

PUBLIC MEETING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

WEDNESDAY MAY 15th, 2024 @ 2:30 P.M.

Location:
22 Reade Street
Spector Hall
New York, NY 10007

NOTE: 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) 298-0800. Any person requiring reasonable accommodation for the public meeting should contact MOCS at least five (5) business days in advance of the meeting to ensure availability. 

*Franchise and Concession Review Committee Public Meeting
Wednesday May 15th, 2024 @ 2:30 P.M.*

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 1: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval 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 with Statue Cruises LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan. The License will provide for one (1) ten (10) year term.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 2: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval 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 with The Battery Conservancy, Inc. for the operation and maintenance of The Battery in Manhattan including a share of the concession revenue generated at the Licensed Premises. The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options.



NYC Parks

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**City of New York
Parks & Recreation**

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

NOTICE OF PUBLIC HEARING

To: Hon. Mark Levine, President of the Borough of Manhattan
Zach Bohmer, District Manager, Manhattan Community Board 1

From: Andrew Coppola, Senior Project Manager *ac*

Subject: Notice of Joint Public Hearing: May 13, 2024: Intent to Award a Sole Source Agreement to Statue Cruises LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan. Concession No. M5-E-M

Date: April 26, 2024

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation ("NYC Parks") to be held on May 13, 2024, at 2 Lafayette, Room 1412, New York, NY 10007 commencing at 2:30 p.m. relative to:

INTENT TO AWARD a Sole Source Agreement ("License") to Statue Cruises LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan.

The License will provide for one (1) ten (10) year term.

Compensation to the City will be as follows:

The greater of the annual minimum fee versus the annual percentage of gross receipts: Operating Years 1-5: \$2,500,000 versus 10% of Gross Receipts; Operating Years 6-10: \$3,000,000 versus 10% of Gross Receipts

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:



NYC Parks

1. Submit a written request to NYC Parks at concessions@parks.nyc.gov from 4/26/2024 through 5/13/2024.
2. Submit a written request by mail to NYC Department of Parks and Recreation, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by 5/10/2024. For mail-in request, please include your name, return address, and License # M5-E-M.
3. Download from NYC Parks website at <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis> from 4/26/2024 through 5/13/2024.

The agenda, transcript, and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

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 212-298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Statue Cruises Ferry Services **Concession ID** M5-E-M

Description The operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan **Agency** New York City Department of Parks and Recreation ("Parks")

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Statue Cruises, LLC Telephone (201) 432-6321

Address 1 Audrey Zapp Drive, Room 108B, Jersey City, NJ 07305 EIN or SSN # 20-8877253

Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 10 years Concession Site(s) Yes No

Renewal Option(s) _____ to _____ Address Landing Slips, Battery Park

_____ to _____

Total Potential Term 10 years Borough Manhattan Community Board 1

>20 years – FCRC unanimously approved term on ___/___/___ Block# 3 Lot# 1

Recommended Annual Revenue
(Check all that apply)

Annual Fee(s) \$ _____

Gross Receipts _____ %

The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts

Other See additional info form

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

Sole Source

Amendment or extension to an existing concession agreement

Not-for-Profit concession agreement

Other (Please specify)

Award is a Major Concession

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 ___/___/___

N/A

No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

The sole source license agreement ("Agreement") with Statue Cruises, LLC for the operation and maintenance of passenger ferries for the purpose of embarking and discharging passengers on a regular schedule between The Battery, Liberty Island, and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to day and night charters of vessels, owned, operated or chartered by Statue Cruises, LLC at landing slips and adjacent walkways located in The Battery, Manhattan. The sole source license agreement provide for a ten (10) year term which will be conterminous with the

Award Requirements

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

The National Park Service ("NPS") and Statue Cruises, LLC ("Statue Cruises") are parties to an agreement by which Statue Cruises provides ferry services to the Statue of Liberty National Monument ("Statue of Liberty") and Ellis Island from The Battery, Manhattan. In 2024, the parties entered into a new agreement effective from 3/1/24 through 2/28/34. Statue Cruises is the only ferry operator licensed by NPS to operate at the Statue of Liberty and Ellis Island. Since NPS is the only entity with power to grant access to the Statue of Liberty and Ellis Island, and Statue Cruises is the sole ferry service with an agreement with NPS to provide said service, Parks has determined that a competitive solicitation

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 05 / 13 / 2024

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 04 / 26 / 2024 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on 05 / 15 / 2024 (date of the FCRC public meeting)

Votes in favor: Votes against:

OR

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

Law Department approved concession agreement on: / /

Authorized Signatures

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

Signature _____

Name _____

Title _____ 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

ADDITIONAL INFORMATION

For Agency Use With Concession Forms

Statue Cruises Ferry Services

M5-E-M

Concession Title _____ **Concession ID** _____

Description The operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan **Agency** New York City Department of Parks and Recreation ("Parks")

Recommended Annual Revenue:

Year 1 \$2,500,000.00 Vs. 10% Gross Receipts
Year 2 \$2,500,000.00 Vs. 10% Gross Receipts
Year 3 \$2,500,000.00 Vs. 10% Gross Receipts
Year 4 \$2,500,000.00 Vs. 10% Gross Receipts
Year 5 \$2,500,000.00 Vs. 10% Gross Receipts
Year 6 \$3,000,000.00 Vs. 10% Gross Receipts
Year 7 \$3,000,000.00 Vs. 10% Gross Receipts
Year 8 \$3,000,000.00 Vs. 10% Gross Receipts
Year 9 \$3,000,000.00 Vs. 10% Gross Receipts
Year 10 \$3,000,000.00 Vs. 10% Gross Receipts

LICENSE AGREEMENT

BETWEEN

STATUE CRUISES, LLC

AND

**CITY OF NEW YORK
PARKS & RECREATION**

for

FOR THE OPERATION AND MAINTENANCE OF A COMMERCIAL FERRY SERVICE
TO THE STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND FROM
THE BATTERY,

MANHATTAN, NEW YORK

M5-E-M

DATED: _____, 2024

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LICENSE AGREEMENT (“License” or “License Agreement”) made this ____ day of _____, 2024, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065, and Statue Cruises, LLC (“Licensee”), a limited liability company organized under the laws of the State of Delaware, whose address is 1 Audrey Zapp Drive, Jersey City, NJ, 07303.

WHEREAS, Parks, pursuant to the City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

WHEREAS, The Battery in the Borough of Manhattan is property under the jurisdiction and control of Parks; and

WHEREAS, Licensee desires to operate passenger vessels including commercial ferry service for the transportation of passengers between The Battery and Liberty and Ellis Islands pursuant to authorizations from appropriate Federal, State and City agencies, in accordance with Licensee’s contract with the National Park Service (“NPS”) which may be amended from time to time (“NPS Agreement”) and the terms set forth herein; and

WHEREAS, in connection therewith, the Commissioner desires to provide for the operation and maintenance of a minimum of one (1) landing slip and a maximum of three (3) landing slips, as are available, and adjacent walkways in The Battery, Manhattan for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island and day and night charters of vessels owned, operated or chartered by Licensee for the accommodation and convenience of and use by the public and Licensee wishes to provide same; and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) Rules for the selection of concessionaires and has received authorization to enter into a sole source concession agreement with Licensee; and

WHEREAS, Parks and Licensee desire to enter into a License Agreement specifying rights and obligations with respect to the operation and maintenance of the Licensed Premises as defined in Section 2.1(j).

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

1. GRANT OF LICENSE

1.1 Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of no more than three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more particularly described in Section 2.1(j) herein, for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on

sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee, for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner.

