



NYC Parks

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City of New York
Parks & Recreation

The Arsenal
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New York, NY 10065
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MEMORANDUM

TO: Hon. Eric L. Adams, President of the Borough of Brooklyn
Mr. Eddie Mark, District Manager, Brooklyn Community Board 13

FROM: Eric Weiss, Senior Project Manager 

SUBJECT: Notice of Joint Public Hearing, April 8, 2019: Intent to amend the existing permit agreement between the New York City Department of Parks and Recreation and Surf Avenue Parking, LLC, for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn, New York

DATE: Friday, March 22, 2019

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation (“Parks”) to be held on Monday, April 8, 2019 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the existing Permit Agreement between Parks and Surf Avenue Parking, LLC. (“Permitee”) for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn, New York. The amendment, among other things, extends the Permit Agreement for one (1) year with an additional one (1)-year renewal option, to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Permitee shall pay to the City permit fees consisting of the following: Operating Year 6: a flat annual fee of \$153,762.00. Operating year 7 (option at Parks’ sole discretion): a flat annual fee of \$153,762.00.

A draft copy of the amended Permit Agreement may be reviewed or obtained at no cost, commencing on Monday, March 25, 2019 through Monday, April 8, 2019, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

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 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

- 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 **XX/XX/XXXX**

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 4/10/2019.
- 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 Alexander Han

Title Director of Concessions

Signature _____

Date __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

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

Signature _____

Date __/__/__

City Chief Procurement Officer

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

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the Permit Agreement ("Permit Agreement") with Surf Avenue Parking, LLC ("SAP") for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn, New York.

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

A. SELECTION PROCEDURE

Sole Source

Other *Describe:* Amendment to Permit Agreement between Parks and SAP

B. NEGOTIATIONS

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

The amendment, among other things, will extend the term of the Permit Agreement for one (1) year, with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

SAP shall operate, maintain and manage the parking facilities at MCU Park, Coney Island for the use and enjoyment of the general public in accordance with the terms of the Permit Agreement and to the satisfaction of the Commissioner.

For operating year 6, SAP will pay Parks a flat annual fee of \$153,762.00. At the sole discretion of Parks, the Permit Agreement may be renewed for an additional one year renewal. For operating year 7, which will be at Parks' sole option, SAP will pay Parks a flat annual fee of \$153,762.00.

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:

In 2009, the Department of City Planning, in partnership with the New York City Economic Development Corporation (EDC), the Department of Housing Preservation and Development (HPD) and Parks, developed a comprehensive rezoning plan to establish a framework for the revitalization of the Coney Island amusement area and the surrounding blocks. The plan builds upon the few remaining existing amusements to create a new 27-acre amusement and entertainment district that will reestablish Coney Island as a year-round, open and accessible amusement destination.

As part of the rezoning plan, a new east-west street is being planned which will divide a 375,000 square foot Parks-owned parcel—a portion of the Brooklyn Block 7073 Lot 101, composed of the part of the MCU parking lot and the Abe Stark ice rink—into two future development sites. The Parks-owned portion of the sites is slated to be demapped.

As the timing of the property transfer to EDC from Parks has been adjusted, and an exact property transfer date is still uncertain, Parks believes that it is in the City of New York's (City) best interest to amend the existing Permit Agreement with Surf Avenue Parking, LLC to extend the term on a short-term basis rather than proceed with a competitive solicitation process. Parks believes that there is not enough time to draft and solicit a new RFP, award, negotiate and register a new contract prior to the property transfer from Parks to EDC.

By amending the existing Permit Agreement for one (1) year with an additional one (1) year option exercisable at Parks' sole discretion, the parking lot will continue to be able to provide a public parking amenity to visitors to Riegelmann Boardwalk, Coney Island beach, the amusement area, neighborhood special events and the Abe Stark ice rink without any lapse in service.

Additionally, the City, acting through Parks has a Stadium Lease Agreement with Brooklyn Baseball Company (Tenant), tenant of the adjacent baseball stadium. Parks or SAP is contractually obligated to provide parking available no less than two (2) hours prior to the scheduled start of and at least one (1) hour after the end of each Tenant event. To ensure Parks meets this continuing obligation, and for the other reasons set forth above, Parks is pursuing an amendment to the existing Permit Agreement.

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 03/22/2019, 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 03/22/2019, 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 in the 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 03/22/2019.

- New York Post, a NYC citywide newspaper on 03/28/2019 and 04/04/2019.
- Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 03/29/2019 and 04/05/2019.
- Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 03/28/2019 and 04/04/2019.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on 04/08/2019.

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

(Cal. No. #)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the existing Permit Agreement between Parks and Surf Avenue Parking, LLC (“Permitee”) for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn. The amendment, among other things, extends the Permit Agreement for one (1) year, with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Permitee shall pay to the City permit fees consisting of the following: Operating year 6: a flat annual fee of \$153,762.00; Operating year 7 (option at Parks’ sole discretion): a flat annual fee of \$153,762.00.

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

April 10, 2019

Date: _____

Signed: _____

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

AMENDMENT TO PERMIT AGREEMENT

BETWEEN

SURF AVENUE PARKING, LLC

AND

**CITY OF NEW YORK
PARKS & RECREATION**

FOR THE RENOVATION, OPERATION AND MAINTENANCE OF PARKING FACILITIES
AT MCU PARK, CONEY ISLAND.

