that any personal property remaining on the Licensed Plaza after the expiration, or sooner termination of this License, is intended by PLAZA PARTNER to be abandoned. PLAZA PARTNER shall remain liable to the City for any damages, including the cost of removal or disposal of property, should PLAZA PARTNER and/or its subconcessionaire(s) fail to remove all possessions from the Licensed Plaza on or before the expiration or termination date. PLAZA PARTNER shall pay any damages promptly upon the City's demand.

K. Upon termination of this License, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

(1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this License, and carrying out any DOT directive concerning the disposition thereof.

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

(3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this License.

(4) Submit, within ninety (90) days, a final statement and report relating to the License. The report shall be made by a certified public accountant or a licensed public accountant.

L. PLAZA PARTNER expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

M. This License may be suspended for any reason with written notice from DOT. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, PLAZA PARTNER shall not operate. In the event that PLAZA PARTNER’s operation is disrupted due to construction in the immediate area where the Licensed Plaza is located, this License may be suspended, at DOT’s option.

N. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER’s breach of the License.

O. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DOT may terminate this License.

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER shall continue to comply with all provisions of this License as if the License was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this License shall in no way be construed as a renewal

or other extension of this License, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this License, including but not limited to, damages and restitution and injunctive relief.

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

A. PLAZA PARTNER shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. PLAZA PARTNER shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and PLAZA PARTNER's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. PLAZA PARTNER shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in **Exhibit E**.

C. With respect to services provided under this License, PLAZA PARTNER shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, PLAZA PARTNER is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. PLAZA PARTNER makes the following representations and warranties:

(1) PLAZA PARTNER 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 power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and

assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

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

(4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this License, PLAZA PARTNER is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). PLAZA PARTNER makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and PLAZA PARTNER shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this License.

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect 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.

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

## **22. CONFLICT OF INTEREST**

PLAZA PARTNER 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. PLAZA PARTNER 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.

**23. NO LEASE**

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

**24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLAZA PARTNER 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 PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 133629973.

**25. RESERVATION OF RIGHTS AND INTERESTS**

A. 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.

B. Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT. PLAZA PARTNER will conspicuously acknowledge the involvement of DOT in any such statement or release. If DOT finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, PLAZA PARTNER and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER 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.

**26. WAIVER OF JURY TRIAL**

PLAZA PARTNER hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against PLAZA PARTNER or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License including, but not limited to, the relationship between the City and PLAZA PARTNER.

This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

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

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within 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 that:

(1) If the City initiates any action arising out of this License against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER either by personal service upon an officer or authorized agent of PLAZA PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

(2) With respect to any action arising out of this License between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If PLAZA PARTNER commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

## **28. CLAIMS AND ACTIONS THEREON**

A. 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 or in any way connected

with this License unless PLAZA PARTNER 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.

B. No action shall lie or be maintained against the City by PLAZA PARTNER upon any claims based upon this License unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, PLAZA PARTNER shall diligently render to the City without additional compensation any and all assistance which the City may require of PLAZA PARTNER.

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

## **31. TRADEMARK**

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Plaza will result in the immediate termination of this License.

### **32. INFRINGEMENTS**

PLAZA PARTNER shall be liable to the City and hereby agrees to indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by PLAZA PARTNER of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by PLAZA PARTNER in the performance of this License.

### **33. ANTI-TRUST**

PLAZA PARTNER hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

### **34. EMINENT DOMAIN AND PUBLIC USE**

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

### **35. DEVELOPMENT PURPOSES**

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. PLAZA PARTNER also agrees that this License shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

### **36. SEVERABILITY**

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.

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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.

**38. MODIFICATION**

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

**39. ENTIRE AGREEMENT**

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

**40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**NO FURTHER TEXT ON THIS PAGE**

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

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

Michelle Craven  
Assistant Commissioner, Office of Cityscape and Franchises  
New York City Department of Transportation

Dated:

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

Dan Biederman  
President  
34th Street Partnership, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

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

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came Dan Biederman, who, being duly sworn by me did depose and say that he is the President of the 34th Street Partnership, Inc., the corporation described in and who executed the foregoing instrument and she acknowledged that she executed the same in his/her official capacity and for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

Exhibit A

[Map of Licensed Plaza, which includes total square footage]

## Exhibit B

[List of Amenities—all quantities are approximations]

- Large Planters (23)
- Umbrellas (6)
- Umbrella bases (6)
- Moveable Tables (80)
- Moveable Chairs (180)
- DOT Standard Granite Blocks (100)
- DOT Standard Wave Delineator (245 lf)

Exhibit C  
[Snow Removal Map]

## Exhibit D

[PDC Approval of DOT Standard Plaza Kiosk]

## Exhibit E

### [Paid Sick Leave Law Concession 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 PLAZA PARTNER agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this License. The PLAZA PARTNER further acknowledges that such compliance is a material term of this License and that failure to comply with the PSLL in performance of this License may result in its termination.

The PLAZA PARTNER must notify DOT’s General Counsel in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this License. Additionally, the PLAZA PARTNER 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 PLAZA PARTNER. The PLAZA PARTNER 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 PLAZA PARTNER can get more information about how to comply with the PSLL. The PLAZA PARTNER 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

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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.

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.

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 permitted 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 PSSL 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 PSSL.

## 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.

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$3,125	\$12,500	\$25,000

## **PUBLIC NOTICE**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held on May 6, 2019, at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, commencing at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to the 34<sup>th</sup> Street Partnership, Inc. (“Partnership”), whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018, to provide for the operation, management, and maintenance of a pedestrian plaza located at West 33<sup>rd</sup> Street between 7<sup>th</sup> Avenue and 8<sup>th</sup> Avenue, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The License will provide for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT.

A draft copy of the License may be reviewed or obtained at no cost, commencing April 26 through May 3, 2019, between the hours of 10am and 4pm, excluding weekends and holidays at the NYC Department of Transportation, located at the NYC Department of Transportation, Office of Cityscape & Franchises, 55 Water Street, 9th Floor, NY, NY 10041.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor’s Office of Contract Services (MOCS) via e-mail at [DisabilityAffairs@mocs.nyc.gov](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability. 