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary for the development, operation, and maintenance of the Licensed Premises in accordance with the terms of this License and to perform any Capital Improvements (as defined in Section 2.1(k)) In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Failure to fulfill any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. Parks shall cooperate with Licensee in obtaining any required approvals, permits or other licenses.

1.3 It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, and that Licensee shall not acquire any property interest in the Licensed Premises whatsoever but that during the Term of this License, Licensee shall have the use of the Licensed Premises in order to carry out the purposes herein provided. Except as herein provided, Licensee has the right to occupy and operate the Licensed Premises so long as this License is not terminated by the Commissioner in accordance with the terms of this License.

1.4 Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or the Commissioner's representatives and to other City, State, and Federal officials having jurisdiction for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement. Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises.

1.5 (a) All intellectual property rights in the Licensed Premises, "The Battery" and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks, including Parks' signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications are the property of the City ("City IP"). Licensee may use the names "The Battery" in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, any other uses of "The Battery" or any other City IP may be only used pursuant to a separate written agreement between the City and Licensee. Parks may require that the City own the portion of any new name selected by Licensee for use at the Licensed Premises that indicates Parks' property or uses a pre-existing facility name or otherwise contains any City IP. The City will not own any portion of any new name that consists of the name, portrait, or signature of a living or deceased individual or identifier that is not otherwise associated with Parks' property. Parks reserves the right to approve of any name selected by the Licensee for the Concession.

(b) Licensee may not use any City IP as a part of their trade, business, company, LLC or D/B/A name, nor may they incorporate under the laws of any State using any City IP as a part of their trade, business, company, LLC or D/B/A name. To the extent that Licensee has already

so incorporated, they will be required to amend their registration and remove from their trade, business, company, LLC or D/B/A name that portion that contains any City IP.

(c) Any business or trade name, which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the Commissioner's prior written approval.

(d) Parks may issue a separate Request for Proposals for naming rights of the Licensed Premises or portions thereof. In the event Parks solicits for and selects a proposal for naming rights, Licensee shall be required to use the name that Parks selects.

2. DEFINITIONS

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

(a) "City" shall mean the City of New York, its departments and political subdivisions.

(b) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or Commissioner's designee.

(c) "Comptroller" shall mean the Comptroller of the City of New York.

(d) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Fixed Equipment, provided by Licensee, except that it shall not include Licensee's vessels used for the purpose of ferry operations to and from Liberty and Ellis Islands.

(e) "Fixed Equipment" shall mean any property affixed in any way to Licensed Premises, whether or not removal of said equipment would damage Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment permanently affixed to Licensed Premises subsequent to the Commencement Date of this License.

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

(f) "Parks" shall mean the New York City Department of Parks & Recreation.

(g) "Substantial Completion" or "Substantially Complete" shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed, and that the improvement may be utilized by the public.

(h) "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is

required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year. For example, Operating Year 1 shall refer to the period between March 1, 2024, to February 28, 2025.

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, one (1) to three (3) landing slips, as are available, as authorized in writing by Parks and adjacent walkways located in The Battery, Manhattan and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping. During the duration of the Term, when three (3) or more landing slips at the Battery are available and suitable for the operation of passenger ferries, Parks shall assign the maximum of three (3) landing slips as Licensed Premises to the Licensee. The parties acknowledge that the Lower Manhattan Coastal Resiliency Project and other unforeseen projects or events may prevent Parks from assigning more than one (1) slip to Licensee as its Licensed Premises. At any time during the Term of this License Agreement, Parks may designate different landing slips from slip(s) currently authorized for Licensee’s use, subject to availability, provided however that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

(k) “Capital Improvements” shall mean all construction, reconstruction or renovation of the Licensed Premises, including architectural, engineering, and design fees and permitting costs necessary to implement such construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include the installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Licensed Premises.

(l) “Alteration” shall mean (excepting ordinary repair and maintenance):

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

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

(m) (i) "Gross Receipts" shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks

Merchandise as defined below) or services of any kind at The Battery, provided that Gross Receipts 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 Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts by Licensee from all sponsorships at the Licensed Premises, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 19 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however, that any gratuities transmitted by Licensee directly or indirectly to employees shall not be included within Gross Receipts. Licensee shall provide documentation satisfactory to Parks to prove that such gratuities were paid to employees in addition to their regular salaries.

(v) Gross Receipts shall include all funds received for services rendered by the Licensee plus any deposits made in relation to said services.

(n) "Special Events" shall mean any private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Commissioner for Commissioner's prior approval plans for any such Special Events at the Licensed Premises which will result in the closing of the entirety of the Licensed Premises to the public during regular hours of operation.

(o) "Parks Merchandise" shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks'

discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

3. TERM OF LICENSE

3.1 This License shall become effective upon registration with the Comptroller's Office and commence upon the date written in a written "Notice to Proceed" issued to Licensee ("Commencement Date"). Subject to earlier termination pursuant to the terms of this License Agreement, this License shall terminate upon the earliest occurrence of one of the following: (i) ten (10) years from the Commencement Date; (ii) termination by Licensee of this License upon an NPS directive; or (iii) termination of Licensee's NPS Agreement, (collectively, "Termination Date" or "Expiration Date"). The period between the Commencement Date and the Termination Date shall be referred to as the "Term". Licensee shall not commence the operation of any part of the concession granted hereby, until it has received from Parks the Notice to Proceed and in no event shall the Concession become effective prior to registration with the Comptroller. Parks acknowledges that during the Term, NPS may require Licensee to conduct its operations out of a location other than the Licensed Premises, necessitating the early termination of this License Agreement. Upon notification from NPS to Parks of such relocation, Parks agrees to terminate this License Agreement and agrees to not pursue any claims against Licensee for lost revenue related to such early termination of the License Agreement, and the License fee will be reduced on a pro rata basis.

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

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

3.3 Parks may terminate this License for cause as follows:

(a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice within thirty (30) days from the mailing thereof, or such longer period required to cure such breach if Licensee has expeditiously commenced curing such breach and is diligently prosecuting such cure to completion, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate upon the written notice of Commissioner to Licensee advising that the License is terminated. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows within one (1) year of the initial breach, other than nonmaterial breaches or omissions, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be

immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) day notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to limit the Commissioner's right to terminate this License pursuant to Section 3.2 hereof.

3.4 In the event Commissioner terminates this License for reasons related to Section 3.3 (a) or (b) above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

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

3.6 Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises (unless such property is held by the Commissioner pursuant to Section 3.4) and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement. Pursuant to Section 4.4 herein, City may use the Security Deposit to recover such damages in part or in whole, however City's recovery of such damages shall not be limited by the Security Deposit.

3.7 If this License is terminated as provided herein, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution, or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.8 If this License is terminated as provided in Section 3.3 hereof:

(a) Parks may draw down on the Security Deposit in accordance with Section 4.4; and Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or re-permitted at an equal or higher fee (if at a lower fee, then only the net difference shall be owed by Licensee); and

(b) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability, provided that Licensee shall not be responsible for any further Capital Improvements or Alterations nor responsible to complete any further work towards Capital Improvements or Alterations upon relicense or re-permitting of the Licensed Premises.

3.9 No receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks on account of Licensee's liability hereunder.

3.10 Should NPS require Licensee to terminate this License in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to Licensee, Parks agrees not to pursue any claims for lost revenues related to such early termination of said License.