BROOKLYN, NEW YORK

B369-PL

DATED: _____, 2019

AMENDMENT TO PERMIT AGREEMENT (“Amendment”) made this ____ day of _____, 2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Surf Avenue Parking, LLC (“Surf Avenue” or “ Permitee”), a corporation organized under the laws of the State of Delaware, whose address is 477 South Rosemary Avenue, Suite 319 West Palm Beach, FL 33401.

WHEREAS, the parties to this Amendment are parties to that certain Permit Agreement dated April 7, 2014, (the “Permit” or “Permit Agreement”); and

WHEREAS, the Permit Agreement originally contemplated a one (1) year term with the option of up to four (4) one-year extensions, each of which has been exercised and the last of which shall expire on April 30, 2019;

WHEREAS, Parks is currently evaluating options and planning for the future of the parking lot concession at the MCU Park, Coney Island; and,

WHEREAS, the parties wish to extend the Term of the Permit Agreement for one (1) additional year with the option of one (1) further additional year, to ensure that the public can continue enjoying the concession while Parks works to develop future plans for this concession; and,

WHEREAS, the New York City Economic Development Corporation has undertaken infrastructure work on Surf Avenue and, as a result, the perimeter of the Licensed Premises may, from time to time, be inaccessible for use by the permittee; and,

WHEREAS, the parties desire to amend the terms of the Permit Agreement subject to and in accordance with the terms of this Amendment.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

1.1 Unless otherwise noted in this Amendment, all capitalized terms in this Amendment shall have the meaning ascribed to them in the Permit Agreement.

1.2 The “TERM” provision of the Cover Sheet of the Permit Agreement is amended by deleting it in its entirety and inserting the following new TERM provision:

TERM: One (6) years from Notice to Proceed, with the option for one (1) one-year renewal at Parks’ sole discretion.

1.3 The FEE AND PAYMENT TERMS provision of the Cover Sheet of the Permit Agreement is amended by adding:

Operating Year 6: \$153,762.00

Operating Year 7: (if option exercised) \$153,762.00

1.4 Section 6 of the Permit Agreement is amended by deleting the following sentence

“The approved hours for the commencement of operations hereunder are set forth on Exhibit B attached to the Cover Page”

in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees for Operating Year 6.

1.5 Section 19 of the Permit Agreement is amended by deleting Section 19 in its entirety and inserting the following new Section 19:

19. TOBACCO; ALCOHOL The selling and/or advertisement of cigarettes, cigars, any other tobacco products, non-tobacco smoking products, e-cigarettes, or alcohol is strictly prohibited. It is the Permittee’s responsibility to adhere to and enforce the prohibitions of this Section 19.

1.6 The “PARK/LOCATION IN PARK (“PREMISES”)” term on the Permit Cover Page is amended by deleting it in its entirety and inserting the following new PARK/LOCATION IN PARK (“PREMISES”) term:

Two parking lots near the Stadium. The primary lot (“Primary Lot”), consisting of approximately 808 parking spaces, unless a smaller number of spaces is assigned, is located adjacent to the Stadium between West 19th and West 20th Streets between Surf Avenue and Riegelmann Boardwalk. The second lot, consisting of

approximately 150 parking spaces, unless a smaller number of spaces is assigned, is located between West 21st and West 22nd Streets, between Surf Avenue and Riegelmann Boardwalk. See map annexed hereto as Exhibit A for exact location of parking lots.

1.7 Section 26 is deleted in its entirety and replaced as follows:

(a) Permittee shall maintain Commercial General Liability (“CGL”) insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury, and if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to each vending location and the per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence based” rather than “claims-made.” Such CGL insurance shall name the City, together with its officials and employees as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26, and the City’s limits shall be no less than the Permittee’s. Such CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by the City. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the City’s status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. Permittee must submit proof of valid Workers’ Compensation Insurance, Employer’s Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C105-C; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers’ Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers’ Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker’s Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

(c) If vehicles are to be used in connection with the concession granted hereby, Permittee shall carry Business Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles.

(d) Permittee shall maintain all-risk property insurance covering all the parking gates and any revenue control equipment on the property at a value reasonably determined by Parks. Such insurance, if required, shall include coverage for, among other risks, damage cause by flooding. If for any reason it does not, the concessionaire shall purchase separate flood insurance. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate Permittee as Named Insured and the City as Loss Payee as their interests may appear.

(e) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(f) For each policy required under this Permit, except for Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee's general liability policy by which the City has been made an additional insured pursuant to Section 26. All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Insurance Agent or Broker" in the form attached as Exhibit E or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(g) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section.

(h) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(i) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

1.8 Section 27(a) is deleted in its entirety, and replaced as follows:

To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the City, its officials and employees harmless against any and all claims (even if the claims are without merit), liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this Permit and/or Permittee's failure to comply with the law or any of the requirements of this

Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City, or its officials or employees from being completely indemnified by Permittee, the City, its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

1.9 Except as amended by this Amendment, the Permit Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the Permit Agreement, the terms of this Amendment shall govern and prevail in all instances.

1.10 This Amendment may be executed in several counterparts, which shall constitute one and the same instrument.

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

CITY OF NEW YORK
PARKS & RECREATION

SURF AVENUE PARKING, LLC

By: _____

By: _____

Name:

Name:

Title:

Title:

Dated: _____

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2019 before me personally came _____ to me known, and known to be the _____ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2019 before me personally came _____ to me known, and known to be the _____ of Surf Avenue Parking, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

EXHIBIT B1
Schedule of Approved Hours and Fees
[to be provided upon effective date]

EXHIBIT E

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