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



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 04-17-2019** \_\_\_\_\_

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 05/08/2019.
- 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 \_\_\_\_\_ Title \_\_\_\_\_

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 New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into a Sole Source License Agreement ("License") with the 34th Street Partnership, Inc. ("Partnership").

***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.

The License would permit the Partnership to operate, manage and maintain the pedestrian plaza located at West 33<sup>rd</sup> Street between 7<sup>th</sup> Avenue and 8<sup>th</sup> Avenue, in the borough of Manhattan (the "Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Partnership, and other similar merchandise within the Licensed Plaza. The License will provide for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

**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:**

Since the concession will not yield a profit to the Partnership it is in the City's best interest to enter into the License with the Partnership because this not-for-profit organization's mission is to enhance the neighborhood in which the Licensed Plaza is located. The Partnership was created and is funded by the property owners directly adjacent to the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. The Partnership has twenty-eight years of relevant experience performing the activities necessary to operate, manage and maintain public spaces, including maintaining the streetscape, subcontracting maintenance services to reliable vendors, and involving the community and other public stakeholders in managing public spaces.

**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 4/19/2019, 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 04/15/2019 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 04/15/2019.

New York Post, a NYC local newspaper published in the affected borough(s) on 4/25/2019 and 4/26/2019.  
 Metro, a NYC local newspaper published in the affected borough(s) on 4/25/2019 and 4/26/2019.

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

A Public Hearing was conducted on 5/8/2019.

**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.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Calendar No. \_\_\_\_)

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) 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 (“License”) with the 34<sup>th</sup> Street Partnership, Inc. (“Partnership”) to provide for the operation, management, and maintenance of a pedestrian plaza located at West 33<sup>rd</sup> Street between 7<sup>th</sup> Avenue and 8<sup>th</sup> Avenue, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Partnership in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License provides for one (1) one-year term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. The Partnership will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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

May 8, 2019

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

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

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

**THIS LICENSE**, made as of \_\_\_\_\_, 20\_\_ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and the 34th Street Partnership, Inc. ("PLAZA PARTNER"), a New York not-for-profit corporation.

**WITNESSETH**

**WHEREAS**, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

**WHEREAS**, PLAZA PARTNER was formed in 1992 to enhance the 34<sup>th</sup> Street area in the borough of Manhattan, City and State of New York, including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, DOT has jurisdiction over the pedestrian area located at West 33<sup>rd</sup> Street between 7<sup>th</sup> Avenue and 8<sup>th</sup> Avenue, New York, NY ("Licensed Plaza"), as illustrated in **Exhibit A** and such Licensed Plaza was designated as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

**WHEREAS**, the City, at its sole cost and expense, designed and constructed the Licensed Plaza, which includes the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

**WHEREAS**, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

**WHEREAS**, PLAZA PARTNER desires to operate and manage the Licensed Plaza, and assist DOT to maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza for the benefit of the public as specifically set forth in this License; and

**WHEREAS**, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the 34<sup>th</sup> Street Area; and

**WHEREAS**, DOT recognizes the PLAZA PARTNER will be able to significantly assist DOT's plaza program; and

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a License Agreement with PLAZA PARTNER, to provide for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, including through City-approved events, sponsorships and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or PLAZA PARTNER, and other similar merchandise "Subconcession(s)" as described in Section 7 herein) within the Licensed Plaza.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows:

**1. SCOPE OF LICENSE**

A. DOT hereby grants to PLAZA PARTNER and PLAZA PARTNER hereby accepts from DOT this non-exclusive License to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza while this License is in effect. PLAZA PARTNER shall provide, or cause to be provided, services for the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza (which may be amended from time to time upon mutual consent of the parties) as specifically set forth in this License (collectively the “Services”) and as more specifically described in Section 3 below. Services shall not include any capital improvements or Alterations as described in Section 14 below.

B. As more particularly set forth in this License, PLAZA PARTNER shall be permitted to:

- (1) manage and operate a Subconcession(s) pursuant to Section 7 herein;
- (2) hold Plaza Events at the Licensed Plaza pursuant to Section 8 herein; and
- (3) accept gifts and sponsorships pursuant to Section 9 herein.

C. As more fully provided in Section 5 below, any revenue received from the management and operation of the Licensed Plaza shall be used by PLAZA PARTNER for Services at the Licensed Plaza.

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to 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 for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza, in accordance with the terms of this License. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this License, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DOT in accordance with this License.

## 2. TERM

A. The term of this License (“Term”) shall be one (1) year, commencing upon written Notice to Proceed (“Commencement Date”). This License may be renewed for up to three (3) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days’ advance written notice of its intent to renew.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DOT upon twenty-five (25) days written notice to PLAZA PARTNER.

## 3. SERVICES

A. PLAZA PARTNER shall provide, or cause to be provided the Services at the Licensed Plaza for the benefit of the public. PLAZA PARTNER shall only be required to provide the maintenance and/or repair as expressly set forth in this License for the amenities described below and in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. PLAZA PARTNER shall not be required to repair any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary. For the avoidance of doubt, PLAZA PARTNER shall not be required to maintain and/or repair any amenity within the Licensed Plaza not listed in **Exhibit B**.

(1) For the purposes of this License, the term “maintain” shall mean cleaning, sweeping, trash removal, snow and ice removal, landscaping, and graffiti removal.

(2) For the purposes of this License, the term “repair” shall mean fixing an amenity with the purpose of returning it to a good condition. This shall not include any capital improvements, which are permanent improvements that add value to the Licensed Plaza, prolong the useful life of the Licensed Plaza, or adapt the Licensed Plaza to new uses.

(3) For the purposes of this License, the term “good condition” shall mean an amenity that is fully functioning, safe, clean, and attractive.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically required by this Section to the reasonable satisfaction of DOT.

(1) Maintenance:

(a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza as reasonably necessary.

(b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza shall be routinely maintained as reasonably necessary.

(c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.