4. PAYMENT TO CITY

4.1 (a) Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of gross receipts derived from the operation of the Licensed Premises:

Operating Year	Minimum Annual Fee	Percentage of Gross Receipts
Operating Year 1:	\$2,500,000.00	10%
Operating Year 2:	\$2,500,000.00	10%
Operating Year 3:	\$2,500,000.00	10%
Operating Year 4:	\$2,500,000.00	10%
Operating Year 5:	\$2,500,000.00	10%
Operating Year 6:	\$3,000,000.00	10%
Operating Year 7:	\$3,000,000.00	10%
Operating Year 8:	\$3,000,000.00	10%
Operating Year 9:	\$3,000,000.00	10%
Operating Year 10:	\$3,000,000.00	10%

(b) In the event of the suspension of Licensee’s ferry service for a period of time (which time shall be determined by Parks based on all the relevant circumstances) due to circumstances beyond the control of Licensee, including, without limitation, acts of God, war, or enemies, or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire, future pandemics or other casualty, Licensee shall propose for the Commissioner’s approval (which shall not be unreasonably withheld) revised terms relating to the payment of fees contemplated by this Section 4. Such revised terms are subject to applicable City requirements. the minimum annual fee shall be reduced on a pro rata basis.

4.2 The minimum annual fee for each Operating Year shall be paid to the City in equal monthly installments on the first (1st) day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments attached as Exhibit A. If at any time Licensee’s annual percentage fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the twentieth (20th) day of each succeeding month in such Operating Year.

4.3 Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become

immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of One Thousand Dollars (\$1,000), due on the first (1st) day of the month must be received no later than the tenth (10th) day of the month. If no payment is received, a two percent (2%) late charge in the amount of Twenty Dollars (\$20) will be assessed on the eleventh (11th) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10th) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or the Commissioner's right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Upon affixing its signature to this License, Licensee shall deposit with the City the amount of \$750,000.00 as its security deposit ("Security Deposit"). The Security Deposit may be in the form of an interest-bearing instrument or other format approved by Parks. The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

(b) The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts; provided, however, any interest which accrues on the Security Deposit shall be the property of the Licensee, subject to any associated fees, including but not limited to, annual maintenance fees, as determined by the Comptroller.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice (provided that such cure period may be extended at the Commissioner's sole discretion upon Licensee demonstrating that Licensee has commenced cure and is diligently pursuing the same to completion), appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of License fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five (5) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the

provisions of this License.

4.5 (a) On or before the thirtieth (30th) day following each month of each Operating Year, Licensee shall submit to Parks, in the form annexed hereto as Exhibit D or other form reasonably satisfactory to Parks, a statement of Gross Receipts, signed and verified to be true and correct by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. The statement shall include the following phrase: “I hereby certify above statement to be true and correct.” Each of the reports of Gross Receipts shall report the Gross Receipts generated at the Licensed Premises in the categories for which rates, fees or prices are specified on Exhibit B, the Schedule of Approved Hours and Rates, Fees and Prices, including, without limitation, the following categories:

NPS Statue of Liberty Ferry Service	Gross Receipts from rates and charges for tickets for ferry service between the Licensed Premises and Liberty Island and Ellis Island; and
NPS Island Cruise Service	Gross Receipts from rates and charges for tickets for NPS sightseeing cruises that begin and/or terminate at the Licensed Premises; and
Other Ferry Operations	Gross Receipts from rates and charges for tickets for all other ferry operations that begin and/or terminate at the Licensed Premises; and
Miscellaneous	All other Gross Receipts generated at and realized from Licensee’s operation of the Licensed Premises.

(b) Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state, and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, to the extent applicable, may be deducted from Gross Receipts or from the compensation due under this License. The Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts.

4.6 On or before the thirtieth (30th) day following each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee, in a format reasonably approved by Parks.

4.7 (a) Licensee, during the Term of this License, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from

the Licensed Premises; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.

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

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall, if not cured after ten (10) days written notice, be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 2027's Gross Receipts are missing and the highest April Gross Receipts occurred in April 2024, then April 2027's "revised" Gross Receipts shall be calculated using April 2024's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

4.8 In the event Parks determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.5 through 4.7 hereinabove Licensee may be subject to a charge of \$500.00 with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty (30) days of such notice.

4.9 License fees shall be made payable to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation Revenue Division
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10065

4.10 Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided in this License, or to any other address that Licensee shall have filed with Commissioner.

4.11 At Parks' request and upon (1) the execution of a new agreement between the Battery Conservancy ("TBC") and Parks (the "New TBC Agreement") providing that TBC may receive a portion of the license fee payments from this License Agreement and (2) subject to any additional City approvals which may be necessary, including FCRC approval and registration of the New TBC Agreement, Licensee shall be required to pay portions of the license fee payments to TBC, which funds shall be used by TBC for the operation and maintenance of the area in and around the New Amsterdam Plain & Pavilion and provide additional maintenance support to The Battery as shall be set forth in more detail in the New TBC Agreement.

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

5.2 The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License,

5.3 Notwithstanding anything in this License Agreement, 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.

6. ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS

6.1 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

7. UTILITIES

7.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with the appropriate service providers. Licensee will be required to pay for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that the New York City Department of Environmental Protection ("DEP") assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City.

8. INFLAMMABLES

8.1 Except for properly stored gasoline, and other substances approved by the United States Coast Guard ("USCG") in the operation of passenger vessels, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

9. OPERATIONS

9.1 Licensee, at its sole cost and expense, shall operate this License for the daily accommodation of NPS, Parks, and the public, on a year-round basis and at such times of day as the Commissioner shall reasonably prescribe and as required by the NPS Agreement and as otherwise permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in their "as-is" condition and agrees to use its best efforts to obtain necessary permits and approvals related to all operations at the Licensed Premises. Parks agrees to use its reasonable efforts to assist Licensee by directing Licensee to appropriate governmental agencies having jurisdiction and by taking such other actions and cooperating with Licensee to obtain such approvals as may be reasonably necessary. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks. Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and Licensee shall perform the following services at the Licensed Premises:

(a) operate and manage the landing facilities and adjacent walkways for embarking and discharging passengers related to Licensee's ferry and passenger vessel operations, including but not limited to the NPS Statue of Liberty Concession, the NPS Island Cruise Service, sightseeing cruises, day and night charters of vessels and other ferry operations;

(b) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair in accordance with Section 12 herein.

9.2 Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all its operations at the Licensed Premises seven (7) days a week for such hours as the Commissioner shall reasonably approve. Licensee's employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner. Annexed hereto and made a part hereof as Exhibit B is the Schedule of Approved Hours and Fees, including the schedule of sailings for Operating Year 1. Licensee shall notify Commissioner promptly of any permanent changes to its scheduled operations as may be required by NPS. All operational plans, including delivery schedules, rubbish removal schedules, and hours of operation are subject to Parks' approval. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

9.3 Parks is a governmental agency which has responsibilities to the public to make efforts to ensure that operations on premises owned or controlled by it are conducted in a manner which is consistent with fair treatment to the consuming public, including pricing which reflects regularly available competitive market prices at nearby locations, subject to reasonable adjustments for variations in costs and market factors. Parks acknowledges that Licensee is a concessioner of NPS under the terms of a concession contract with NPS ("NPS Agreement") and that as part of that concession relationship, NPS may require modification of schedules and prices, require Licensee to follow recommendations and give reasons why recommendations should be followed, but that the prices for the ferry services to Liberty Island and Ellis Island ultimately posted by Licensee are subject to NPS approval. Parks acknowledges and accepts the rates, schedule, and formula for ferry rate increases outlined in Exhibit B. Rates for all other services, including scheduled cruises, vessel charterers, and other ferry services departing from the Licensed Premises are subject to Parks' prior written approval.