(d) Drains and surface gratings shall be maintained regularly to prevent clogging.

(e) Planters and planting beds shall be free of litter and debris.

(f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be maintained as reasonably necessary.

(g) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be maintained as reasonably necessary.

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

(i) Snow and ice shall be removed from all walkways within a reasonable period of time in accordance with the snow map illustrated in **Exhibit C**. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

(k) Signs shall be posted throughout the Licensed Plaza cautioning users of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Plaza may be closed due to such snow and/or ice conditions.

(l) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

(m) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.

(n) Seasonal or annual pruning of shrubs and plantings.

(o) To the extent that PLAZA PARTNER applies pesticides to the Licensed Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.

(2) Repair:

(a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair damaged benches or other seating listed in **Exhibit B** as needed within a reasonable time.

(b) Moveable Street Furniture: All Moveable Street Furniture listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(c) Facilities/Structures: All facilities, structures, equipment, subconcession structures, and subconcession areas listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(d) Painting: All amenities listed in **Exhibit B** with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) Planters: All planters listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(f) Plantings: Re-seed and/or re-sod grass-covered areas as needed. Seasonal or annual planting of varied plant life (excluding trees), including some flowering plants, such that at no time are planters or planting beds empty of plant life.

(g) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in **Exhibit B** as “DOT Standard” shall be repaired as needed within a reasonable time.

(h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use best efforts to facilitate discussions between the appropriate parties, and DOT shall make good faith efforts so that such construction warranties provide the PLAZA PARTNER with third-party enforcement rights.

(i) PLAZA PARTNER shall not be required to repair and/or replace any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary.

(j) For the avoidance of doubt, the City shall retain responsibility for the repair and replacement of any amenity that is listed in **Exhibit B** as “DOT Standard” and for any City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

(k) For the avoidance of doubt and notwithstanding anything to the contrary, the parties further acknowledge that PLAZA PARTNER shall not be responsible, or bear any repair or other obligations or liabilities, for any damage in or to the Licensed Plaza to the extent caused by the City, another governmental entity or public authority, a utility company or other permitted third-party (such as providers of sewer, water, gas, heat, electricity, cable, broadband, and telephone) except when such permitted third party is acting at the direction of the Plaza Partner or its contractors, subcontractors or agents or subconcessionaire(s) or subconcessionaire(s)' contractors, subcontractors or agents.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Plaza Event as set forth in Section 8 of this License, other City-approved events, or a DOT-approved subconcession agreement.

D. PLAZA PARTNER must comply with all recycling regulations and must obtain any and all additional permits required by law.

E. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.

F. Advertising (other than in a form identifying PLAZA PARTNER with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

G. DOT makes no representations regarding the adequacy of utilities currently in place at the Licensed Plaza. DOT makes no representation regarding the availability of electricity, water or other utilities at the Licensed Plaza or that any entity can or will make such services available. PLAZA PARTNER, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Licensed Plaza to conduct its operations. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by its employees, agents, contractors and subconcessionaire(s) at the Licensed Plaza and shall procure at PLAZA PARTNER's own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. PLAZA PARTNER shall be responsible for the installation of all necessary water, gas, heat, electricity, cable, broadband, and telephone connections. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services, other than subconcessionaires. PLAZA PARTNER shall not tap into DOT's electricity without prior DOT written approval. If generators are used, PLAZA PARTNER shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders for the lawful operation of its generators. In the event of a drought, Permittee shall comply with all City directives and restrictions.

H. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

(1) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).

(2) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

I. PLAZA PARTNER shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza for which PLAZA PARTNER has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Licensed Plaza for which PLAZA PARTNER does not have repair responsibility under this License, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

J. DOT shall have the right at all times to have representatives of the City, the State and/or federal government present at the Licensed Plaza for any purpose, including but not limited to conducting routine inspections, routine repair work, emergency inspections and emergency repair work.

#### **4. BUDGET**

A. On or before April 1<sup>st</sup> of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2019 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License; and reasonable administrative costs, including but not limited to insurance costs, a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

C. The PLAZA PARTNER Licensed Plaza budget shall not be final until DOT provides written approval. Such approval or denial shall occur within 30 days from the date the budget is submitted. However, DOT will endeavor to respond within 10 business days from the date the budget is submitted.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems necessary.

## 5. REVENUE

A. PLAZA PARTNER shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to PLAZA PARTNER under this License, including:

- (1) any funds collected for Services under Section 3;
  - (2) any funds collected under a Subconcession described in Sections 6 and 7;
  - (3) any funds collected for Plaza Events under Section 8; and
  - (4) any funds collected for sponsorships under Section 9
- (collectively referred to herein as "Revenue").

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. PLAZA PARTNER may withdraw and use Revenue as defined herein from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to Plaza Partner's operation of the Licensed Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, maintaining and repairing the Licensed Plaza and as described in Sections 1 and 3.

C. No withdrawals shall be made from the Special Account other than as provided in this License.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by Plaza Partner (such as grants, donations, bequests and contributions) other than in the course of Plaza Partner's use or operation of the Licensed Plaza. Applicable law governs Plaza Partner's use of such other revenues.

F. Subject to paragraph (G) below, in no event shall the total annual Revenue from managing and operating the Licensed Plaza during the Term of the License exceed the cost of providing the Services and reasonable administrative costs.

G. At the end of each fiscal year in which the License is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this License, the Accrual Fund contains an amount that is more than three times the DOT-approved Licensed Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services in the Licensed Plaza. At the end of the Term of this License or if this License is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services.

## 6. SUBCONCESSION(S)

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals (“RFP”) or a Request for Bids (“RFB”) approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor’s Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 (“Threshold”). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT’s approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER’s written request for approval.

F. (1) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)’s contractors, subcontractors and agents, and PLAZA PARTNER’s contractors, subcontractors and agents that perform operations involving the Licensed Plaza to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein.

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)’s contractors, subcontractors and agents, and PLAZA PARTNER’s contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless. Any subconcession agreement(s) and/or other agreements that involve operations in the Licensed Plaza shall include the following, provided that the terms “SUBLICENSEE” and “PLAZA PARTNER” shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:

(a) SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the PLAZA PARTNER, City or others from damage, loss, injury resulting from any and all operations under this Agreement.

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the “Indemnitees”), 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) relating to or arising out of, or alleged (by a person

other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(c) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.

(d) SUBLICENSEE's obligation to defend, indemnify and hold the Indemnitees harmless shall not be (i) limited in any way by SUBLICENSEE's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees' to avail themselves of the benefits of such insurance.

G. The subconcession agreement(s) may not be assigned without the prior written approval of DOT. Such approval or denial shall not be unreasonably delayed. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

## **7. OPERATION OF THE SUBCONCESSION(S)**

A. PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

- (1) Operate the Subconcession(s) as provided herein; and
- (2) Continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s), consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30<sup>th</sup>) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30<sup>th</sup>) day following the termination of this License or the subconcession agreement(s), or June 30<sup>th</sup>, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating.

(1) PLAZA PARTNER shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess

all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) PLAZA PARTNER shall require its subconcessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), 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:

- (1) Collect and safeguard all monies generated under this License;
- (2) Maintain the Subconcession(s) in accordance with this License;
- (3) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) Secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT. Such approval or denial will not be unreasonably delayed.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's prior written approval. Such approval or denial will not be unreasonably delayed.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell wine and beer only with the appropriate license from the State Liquor Authority ("SLA"). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, and arrange for the removal, by a duly licensed private

carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(3) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

(4) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(5) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(6) During the term of this License, PLAZA PARTNER shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(7) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

(8) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

(9) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) and any subconcession structure is substantially completed, and DOT shall inspect the Subconcession(s) and/or any subconcession structure within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(10) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) and/or any subconcession structure for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

(12) PLAZA PARTNER shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subconcession structure.

(13) PLAZA PARTNER shall keep DOT fully informed of PLAZA PARTNER's progress in the construction of the Subconcession(s) and/or any subconcession structure.

(14) All risks of construction of the Subconcession(s) and/or any subconcession structure are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) and any subconcession structure will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER's expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay all municipal fees and impositions in connection therewith.

W. Upon DOT's prior written approval, PLAZA PARTNER may use DOT's Standard Plaza Kiosk (as approved by the New York City Public Design Commission and as more particularly described in **Exhibit D**) to operate the Subconcession(s). Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, at its sole cost and expense, shall furnish all interior fixtures and equipment for the operation of the Subconcession(s). PLAZA PARTNER shall not apply any Revenue to any such interior fixtures and equipment. Ownership title of the Standard Plaza Kiosk belongs to and shall remain with the City throughout the Term.

X. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

Y. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.

## **8. PLAZA EVENTS**

A. The Licensed Plaza may be used for Plaza Events (as defined in Section 1-01 of Title 50 of the Rules of the City of New York), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit an application to the Street Activity Permit Office ("SAPO") within the City's Office of Citywide Event Coordination and Management ("CECM") for any proposed Plaza Events to be held at the Licensed Plaza by the PLAZA PARTNER pursuant to SAPO's applicable rules.

C. PLAZA PARTNER may hold Plaza Events at the Licensed Plaza subject to:

(1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in Section 1-01 of Title 50 of the Rules of the City of New York;

(2) the City's right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

(3) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary;

(4) If applicable, PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with its own Plaza Events at the Licensed Plaza;

(5) all Plaza Events shall be open to the public and at no cost; and

(6) PLAZA PARTNER understands that the Licensed Plaza is public property and that activities at the Licensed Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore: (a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Licensed Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Licensed Plaza that may be protected by the First Amendment.

D. The City may use the Licensed Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event.

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Plaza Events, and DOT shall pay for any such fees or royalties relating to DOT's events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Licensed Plaza in connection with a Plaza Event, shall be appropriately located, and shall state that the Licensed Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. In addition to the SAPO permit fee collected by CECM, PLAZA PARTNER may collect a concession fee from the event sponsor or holder for any Commercial/Promotional events (as defined in Section 1-01 of Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of PLAZA PARTNER's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5, such sponsorships shall be considered Revenue. Sponsorships generated for the

general benefit of the PLAZA PARTNER shall not be subject to DOT approval and shall not be considered Revenue. However, if portions of such general sponsorships are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this subsection. Any such sponsorships shall be restricted in size, quantity and location as deemed appropriate by DOT.

(2) All sponsorships benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

B. Gifts

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept gifts solely for the benefit of the City and the Licensed Plaza. For purposes of this License, such gifts shall not be considered Revenue. Gifts obtained for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be subject to the provisions of this subsection.

(2) All gifts benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.

(3) PLAZA PARTNER shall prepare and provide to DOT bi-annual reports detailing any such gifts benefiting the City and the Licensed Plaza, in a format reasonably acceptable to DOT.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Licensed Plaza without DOT's written approval. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, upon twenty-four (24) hours' notice, shall remove any and all unauthorized notice or signage placed in or on the Licensed Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

E. For the avoidance of doubt, sponsorships and gifts as contemplated in this Section are not considered Plaza Events and are not subject to SAPO's rules.

## **10. INSPECTION AND AUDIT OF RECORDS**

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), it shall incorporate such provisions, appropriately modified to apply to the subconcessionaire(s), into any subconcession agreement(s).

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this License, and set forth, in a manner satisfactory to DOT, its expenditures in any way connected to the Services under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all activities concerning the Accrual Fund subject to Section 5(G) above.

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;
- (5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and
- (6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT 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 annual report to be filed with the Charities Bureau or any successor report). Finally, no more than sixty (60) days after the end of each fiscal year which is subject to the terms and conditions of this License, PLAZA PARTNER shall provide DOT with detailed statements, to DOT's reasonable satisfaction, concerning any revenue generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that PLAZA PARTNER has incurred, in connection with its maintenance responsibilities under this License.

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

- (1) all federal, state and local tax returns and schedules of PLAZA PARTNER;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and
- (4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within (30) days of the end of each quarter during the

Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER 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 PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, PLAZA PARTNER agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

K. Notwithstanding anything else to the contrary contained in this License, the parties 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.