9.4 (a) Licensee shall notify the Commissioner within five (5) business days whenever Licensee tentatively schedules any private use of the Licensed Premises (e.g., private parties) which would close the entire Licensed Premises to the general public. In no event shall Licensee close the entire Licensed Premises to conduct private activities during public hours. In addition, Parks may make use of the Licensed Premises, as provided in Section 17 herein.

(b) In the event of extreme weather conditions including heavy snowfall, hurricanes, or floods, which prohibit the use of the whole or a substantial part of the Licensed Premises for the purposes as provided in this License, Licensee may close the Licensed Premises. In the event of such a closing as provided in this Section 9.4(b), Licensee shall notify the Commissioner within at least twelve (12) hours of closing the Licensed Premises.

9.5 Licensee shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable rules, laws and regulations. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any Certificates of Occupancy and Permits of Assembly, as issued.

9.6 Licensee shall submit to Commissioner for Commissioner's approval which shall not be unreasonably withheld, not less than sixty (60) days before the first day of each Operating Year, the approved NPS schedules for the coming Operating Year concerning operating days and hours for the services and products to be provided under this License during the forthcoming Operating Year. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days, hours, fees and rates. Parks acknowledges that Licensee is a concessioner of NPS under the terms of the NPS Agreement and that as part of that concession relationship, NPS may require modification of schedules, require Licensee to follow recommendations and give reasons why recommendations should be followed, but that the schedules ultimately posted by Licensee for the ferry services to Liberty Island and Ellis Island are subject to NPS approval. The hours and schedules for all other services, including scheduled cruises, vessel charterers, and other ferry services departing from the Licensed Premises are subject to Parks' prior written approval. In the event of any federal government shutdown during which Liberty and Ellis Islands are closed to the public, all usage of the Licensed Premises shall be subject to Parks' approval.

9.7 Licensee shall record all transactions involved in the operation of this License on cash registers and keep books and records as required by Section 4.7 of this License Agreement.

9.8 Licensee warrants that all services provided pursuant to this License shall be of high grade and good quality.

9.9 Licensee shall not use or permit the use of any polystyrene foam products in connection with services or merchandise offered under this License.

9.10 An officer of the Licensee shall personally operate this License or employ an operations manager(s) ("Manager(s)") possessing appropriate qualifications to manage operations at the Licensed Premises in a manner that is satisfactory to the Commissioner in Commissioner's reasonable discretion. The Manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor, or sub-licensee whenever requested by Commissioner.

9.11 Licensee shall provide equipment, which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

9.12 Licensee shall, at its sole cost and expense, provide, hire, train, supervise, and be

responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collect and safeguard all monies generated under this License;
- (b) maintain the Licensed Premises;
- (c) conduct and supervise all activities to be engaged in at the Licensed Premises including but not limited to the provision of qualified food and guest service personnel and cashier(s); and
- (d) securing the Licensed Premises.

9.13 Licensee shall comply with all laws, rules, and regulations of appropriate agencies, specifically the DEP, regarding noise levels. In no event shall Licensee play any music or music programming which would require it to pay fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcasting Music, Inc. (BMI), or such other applicable entity. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to Commissioner. Outdoor amplified sound will not be permitted past 10pm. Any musical programming or other types of entertainment must be approved by Parks.

9.14 Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the reasonable prior written approval of the Commissioner.

9.15 Licensee shall provide access to the Licensed Premises to disabled members of the public. This accessibility shall be clearly indicated by signs and included in advertising by Licensee when practicable. Licensee shall include in its advertising and promotion program, provided for in Section 9.22 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall be in compliance with the applicable provisions of the Americans with Disabilities Act (“ADA”) and any other similarly applicable legislation. Signage shall also comply with ADA standards.

9.16 Licensee shall be responsible for all security at the Licensed Premises, which may include installing a CCTV monitoring system at the Licensed Premises on a twenty-four (24) hour per day basis or implementing such other plan as approved and enacted by the United States Parks Police and any other agencies having jurisdiction.

9.17 Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring at the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft, which may be asserted against Licensee with respect to the Licensed Premises of which Licensee becomes aware. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage (including all insured claims for loss or damage) pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person’s name and address.

9.18 Licensee shall promptly notify Parks' personnel of any unusual conditions at the Licensed Premises that may develop in the course of the operation of this License of which License becomes aware such as, but not limited to, fire, flood, casualty and substantial damage of any character.

9.19 Licensee shall comply with all DEP directives during City drought restrictions.

9.20 Licensee shall maintain close liaison with Parks' Enforcement Patrol, NYPD, and other police officials, and cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises. Licensee shall report illegal activity on the Licensed Premises to Parks, NYPD, or other police officials immediately upon Licensee becoming aware of such activity.

9.21 The Commissioner shall have the right to reasonably approve the days and times on which deliveries to Licensee may be made.

9.22 (a) Licensee may establish an advertising and promotion program, , however Licensee shall not place any advertisements on the exterior of the Licensed Premises or on any building. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter except advertising which contains tobacco, non-tobacco smoking product, electronic cigarette or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11.. Licensee may release news items to the media as it sees fit. If the Commissioner in Commissioner's reasonable discretion, however, finds any releases to be unacceptable, then Licensee shall cease or alter such releases as directed by the Commissioner. The Commissioner shall have prior approval as to the design and distribution of all advertising and promotional material relating to any and all of Licensee's operations at the Licensed Premises under this License Agreement, the Licensed Premises, the Battery, or Parks' logo.

(b) Licensee may, subject to the prior reasonable approval of the Commissioner as to design and distribution, such approval not to be unreasonably withheld, print or arrange for the printing of advertising, signs, programs or brochures containing advertising matter, except advertising matter which contains tobacco, non-tobacco smoking product, electronic cigarette or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11., or which adversely affects the reputation of the Licensed Premises, Parks or the City of New York. Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the prior written approval of the Commissioner.

(c) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License, at locations which do not interfere with operations at the Licensed Premises determined through consultation with the Licensee.

(d) Under no circumstances shall Licensee be permitted to place advertisements on the Licensed Premises. Licensee shall not advertise any product brands on the Licensed Premises without Parks' prior approval.

9.23 (a) Licensee shall display at the Licensed Premises, in an appropriate manner, all permits and licenses required to operate the Licensed Premises.

(b) Any sign posted by Licensee on the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner, shall be appropriately located, and shall state that the Licensed Premises is a New York City municipal concession operated by Licensee. In addition, Licensee may display signage for the purpose of advertising upcoming events at the Licensed Premises, the design, location, size and type of which shall be aesthetically appropriate and subject to the reasonable approval of Parks and where appropriate, the NYC Art Commission.

9.24 Intentionally omitted.

9.25 The sale or advertising of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is strictly prohibited. In addition, the use of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is prohibited. Licensee will be required to adhere to and enforce this policy.

9.26 The sale of beverages from glass bottles at the Licensed Premises is strictly prohibited. All beverages shall be decanted into non-glass, shatter-proof containers before being served.

9.27 Intentionally omitted.

9.28 Licensee shall conduct regular pest control inspections and extermination, as needed. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use and comply with any additional Parks regulations on pesticides use.

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

9.30 Intentionally omitted.

9.31 Licensee shall comply with the Earned Safe and 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 annexed hereto as Exhibit E.