L. This Section shall survive the expiration or earlier termination of this License.

## **11. INSURANCE**

A. PLAZA PARTNER's Obligation to Insure

(1) Upon written Notice to Proceed through the date of expiration or termination of this License, PLAZA PARTNER shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. PLAZA PARTNER shall ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such service of alcohol.

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

B. Commercial General Liability Insurance

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. This insurance shall protect the insureds from claims 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 00 01, shall contain no exclusions other than as required by law or as approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured 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 Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

(a) Contractual liability coverage insuring the contractual obligations of the insureds;

(b) Employers' liability coverage for liability assumed by the Licensee under an "insured contract";

(c) Coverage for claims arising under New York Labor Law; and

(d) The applicability of Commercial General Liability coverage to the Additional Insured in respect of liability arising out of any of the following claims: (i) claims against the Additional Insured by employees of a PLAZA PARTNER or employees of the entity required to maintain the insurance hereunder; or (ii) claims against the City, including its officials and employees, by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing; or (iii) claims against the City including its officials and employees arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

#### C. Workers' Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits Insurance

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

#### D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER 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 (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) If vehicles are used for transporting hazardous materials, such Commercial 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.

#### E. Liquor Law Liability Insurance

(1) In the event PLAZA PARTNER shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, PLAZA PARTNER shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name PLAZA PARTNER and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

#### F. General Requirements for Insurance Coverage and Policies

(1) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A-7 or a

Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Rating rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(2) With the exception of coverage required by the Workers' Compensation law, policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Whenever this Section 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 alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT 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, PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(5) The City's limits of coverage for all types of insurance required under this Section shall be the greater of: (i) the minimum limits set forth in this Section or (ii) the limits provided to PLAZA PARTNER under all primary, excess and umbrella policies covering operations under this License. The City reserves the right to increase the required limits of Commercial Property Insurance upon the Commissioner's determination that the existing limits do not adequately protect the City from financial risk due to potential claims for injury or property damage.

(6) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

#### G. Proof of Insurance

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

(2) Within 10 Days of award of this License or as otherwise specified by the DOT, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), PLAZA PARTNER shall submit proof of PLAZA PARTNER's workers' compensation insurance and disability and paid family leave benefits insurance (or proof of a legal exemption) to DOT in a form acceptable to the New York State Workers' Compensation Board and the Certificate Holder shall be City of New York, c/o Department of Transportation General Counsel, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (g) Form CE-200 – *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

(4) Certificates of Insurance confirming renewals of insurance shall be submitted to the DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.

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

(6) PLAZA PARTNER shall be obligated to provide the City with a copy of any policy of insurance required under this Section upon request by the DOT Commissioner or the New York City Law Department.

#### H. Miscellaneous

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

(2) PLAZA PARTNER 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.

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER 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. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

(4) PLAZA PARTNER's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section 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.

(5) Insurance coverage in the minimum amounts provided for in this Section shall not relieve PLAZA PARTNER 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.

(6) 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 Section, PLAZA PARTNER shall at all times fully cooperate with the City with regard to such potential or actual claim.

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

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event PLAZA PARTNER requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name PLAZA PARTNER as an additional insured under such insurance, PLAZA PARTNER shall ensure that such entity also names the City, including its officials and employees, as an additional insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26). Such coverage as an additional insured shall not require privity of contract between the City, including its officials and employees, and the named insured.

(9) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

## **12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

### **A. PLAZA PARTNER Responsibilities**

(1) PLAZA PARTNER shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

(2) PLAZA PARTNER shall take 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.

(3) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza 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 the PLAZA PARTNER or the Licensed Plaza (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER’s personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. 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.

B. PLAZA PARTNER Indemnification

(1) Notwithstanding any other provisions of this License, the maximum amount for which the PLAZA PARTNER is liable for third party bodily injury (including death) and property damage caused by the PLAZA PARTNER’s operations under this License shall not exceed the Commercial General Liability limits required in Section 11(B) above (“Limitation of Liability”). The Limitation of Liability shall not apply to PLAZA PARTNER’s contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)’s contractors, subcontractors or agents.

(2) To the fullest extent permitted by law, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) 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) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of this License. Such Liabilities shall include, without limitation, claims alleged to result from the following:

(a) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ negligence or failure to comply with any of the requirements of this License, including PLAZA PARTNER’s maintenance and/or repair obligations set forth in Section 3 herein;

(b) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(c) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(3) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by PLAZA PARTNER, the Indemnified Parties shall be partially indemnified by PLAZA PARTNER to the fullest extent permitted by law.

(4) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, DOT shall give prompt written notice of such claim to PLAZA PARTNER. PLAZA PARTNER shall assume and prosecute the defense of such claim at the sole cost and expense of PLAZA PARTNER. PLAZA PARTNER may settle any such claim in its discretion without consent of DOT and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the PLAZA PARTNER indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from DOT and the Corporation Counsel. .

(5) PLAZA PARTNER's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by PLAZA PARTNER's obligations to obtain and maintain insurance under this License except as expressly provided in Section 12(B)(1), nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

C. To the extent Liabilities arise from the following, they shall be excluded from PLAZA PARTNER's indemnification and defense obligations under Section 12(B):

- (1) the design and construction of the Licensed Plaza;
- (2) any subsurface structural conditions at the Licensed Plaza; and
- (3) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of PLAZA PARTNER.

D. City of New York Indemnification

(1) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities of third parties for injury, including death, or property damage to the extent arising out of the negligent repair of the DOT Standard amenities listed in Exhibit B.

(2) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities of third parties for injury, including death, or property damage to the extent arising out of any Plaza Events not sponsored by the PLAZA PARTNER.

(3) Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER.

### **13. ASSIGNMENT**

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

B. Except for the subcontracts for supplemental services let pursuant to the processes set forth in PLAZA PARTNER's contract with the New York City Department of Small Business Services that are for district-wide services, PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

(1) that work performed by the subcontractor must be in accordance with the terms of the License between DOT and PLAZA PARTNER;

(2) that nothing contained in such agreement shall impair the rights of DOT;

(3) that nothing contained herein, or under the License between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;

(4) that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

(5) (a) that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

(c) that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

(d) that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of PLAZA PARTNER to obtain any required consent to any assignment shall be grounds for termination for cause, at DOT's option. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to PLAZA PARTNER, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City.

D. This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

A. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Licensed Plaza by installing other amenities in addition to those already installed and listed in Exhibit B upon DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such capital improvements, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the PLAZA PARTNER plans to capitally improve the Licensed Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. PLAZA PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such alterations.

C. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work, excluding maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

E. DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Licensed Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair PLAZA PARTNER's obligations in any respect. DOT will coordinate with PLAZA PARTNER and provide reasonable notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA PARTNER's operations.

## **15. INSPECTION AT SITE**

DOT shall have the right at all times to have representatives of the City and/or the State or federal government present at the Licensed Plaza for any purpose.

## **16. PERSONNEL**

A. The parties agree that PLAZA PARTNER is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, assert the existence of any relationship or status on the part of PLAZA PARTNER, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

B. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this License. Nothing in this License, and no entity or person's performance pursuant to or in connection with this License, shall create any relationship between the City and PLAZA PARTNER's employees, agents, subconcessionaire(s), or subconcessionaire(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of PLAZA PARTNER, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity. Except as specifically stated in this License, nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

C. To the extent required by law, PLAZA PARTNER shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual

orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

## **17. INVESTIGATIONS CLAUSE**

A. The parties to this License agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a Federal, State of New York ("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, or license that is the subject of the investigation, audit or inquiry.

B. (1) 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, 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 or 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

(2) 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 under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking 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

C. (1) DOT 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 days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) 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 subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any 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

(2) The cancellation or termination of all such 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, with 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.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

(1) 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.

(2) 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.

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

(4) 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 subparagraph D 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 subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

## F. Definition of Terms

(1) 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.

(2) 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.

(3) 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.

(4) 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.

G. In addition to and notwithstanding any other provisions 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 PLAZA PARTNER fails promptly to 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 or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by PLAZA PARTNER, or affecting the performance of this contract.

## 18. NOTICE

All notices, except those related to Sections 11(H)(3) and 12(D)(3) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 34th Street Partnership, 5 Bryant Park, Suite 2400, New York, NY 10018 or such other address as may be notified from time to time.

## 19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six month written notice.

B. DOT shall have the right to terminate this License in whole or in part:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's

or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER becoming insolvent.

(4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.

(5) Upon DOT's determination that this License should be terminated without cause.

C. DOT shall give PLAZA PARTNER written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section, DOT shall provide written notice of such termination to PLAZA PARTNER, and this License shall terminate effective twenty-five (25) days from the date such notice is received by PLAZA PARTNER.

F. Force Majeure Event

(1) Subject to the remaining paragraphs of this Section 19(F), if PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event (as defined below), PLAZA PARTNER shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of the Services. The time for performance of such Services shall be extended commensurate with the nature of the Force Majeure Event.

(2) "Force Majeure Event" means any circumstance beyond PLAZA PARTNER's reasonable control and without PLAZA PARTNER's fault or negligence affecting the Licensed Plaza or a substantial portion thereof including:

(a) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom; and

(e) collapse of buildings, fire, explosion, or citywide blackout.

(3) If PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event, PLAZA PARTNER shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event, notify DOT of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License;

(b) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the Services under this License; and

(c) resume performance of the Services as soon as reasonably practicable after the removal of the Force Majeure Event.

(4) If the Force Majeure Event prevents, hinders or delays PLAZA PARTNER's performance of the Services for a continuous period of more than thirty-five (35) days, DOT may terminate this License by giving PLAZA PARTNER twenty-five (25) days' written notice.

G. Upon expiration or sooner termination of this License by DOT, all rights of PLAZA PARTNER herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

H. Upon such termination PLAZA PARTNER shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

I. PLAZA PARTNER agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations and cause any subconcessionaire(s) to cease all operations pursuant to this License and shall vacate and cause any subconcessionaire(s) to vacate the Licensed Plaza without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration, or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Plaza.

J. PLAZA PARTNER shall, or shall cause its subconcessionaire(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Plaza. PLAZA PARTNER acknowledges that any personal property remaining on the Licensed Plaza after the expiration, or sooner termination of this License, is intended by PLAZA PARTNER to be abandoned. PLAZA PARTNER shall remain liable to the City for any damages, including the cost of removal or disposal of property, should PLAZA PARTNER and/or its subconcessionaire(s) fail to remove all possessions from the Licensed Plaza on or before the expiration or termination date. PLAZA PARTNER shall pay any damages promptly upon the City's demand.

K. Upon termination of this License, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

(1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this License, and carrying out any DOT directive concerning the disposition thereof.

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

(3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this License.

(4) Submit, within ninety (90) days, a final statement and report relating to the License. The report shall be made by a certified public accountant or a licensed public accountant.

L. PLAZA PARTNER expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

M. This License may be suspended for any reason with written notice from DOT. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, PLAZA PARTNER shall not operate. In the event that PLAZA PARTNER’s operation is disrupted due to construction in the immediate area where the Licensed Plaza is located, this License may be suspended, at DOT’s option.

N. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER’s breach of the License.

O. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DOT may terminate this License.

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER shall continue to comply with all provisions of this License as if the License was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this License shall in no way be construed as a renewal

or other extension of this License, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this License, including but not limited to, damages and restitution and injunctive relief.

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

A. PLAZA PARTNER shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. PLAZA PARTNER shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and PLAZA PARTNER's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. PLAZA PARTNER shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in **Exhibit E**.

C. With respect to services provided under this License, PLAZA PARTNER shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, PLAZA PARTNER is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. PLAZA PARTNER makes the following representations and warranties:

(1) PLAZA PARTNER 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 power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and

assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

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

(4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this License, PLAZA PARTNER is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). PLAZA PARTNER makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and PLAZA PARTNER shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this License.