9.32 Licensee must provide ADA accessibility as required by prevailing code throughout the Licensed Premises. Licensee shall comply with all City, State, and Federal requirements to

provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

9.33 Licensee agrees to work in good faith to cooperate with Parks efforts to advance Parks-approved volunteering events and programming at or near the Licensed Premises. Parks' concession unit will coordinate these activities with the Licensee.

10. INTENTIONALLY OMITTED

11. IMPROVEMENT AND/OR CORRECTION IN OPERATIONS

11.1 Should the Commissioner reasonably decide that Licensee is not operating the Licensed Premises in a manner consistent with a typical public landing and docking facility in the same segment of the market, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. Licensee's failure to comply with such written notice or to respond in a manner satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, shall be deemed a default under this License, and Commissioner may terminate this License in accordance with Section 3.3(a) hereof.

11.2 Should Commissioner, in Commissioner's sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have twenty-four (24) hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

12. MAINTENANCE, SANITATION, AND REPAIRS

12.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, put, keep, repair, preserve, and maintain in good order the Licensed Premises, including all batter piles, mooring bits, wales, chocks, paths, walkways, and signage so as to maintain the Licensed Premises in a manner customary for landing and docking facilities in the same industry. Licensee shall at all times keep the Licensed Premises clean, litter free, neat and, with respect to any food service operations, fumigated, disinfected, deodorized and in every respect sanitary. Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the perimeter of the Licensed Premises), and collect and remove all litter, debris, snow, and garbage therefrom. Licensee shall provide for the regular cleaning and maintenance of the perimeter of the Licensed Premises including but not limited to the timely removal of all litter and debris, snow and garbage, perimeter sidewalk and perimeter fence maintenance and repair. Licensee shall repair and maintain in good working order any and

all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment. To the extent required by law, Licensee shall obtain any required permits, pay all applicable fees and shall submit to any agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings for the maintenance and repair of the Licensed Premises.

12.2 All such maintenance shall be performed by Licensee in a good and worker-like manner. In part to secure Licensee's obligation to maintain and repair the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4(a).

12.3 No later than thirty (30) days before the end of each Operating Year, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and all Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee during the forthcoming Operating Year in order to comply with the terms of this License.

12.4 (a) Licensee shall provide adequate waste receptacles at the Licensed Premises. All waste, garbage, refuse, rubbish, and litter which collects upon the Licensed Premises, without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises at a frequency satisfactory to the Commissioner, all at the Licensee's sole cost and expense. In performing its duties under this section, Licensee shall comply with all applicable ordinances and programs of the City, state, and federal governments.

(b) Licensee will provide separate receptacles for recyclable items, and shall conform to all New York City, New York State and federal recycling laws as the same may exist from time-to-time.

12.5 At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted. The condition of the Licensed Premises at the Commencement Date shall be considered acceptable.

12.6 At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises during the Term hereof.

12.7 Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License, without the express written permission of Parks.

12.8 At its sole cost and expense, Licensee shall repair and maintain the landing slips available to them as assigned by Parks, and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of

all litter, debris, and garbage. During the Term, in the event that Licensee is assigned a different landing slip(s) than the landing slip(s) assigned on the Commencement Date, Licensee's obligations under this Article 12 shall apply to said newly assigned landing slip(s). However, in the event the newly assigned landing slip(s) are in a condition which requires repair work, normal wear and tear excepted, Licensee may propose and submit for Commissioner's approval a plan to equitably address such required repair work. Nothing in the proceeding sentence shall reduce or otherwise alter Licensee's maintenance obligations as described in this Agreement.

12.9 Licensee acknowledges that prior to the commencement of the Term, Licensee performed repair and maintenance work to Slip 2 at its sole cost and expense. Licensee acknowledges and agrees that Licensee shall not seek, and is not entitled to seek, payment, reimbursement, vouchers, or credits from Parks for the cost of any of the repair and maintenance work Licensee performed on Slip 2 prior to the commencement of the Term. This Section 12.9 shall not in any way alter Licensee's maintenance, sanitation, or repair obligations as laid out in this Article 12.

12.10 Intentionally omitted.

12.11 Intentionally omitted.

12.12 Licensee shall provide adequate staff in order to maintain the Licensed Premises in a manner consistent with a typical public landing and docking facilities operating in the same segment of the market.

12.13 In the event the Commissioner requires or directs Licensee to undertake any routine maintenance or repair in order to operate and maintain the Licensed Premises in accordance with Article 11 and Article 12 of this License Agreement, Licensee shall promptly, and in any event within forty-eight (48) hours from the time of written notification by the Commissioner (provided that such maintenance or repair is capable of being completed in such time period) undertake and complete such maintenance or repair. In the event such maintenance or repair may not be completed within such time period, Licensee shall diligently prosecute to completion such maintenance or repairs, subject to unavoidable delays beyond reasonable control of Licensee. Any extension of time for the completion of such maintenance or repair shall be granted at the reasonable discretion of Commissioner. If Licensee fails to complete such routine maintenance or repair within such time period, Licensee shall pay liquidated damages of two hundred fifty dollars (\$250.00) for each day such routine maintenance or repair is not completed.

12.14 In the event Licensee maintains any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity at the Licensed Premises, Licensee shall (i) maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with State Department of Environmental Conservation ("DEC") and register such tanks with the DEP; (ii) assume all registration and update costs; (iii) keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randall's Island, New York; (iv) perform or have performed a tightness test conducted at least once every five (5) years and shall comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks, if any, must be pre-approved by Parks.

13. EQUIPMENT

13.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, provide, and replace, if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve, and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

13.2 Subject to the terms of this License Agreement, City has title to all Fixed Equipment on the Premises as of the date of Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent the City chooses not to exercise such option, Licensee shall at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment, other than Fixed Equipment, and restore the Licensed Premises to a condition reasonably satisfactory to Parks but Licensee shall not be required to restore to a condition better than at the commencement of the Term.

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

13.4 Licensee must acquire, replace or repair, or install or affix, at its sole cost and expense, any equipment, materials, and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by Commissioner, except that Commissioner shall not impose requirements on Licensee regarding the vessels used for the purpose of ferry operations to and from Liberty and Ellis Islands.

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

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

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

13.8 Licensee shall install Energy Star approved or other similarly efficient appliances and equipment at the Licensed Premises.

14. EXPENDABLE OR PERSONAL EQUIPMENT

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

14.2 Licensee must acquire, replace or repair, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by Commissioner, except that Commissioner shall not impose requirements on Licensee regarding the vessels used for the purpose of ferry operations to and from Liberty and Ellis Islands.

14.3 Title to all Expendable Equipment obtained by Licensee (other than that applied toward Capital Improvements) shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee in accordance with Section 3.6.

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

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

14.6 Licensee shall install Energy Star approved or other similarly efficient appliances and equipment at the Licensed Premises.

15. EQUIPMENT AND CONDITION UPON SURRENDER

15.1 Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, shall put, keep, landscape, repair, and preserve in good order Licensed Premises, which shall include sidewalks, and Fixed and Additional Fixed Equipment.

15.2 Notwithstanding the foregoing, at the expiration or sooner termination of this License, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment

to which City holds title, in at least as good a condition as said Licensed Premises, and the Fixed and Additional Fixed Equipment were found by Licensee, reasonable wear and tear excepted.

15.3 Licensee acknowledges that it is acquiring a license to use the Licensed Premises and Fixed Equipment thereon solely on reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is."