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect 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.

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

## **22. CONFLICT OF INTEREST**

PLAZA PARTNER 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. PLAZA PARTNER 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.

### **23. NO LEASE**

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

### **24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLAZA PARTNER 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 PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 133629973.

### **25. RESERVATION OF RIGHTS AND INTERESTS**

A. 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.

B. Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT. PLAZA PARTNER will conspicuously acknowledge the involvement of DOT in any such statement or release. If DOT finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, PLAZA PARTNER and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER 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.

### **26. WAIVER OF JURY TRIAL**

PLAZA PARTNER hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against PLAZA PARTNER or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License including, but not limited to, the relationship between the City and PLAZA PARTNER.

This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

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

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within 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 that:

(1) If the City initiates any action arising out of this License against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER either by personal service upon an officer or authorized agent of PLAZA PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

(2) With respect to any action arising out of this License between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If PLAZA PARTNER commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

## **28. CLAIMS AND ACTIONS THEREON**

A. 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 or in any way connected

with this License unless PLAZA PARTNER 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.

B. No action shall lie or be maintained against the City by PLAZA PARTNER upon any claims based upon this License unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, PLAZA PARTNER shall diligently render to the City without additional compensation any and all assistance which the City may require of PLAZA PARTNER.

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

## **31. TRADEMARK**

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Plaza will result in the immediate termination of this License.

### **32. INFRINGEMENTS**

PLAZA PARTNER shall be liable to the City and hereby agrees to indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by PLAZA PARTNER of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by PLAZA PARTNER in the performance of this License.

### **33. ANTI-TRUST**

PLAZA PARTNER hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

### **34. EMINENT DOMAIN AND PUBLIC USE**

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

### **35. DEVELOPMENT PURPOSES**

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. PLAZA PARTNER also agrees that this License shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

### **36. SEVERABILITY**

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.

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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.

**38. MODIFICATION**

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

**39. ENTIRE AGREEMENT**

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

**40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**NO FURTHER TEXT ON THIS PAGE**

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

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

Michelle Craven  
Assistant Commissioner, Office of Cityscape and Franchises  
New York City Department of Transportation

Dated:

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

Dan Biederman  
President  
34th Street Partnership, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

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

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this            day of            , 20\_\_ before me personally came Dan Biederman, who, being duly sworn by me did depose and say that he is the President of the 34th Street Partnership, Inc., the corporation described in and who executed the foregoing instrument and she acknowledged that she executed the same in his/her official capacity and for the purposes mentioned therein.

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Notary Public



## Exhibit B

[List of Amenities—all quantities are approximations]

- Planter Benches (11) – 167 linear feet (lf)
- Flexible Delineators (3)
- Bike Racks (10)
- Folding Chairs (150)
- Folding Tables (50)
- Umbrellas (9)
- Bleacher Seating – 275 linear feet (lf)
  - Small bleacher – 78 lf
  - Medium bleacher – 197 lf
- Painted Pavement (18,200 sf)
- Plantings (440 sf)



## Exhibit D

[PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE 26412

RESOLVED That the Design Commission, having considered designs for the design of a prototypical kiosk for installation in plazas, citywide, submitted by the Department of Transportation, represented by exhibits 6816-GS, GT & GU of record in this matter, hereby gives to the same unanimous preliminary approval with the understanding that DOT will (1) consider solar tubes or photovoltaic panels to draw in additional light if the perforated screens are found to be insufficient for daylighting; (2) incorporate a standard location and size for information that will be on all kiosks, such as DOT's logo; (3) develop the signage guidelines to provide as much control as possible; and (4) return as soon as possible with an update on the Astor Place kiosks. The Commission urges DOT to (1) require maintenance partners to utilize this design in all plazas, except in unique site contexts, and (2) establish aesthetic guidelines for temporary kiosks. The Commission also notes that any kiosk or other structure remaining in-situ (with or without permanent footings) for longer than 365 days is subject to PDC review per the New York City Charter, Chapter 37, Section 854(g).

Preliminary approval is conditioned upon submission of this project for final review and approval before December 11, 2019.

A true copy of resolution adopted by the Design Commission at its meeting on December 11, 2017.

A handwritten signature in black ink, appearing to read "Justin Garrett Moore".

Justin Garrett Moore  
Executive Director

**Philip Aarons, Laurie Hawkinson, Susan Morgenthau, Signe Nielsen, Ethel Sheffer, Hank Willis Thomas, Mary Valverde, Commissioners**

## Exhibit E

### [Paid Sick Leave Law Concession 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 PLAZA PARTNER agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this License. The PLAZA PARTNER further acknowledges that such compliance is a material term of this License and that failure to comply with the PSLL in performance of this License may result in its termination.

The PLAZA PARTNER must notify DOT’s General Counsel in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this License. Additionally, the PLAZA PARTNER 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 PLAZA PARTNER. The PLAZA PARTNER 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 PLAZA PARTNER can get more information about how to comply with the PSLL. The PLAZA PARTNER 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

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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.

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.

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 PSLL 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 PSLL. 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 PSLL 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 permitted 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 PSSL 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 PSSL.

## 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.

## SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$2,000	\$5,000	\$12,000

# Memo

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

**From:** Courtney Kaadi (CK)  
NYC & Company Inc.

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

Alexandre Stamoulis  
Mayor's Office of Contract Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** March 29, 2019

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

The proposed concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact me by e-mail at [ckaadi@nycgo.com](mailto:ckaadi@nycgo.com).

Best,



Courtney Kaadi

**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 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-2019-003
<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) (CSP)\*
  Competitive Sealed Proposals

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

Negotiated Concession\*

Recommended Concessionaire: Nike  EIN  SSN # 930891124  
 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 \_\_\_\_\_ Title \_\_\_\_\_

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

**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 \_\_/\_\_/\_\_

**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 Nike, 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 Nike, Inc.