16. BONDS, CAPITAL PROJECTS, SUSPENSION & SECURITY

16.1 To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project, excluding routine maintenance and repairs required to be performed as per Section 12.1, with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other capital undertaking shall be in a form acceptable to Parks. For purposes of this provision a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 16.1: (i) Licensee guarantees payment in accordance with the provisions of Exhibit G, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

16.2 Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term of this License. The U.S. Army Corps of Engineers ("Army Corps"), or other federal or state entity, may also perform work which requires closure of portions of The Battery, including the Licensed Premises. Licensee agrees to cooperate with Parks to accommodate any such work by a City, Army Corps, state, or federal entity and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one (1) week notice of any such work. Parks may temporarily close a part or all of the Licensed Premises to facilitate the completion of a City, Army Corps, state or federal project, as determined by the Commissioner. In the event that Licensee must close the Licensed Premises because of such Parks, Army Corps, state, or federal work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event of full or partial closure of the Licensed Premises or suspension of Licensee's operations at the Licensed Premises, as provided for herein.

16.3 This License may be suspended in full or in part for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand

delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

16.4 Licensee acknowledges that the City has planned multiple capital construction projects ("Capital Projects") in the vicinity of the Licensed Premises during the Term, including, but not limited to, the renovation of existing slips, north of the Licensed Premises and the reconstruction of the entire length of the pedestrian promenade/wharf south and west of the Licensed Premises, which includes a portion of the Licensed Premises, which will impact the operation of the concession. Licensee acknowledges that the Capital Projects may impact how many and which landing slips Licensee is authorized to use. Subject to Section 16.2 above, Licensee assumes the risk and sole cost and expense of conducting business at the Licensed Premises during any Capital Project.

16.5 Licensee shall be responsible for securing of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

16.6 For any and all Capital Improvement Project, Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Small Business Services ("SBS"), the New York City Department of Buildings ("DOB"), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer, who will oversee the entire construction project. Licensee shall submit the architect's or engineer's qualifications to Parks for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All necessary permits and approvals for capital work must be obtained from SBS or DOB, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and letters of no objection, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to the Commissioner's satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed. To the extent required by law, Licensee shall obtain any required permits, pay all applicable fees and shall submit to any agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings for the maintenance and repair of the Licensed Premises.

16.7 At Parks' request, Licensee shall provide Parks with one (1) complete set of final, approved "AS-DESIGNED" plans in a format acceptable to Parks. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on four (4) millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED" drawings submitted must be so labeled. Each drawing shall contain the name, address and telephone number of the architect/engineer and the contractor. Each drawing shall also include the Parks property number, block and lot numbers for the Parks facility in which the work was performed, and, if applicable, the DOB approval/application number.

16.8 For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the DOB, insofar as it has jurisdiction over Capital Improvements. Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, fire department certificates and all other permits and approvals including, but not limited to, SBS, New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation, New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits necessary for any alterations to the existing premises. Licensee shall notify Commissioner of the specific date on which construction shall begin.

16.9 Licensee shall perform all Capital Improvements 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 as part of the Capital Improvements shall, except as may be approved by Parks, be new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in Licensee's name, all manufacturer's warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the Licensee's Capital Improvements when and if, as set forth in this License Agreement, the City exercises its option to take title to such equipment and materials, as may be requested by the City from time to time. Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guarantees and warranties or exercise other rights or remedies. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensee(s) of the Licensed Premises.

16.10 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, and City laws, rules, regulations and orders.

16.11 Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

16.12 No temporary storage or other ancillary structures and staging areas may be erected and maintained without Parks’ prior written approval.

16.13 Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from Parks. Licensee will report dead and diseased trees to Parks and upon Parks’ request Licensee will remove them. Any attachments to the trees, such as lights, will not be permitted.

16.14 Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 16.14 shall constitute a default and may result in the termination of this License.

16.15 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment, accepted by Parks as Capital Improvements 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 their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and repair any damage caused by such removal to the Licensed Premises, to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

17. RESERVATION FOR PARKS SPECIAL EVENTS

17.1 For the purposes of this Article the term “Parks’ Special Event(s)” shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks’ Special Events and unanticipated events and emergencies at the Licensed Premises. Parks agrees to notify Licensee and NPS at least thirty (30) days in advance of any such Parks’ Special Event. Licensee and Parks agree to work

cooperatively and in good faith each other and with NPS in scheduling Parks' Special Events. Any Special Event shall be coordinated with the operations of Licensee. Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Article shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

17.2 In order to host benefits, programs, and other non-profit or public events, Parks may request, no more than three times a calendar year, and Licensee, subject to NPS' approval if required (which shall be requested by Licensee), shall be required to provide, non-exclusive use of the entire Licensed Premises by way of up to twenty-five (25) tickets for ferry services, at no cost to Parks.

18. INTENTIONALLY OMITTED

19. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

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

(b) Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment or sublicense documents as provided herein. The Commissioner may request any additional information the Commissioner deems necessary, and Licensee shall promptly comply with such requests.

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

19.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of forty-nine percent (49%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all

information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sub-licensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

19.3 No consent to or approval of any assignment or sub-licensee granted pursuant to this Article shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

19.4 In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Article 24 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

19.5 Licensee and proposed assignee/transferee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

20. ALTERATIONS

20.1 (a) Licensee may alter Licensed Premises only with the written approval of Parks. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

(b) In order to alter Licensed Premises pursuant to subsection (a) of this Section, Licensee must:

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

(ii) Ensure that work performed and alterations made on Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article 20, in a good and workmanlike manner, and within a reasonable time; and

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

(c) Commissioner may, in Commissioner's discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligations herein or operations hereunder in any respect.

21. COMPLIANCE WITH LAWS

21.1 Licensee shall comply with and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, state or federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

21.2 Licensee shall not use the Licensed Premises, or any portion thereof, and Licensee shall use diligent efforts not to allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

22. NON-DISCRIMINATION

22.1 With respect to all employment decisions, Licensee shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Licensee shall comply with the ADA and regulations pertaining thereto as applicable. Any violation of this Article shall be a material breach of this License.

22.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

23. NO WAIVER OF RIGHTS

23.1 No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein and the expiration of applicable cure periods shall be deemed a waiver of any right on the part of Commissioner to terminate this License. No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and

conditions.

24. INDEMNIFICATION

24.1 Licensee Responsibility.

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

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

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

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

24.2 Indemnification and Related Obligations

(a) To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) (i) arising out of or related to any of the operations under this License (regardless of whether or not the Licensee itself has been negligent), and/or (ii) the Licensee's failure to comply with the law or any of the requirements of this License (collectively, "Losses"). Notwithstanding the foregoing, Licensee shall not be responsible for Losses to the extent due to the negligence or intentional tortious act or omission of the City or its officials and employees. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely

indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

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

25. WAIVER OF COMPENSATION

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

25.2 Licensee further 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 Commissioner sooner than the fixed term because the Licensed Premises are required for any Park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

26. WORKERS' COMPENSATION AND INSURANCE

26.1 Licensee's Obligation to Insure

(a) From the date this License Agreement is executed through the date of expiration or termination of the Agreement, the Licensee shall ensure that the types of insurance indicated in this Article 26 are obtained and remain in force, and that such insurance adheres to all requirements herein.

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

26.2 Commercial General Liability Insurance, Protection & Indemnity Insurance, and Pollution Insurance

(a) The Licensee shall maintain Commercial General Liability 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. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). 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 Commissioner, and shall be “occurrence” based rather than “claims-made.”

(b) Such Commercial General Liability insurance shall name 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 Form CG 20 26. “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 Form CG 20 26.

(c) If the Licensee maintains Marine Protection & Indemnity Insurance or Vessel Pollution Insurance or both, such policies of insurance shall list the City, including its officials and employees, as additional insured. Such coverage, if maintained, shall be in an amount that is commercially reasonable.