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

Nike, Inc. is an American multinational corporation that is engaged in the design, development, manufacturing, and worldwide marketing and sales of footwear, apparel, equipment, accessories. Since being founded in 1971, Nike has become the world's largest supplier of athletic shoes and apparel and a major manufacturer of sports equipment. The combination of Nike'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 Nike. It is in the City's best interest to negotiate a sole source agreement with Nike because through cobranded merchandise featuring the highly sought after Nike 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 Nike, Inc. for the non-exclusive use of City-owned trademarks on footwear, apparel and accessories. We intend to bring this matter before the FCRC on May 8<sup>th</sup> 2019 ("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**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the 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 Nike, Inc. (“Nike”) 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 Nike to the FCRC for approval.

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

May 8<sup>th</sup>, 2019

Date:

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

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



**Small Business  
Services**

Gregg Bishop  
Commissioner

**TO:** Hon. Gale A. Brewer, Manhattan Borough President  
Lucian Reynolds, District Manager, Manhattan Community Board #1

**FROM:** Andrew Schwartz, Deputy Commissioner, DSBS 

**SUBJECT:** Intent to Seek FCRC Authorization to Utilize a Different Procedure to Negotiate a Sole Source Concession Agreement with the New York City Economic Development Corporation for the Enhancement and Activation of the Former Streets at the South Street Seaport

**DATE:** Friday, March 15, 2019

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In accordance with Section 1-16 of the Concession Rules of the City of New York (“Concession Rules”), the New York City Department of Small Business Services (“DSBS”), is seeking approval from the Franchise and Concession Review Committee (“FCRC”) to utilize a different procedure to negotiate a Sole Source Concession with the New York City Economic Development Corporation (“NYCEDC”) for the enhancement and activation of a portion of former streets consisting of sections of Fulton Street, Water Street, and Front Street generally bounded by South Street, John Street, Water Street, Pearl Street and Beekman Street (“Former Streets”), located in the South Street Seaport Special District, Borough of Manhattan.

In accordance with leases between the City of New York and the (i) South Street Seaport Museum (“Museum”), and (ii) South Street Limited Partnership (“SSSLP”), the Museum and SSSLP have consented to such a concession to NYCEDC. It is anticipated that NYCEDC will activate and enhance the Former Streets by issuing permits for community events, enriched programming, and revenue generating events.

The proposed concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact Tia Pierce, Procurement Officer, DSBS, by phone at (212) 618-9258 or via email [tpierce@sbs.nyc.gov](mailto:tpierce@sbs.nyc.gov) or Orion Hinkley, Senior Associate, NYCEDC, by phone (212) 312-1241 or via email [ohinkley@edc.nyc](mailto:ohinkley@edc.nyc)

**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> New York City Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> South Street Seaport Former Streets
<b># VOTES required for                  proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> 7189

**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: New York City Economic Development Corp.  EIN  SSN # 13-2577233  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> Initial Term: To be negotiated Renewal Option(s) Term: To be negotiated  Total Potential Term: To be negotiated	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>                  (Check all that apply)</p> <p align="center"><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 type="checkbox"/> N/A</p> Address <u>South Street Seaport Former Streets, New York, New York</u> Borough <u>Manhattan</u> C.B. <u>1</u> Block # <u>   </u> Lot # <u>   </u>	

\*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.

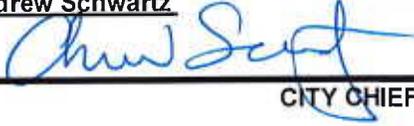
**AUTHORIZED AGENCY STAFF**

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

Name Andrew Schwartz

Title Deputy Commissioner

Signature



Date 4/19/19

**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   /  /  

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 (Sole Source)

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

- 1. Briefly summarize the terms and conditions of the concession.** Department of Small Business Services ("DSBS") is seeking approval from FCRC to negotiate a sole source concession agreement with the New York City Economic Development Corporation ("NYCEDC") for the demapped streets consisting of sections of Fulton Street, Water Street, and Front Street generally bounded by South Street, John Street, Water Street, Pearl Street and Beekman Street ("Former Streets") located in the South Street Seaport Special District, Borough of Manhattan. The purpose of the proposed sole source concession is to give NYCEDC an opportunity to enhance and activate the Former Streets by issuing permits for community events, enriched programming, and revenue generating events.
- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** Pursuant to the Maritime Contract between the City and NYCEDC, NYCEDC administers the City's existing leases for the South Street Seaport. The purpose of the concession is for NYCEDC to activate and enhance the Former Streets, which are not part of the leased premises. A sole source concession agreement is consistent with NYCEDC's administration of the leases for the South Street Seaport and with the Maritime Contract between the City and NYCEDC. Pursuant to Section 2.1(c) of the Amended and Restated Marketplace Lease, Landlord must receive consent from South Street Seaport Limited Partnership and the Seaport Museum before granting any rights, permits or licenses respecting such use of the Former Streets by any other entity or person. Both Tenants have provided written consent to a proposed sole source concession to NYCEDC. Based on the foregoing, it is in the City's best interest for FCRC to authorize DSBS to negotiate a sole source concession agreement with NYCEDC.
- 3a. Briefly explain the selection procedure that will be utilized.** DSBS is requesting FCRC 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 Concession Agreement with NYCEDC. Upon receipt of FCRC's authorization ("Step 1"), DSBS will negotiate with NYCEDC and thereafter seek FCRC approval of the negotiated sole source concession agreement ("Step 2") at a subsequent FCRC meeting. Once negotiated and if determined by DSBS to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed concession agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If DSBS determines the concession to be non-significant, the agency will present the fully negotiated concession agreement to the FCRC and request the required FCRC authorization to enter into the agreement 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.  **N/A**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_\_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (FCRC) authorizes 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 a sole source concession agreement with the New York City Economic Development Corporation for the enhancement and activation of a portion of former streets consisting of sections of Fulton Street, Front Street and Water Street generally bounded by South Street, John Street, Water Street, Pearl Street and Beekman Street, located in the South Street Seaport Special District, Borough of Manhattan.

**BE IT FURTHER RESOLVED**, that DSBS, shall submit the proposed concession agreement to the FCRC for approval.

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

**MAY 8, 2019**

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

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

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