26.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance

The Licensee shall maintain, or for workers not directly employed by Licensee, cause to be maintained, Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee’s operations under this License, and such insurance shall comply with the laws of the State of New York.

26.4 Commercial Automobile Liability Insurance

(a) If vehicles are used in connection with Licensee’s operations under this License Agreement, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) for each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. 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. Such Commercial Automobile Liability insurance shall name 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.

26.5 Property Insurance

(a) At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an

additional insured and loss payee as its interests may appear. Licensee's replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.

(b) In the event of any loss to any of the Concession Structures, the Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, the Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

26.6 Flood Insurance

(a) At the direction of the Commissioner, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. As of February 29, 2024, Licensee has no building that would require such flood insurance. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

(b) In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as a loss payee under all such policies.

26.7 Marine Insurance

(a) Licensee shall obtain insurance covering liability arising from its ownership, operation, rental or other use of watercraft, with limits of at least Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Such insurance may be provided through endorsement to the Licensee's Commercial General Liability policy or through a separate policy, which policy shall be subject to the City's approval. Such insurance shall include the City of New York, including its officials and employees, as additional insured.

26.8 General Requirements for Insurance Coverage and Policies

(a) Policies of insurance required under this Article 26 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII", a Standard & Poor's rating of at least A, a Moody's Investors Service rating of A3, or a Fitch's Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City Law Department.

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

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

(d) There shall be no self-insurance program or self-insured retention exceeding \$10,000 with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

(g) All required policies, except for Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

26.9 Proof of Insurance

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

(b) For Workers’ Compensation, Employer’s Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker’s Compensation Insurance; U-6.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or

successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance coverage.

(c) For all insurance required under this Article other than Workers' Compensation, Employer's Liability, and Disability Benefits Insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee'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 Commissioner (attached hereto as Exhibit F) or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

26.10 Miscellaneous

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

(b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, 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 the Licensee 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 the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name 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 20 26).

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

the policy.

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

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

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

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

(h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee 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 Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company to endeavor to provide the City with advance written notice in the even such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New

York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

27. INVESTIGATIONS

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

(b) If any person

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

(ii) Refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify. If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 27(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 27(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 27(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (b) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

(ii) The term "person" as used herein shall be defined as any natural person

doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

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

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

28. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

28.1 This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

28.2 Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) 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 Agreement and intent, Licensee agrees:

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

(b) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum nonconveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

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

28.4 If the Licensee commences any action against the City in a court located other than in the

City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

29. WAIVER OF TRIAL BY JURY

29.1 Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

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

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

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

30. EMPLOYEES OF LICENSEE

30.1 All experts, independent contractors, specialists, trainees, servants, agents, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

31. INDEPENDENT STATUS OF LICENSEE

31.1 Licensee is not an employee of Parks or the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the City, or of any department, agency, or unit thereof, they will not make any claim, demand, or application to or for, any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation

coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

32. CONFLICT OF INTEREST

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

33. PROCUREMENT OF AGREEMENT

33.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

33.2 For a breach of violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

34. NO CLAIM AGAINST OFFICIALS, AGENTS OR EMPLOYEES

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

35. ALL LEGAL PROVISIONS DEEMED INCLUDED

35.1 Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

36. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

36.1 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

37. JUDICIAL INTERPRETATION

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

38. ENTIRE AGREEMENT

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

39. COUNTERPARTS

39.1 This License Agreement may be executed in several counterparts, which shall constitute one and the same instrument.

40. MODIFICATION OF AGREEMENT

40.1 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

41. NOTICES

41.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner. Notices may also be given by reputable overnight delivery service such as Federal express. Notices may

also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement.

42. MISCELLANEOUS

42.1 The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

[Signature Page to Follow]

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

CITY OF NEW YORK
PARKS & RECREATION

STATUE CRUISES, LLC

By: _____
Alexander Han
Chief of Concessions

By: _____
Mitchell Randall
Vice President

Dated: _____

Dated: _____

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

EXHIBIT A

SCHEDULE OF MINIMUM ANNUAL PAYMENTS
To be provided at a later date.

EXHIBIT B

SCHEDULE OF APPROVED HOURS AND RATES, FEES, AND PRICES

Operating hours year-round shall be as required by the National Park Service in connection with the Liberty and Ellis Island Ferry service, as required by regularly scheduled cruises, as requested by vessel charterers, or as required for other ferry services, subject to Parks' written approval.

SCHEDULE OF APPROVED FEES

Year	Adult (13-61 years)	Child (4-12 years)	Senior (62 years and over)
March 1, 2024 – December 31, 2024	\$21.00	\$12.00	\$18.00
January 1, 2025 – December 31, 2025	\$21.50	\$12.50	\$18.50
January 1, 2026 – December 31, 2026	\$22.00	\$13.00	\$19.00
January 1, 2027 – December 31, 2027	\$22.50	\$13.50	\$19.50

Licensee shall charge an additional \$4.00 per ticket for every ticket purchased with the SOLEIF audiotour.

In 2028 and once every three years after 2028, Licensee may increase rates for passenger ferry transportation services based on the growth in the New York City Metropolitan Statistical Area's CPI.

EXHIBIT C

SITE PLAN OF LICENSED PREMISES



*Exact Licensed Premises subject to final Parks approval and may be adjusted.

EXHIBIT D

MONTHLY REPORT OF GROSS RECEIPTS

THIS REPORT REPRESENTS GROSS RECEIPTS RECEIVED

DATE(s)	
	MM/DD/YY
REVENUE CATEGORY	
-	
	\$
	\$
-	
	\$
-	
	\$
TOTAL GROSS RECEIPTS:	
	\$
TOTAL AMOUNT OF GRATUITIES EXCLUDED FROM GR	
	\$

I hereby certify the above statement to be true and correct.

Certified correct: _____

Signature

_____ Date

_____ Title

EXHIBIT E

NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Licensees of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Licensee must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer or Concession Manager of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to www.nyc.gov/PaidSickLeave for 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance

with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

- a. 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;
- b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- c. closure of such employee's place of business by order of a public official due to a public health emergency;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer

as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or

interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in §

20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT F

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

[Name and title of authorized official, broker, or agent (typewritten)]

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT G

PAYMENT BOND/PAYMENT GUARANTEE

I. (A) For purposes of this Exhibit G:

(1) “Contractor” means a person, firm or corporation who or which contracts with the Licensee to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to the Licensee in connection with the work for the Capital Improvement Project. The Contractor may also be referred to in this Exhibit G as a “party liable for payment” where applicable;

(2) “Licensee” shall have the meaning given such term in the License Agreement. The Licensee may also be referred to in this Exhibit G as a party liable for payment where applicable; and

(3) “Subcontractor” means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to a Contractor in connection with the work for the Capital Improvement Project. The Subcontractor may also be referred to in this Exhibit G as a “party liable for payment” where applicable.

(B) Licensee shall, in accordance with the terms of this Exhibit G, guarantee payment of all lawful claims for:

(1) Wages and compensation for labor performed and/or services rendered; and

(2) Materials, equipment, and supplies provided, whether incorporated into the Capital Improvement Project or not, when demands have been filed with the Licensee as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Capital Improvement Project (hereinafter referred to as a “beneficiary”) performed at the direction of the Licensee, the Contractor, or a Subcontractor of the Contractor; and

II. The provisions of Section I.(B) of this Exhibit G are subject to the limitations and conditions in this Section II and in Sections III and IV of this Exhibit G:

(A) The guarantee is made for the benefit of all beneficiaries as defined in Section I.(B) of this Exhibit G, provided that those beneficiaries strictly adhere to the terms and conditions of this Section II of this Exhibit G.

(B) Nothing in this Exhibit G shall prevent a beneficiary providing labor, services or material for the Capital Improvement Project from suing the person, firm or corporation for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

(C) Every person who has furnished labor or material, to the Licensee, a Contractor or to

a Subcontractor of the Contractor, in the prosecution of the Capital Improvement Project and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action, by filing a demand hereunder; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.

(D) No action on this payment guarantee shall be commenced after the expiration of two (2) years after the completion of the Capital Improvement Project.

(E) A Contractor shall promptly forward to the Licensee any notice or demand received pursuant to Section II.(C) of this Exhibit G. The Contractor shall inform the Licensee of any defenses to the notice or demand and shall forward to the Licensee any documents the Licensee requests concerning the notice or demand. If the Contractor has a claim against the Licensee as described in the first sentence of Section II.(C) of this Exhibit G, the Contractor shall promptly forward such demand to the Licensee.

(F) All demands made against the Licensee by a beneficiary of this payment guarantee shall be presented to the Licensee along with all written documentation concerning the demand which the Licensee deems reasonably appropriate or necessary, which may include, but shall not be limited to: the contract or subcontract; any invoices presented to the party liable for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the party liable for payment and that the demand has not been paid by the party liable for payment within the time allowed for such payment by the contract or subcontract; and copies of any correspondence between the beneficiary and the party liable for payment concerning such demand. If the party liable for payment is not the Licensee, the Licensee shall notify the party liable for payment that a demand has been made. The party liable for payment shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

(G) The Licensee shall make payment as described in Section IV only if, after considering all defenses presented to the claim for payment, it determines that the payment is due and owing to the beneficiary making the demand.

(H) No beneficiary shall be entitled to interest from the Licensee, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by applicable law.

III. Upon the receipt by the Licensee of a demand pursuant to this Exhibit G, in the case where the Licensee is not the party liable for payment, the Licensee may withhold from any payment otherwise due and owing to the Contractor an amount sufficient to satisfy the demand.

IV. (A) In the event the Licensee determines that the demand is valid and the Licensee is not the party liable for payment, the Licensee shall notify the party liable for payment of such determination and the amount thereof, and direct the party liable for payment to immediately pay such amount to the beneficiary. In the event the party liable for payment, within seven (7) days of receipt of such notification from the Licensee, fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee becomes aware of such failure to pay the beneficiary.

(B) In the event the Licensee determines that the demand is valid and the Licensee is the party liable for payment, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee determines that the demand is valid.

(C) In the event the Licensee determines that the demand is invalid, any amount withheld pending the Licensee's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York. The Licensee shall provide written notification of its determination that the demand is invalid to the beneficiary that made such demand.

V. Nothing in this Exhibit G shall relieve a party liable for payment of the obligation to pay the claims of all persons with valid and lawful claims against such party relating to the Capital Improvement Project.

VI. Notwithstanding any provision to the contrary contained in the License Agreement (including this Exhibit G), the payment guarantee made pursuant to this Exhibit G shall be construed in a manner consistent with Section 5 of the New York Lien Law.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

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 a Sole Source License Agreement (“Agreement”) with Statue Cruises, LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan. The agreement will provide for a ten (10) year term. Compensation to the City will be as follows:

The greater of the annual minimum fee versus the annual percentage of gross receipts:
Operating Years 1-5: \$2,500,000 versus 10% of Gross Receipts; Operating Years 6-10:
\$3,000,000 versus 10% of Gross Receipts

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

5/15/2024

Signed: _____

Title: Chief City Procurement Officer

Date: _____



NYC Parks

David Cerron
Assistant Commissioner
Business Development &
Special Events

T 212.360.3457

E david.cerron@parks.nyc.gov

**City of New York
Parks & Recreation**

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

NOTICE OF PUBLIC HEARING

To: Hon. Mark Levine, President of the Borough of Manhattan
Zach Bommer, District Manager, Manhattan Community Board 1

From: Phil Abramson, Director of Revenue Communications

Subject: Notice of Joint Public Hearing: 5/13/2024; Intent to Enter into a License Agreement for the Operation and Maintenance of The Battery in Manhattan to The Battery Conservancy, Inc.; M5-O.

Date: **4/26/2024**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation (“Parks”) to be held on 5/13/2024, at 2 Lafayette Street, Room 1412, in Manhattan, New York, NY 10007 commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to The Battery Conservancy, Inc. (“Licensee”) for the operation and maintenance of The Battery in Manhattan including a share of the concession revenue generated at the Licensed Premises. Such revenue-generating programming shall include, but not be limited to, temporary or seasonal markets for food or other Parks appropriate items for sale approved by Parks, and special events at The Battery.

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options.

Compensation to the City will be as follows: All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and programming at the Licensed Premises in performing Licensee’s obligations and providing services required or permitted by this License.

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

A draft copy of the agreement may be obtained at no cost by any (or all) of the following ways:

1. Submit a written request to NYC Parks at philip.abramson@parks.nyc.gov from 4/26/2024 through 5/13/2024.
2. Submit a written request by mail to NYC Parks, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by 5/13/2024. For mail-in requests, please include your name, return address, and Concession # M5-O.
3. Download from NYC Parks' website at <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis> from 4/26/2024 through 5/13/2024.

The agenda, transcript, and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

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) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title The Battery Conservancy Maintenance & Operation Agreement **Concession ID** M5-O

Description Sole Source License Agreement with The Battery Conservancy for the operation and maintenance of The Battery in Manhattan, including a share of the concession revenue generated at the **Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)** **Agency** NYC Department of Parks & Recreation

Recommended Concessionaire

Name The Battery Conservancy, Inc. Telephone 212-344-3491
Address 90 Broad Street, Suite 1503 EIN or SSN # 13-3769101
New York, NY 10004 Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 10 Years Concession Site(s) Yes No
Renewal Option(s) Notice to Proceed to 5 Years Address State Street, Whitehall Street & Battery Place
Notice to Proceed to 5 Years New York, NY 10004
Total Potential Term 20 years Borough Manhattan Community Board 1
 >20 years – FCRC unanimously approved term on ___/___/___ Block# 3 Lot# 1

Recommended Annual Revenue
(Check all that apply)
 Annual Fee(s) \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other See Additional Information

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:
 Sole Source
 Amendment or extension to an existing concession agreement
 Not-for-Profit concession agreement
 Other (Please specify)

Award is a Major Concession
 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 ___/___/___
 N/A
 No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

The License will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options. All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and programming at the Licensed Premises in performing Licensee's obligations and providing services required or permitted by this License.

Award Requirements

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

See Additional Information

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 5 / 13 / 24

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 4 / 26 / 24 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on ___/___/___ (date of the FCRC public meeting)

Votes in favor: ___ Votes against: ___

OR

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

Law Department approved concession agreement on: ___/___/___

Authorized Signatures

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

Signature _____

Name _____

Title _____ 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

For Agency Use With Concession Forms

The Battery Conservancy Maintenance & Operation Agreement

M5-O

Concession Title _____ **Concession ID** _____

Description Sole Source License Agreement with The Battery Conservancy for the operation and maintenance of The Battery in Manhattan, including a share of the concession revenue generated at the Licensed Premises. **Agency** NYC Department of Parks & Recreation 

Recommended Annual Revenue:

All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and programming at the Licensed Premises in performing Licensee's obligations and providing services required or permitted by this License.

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

The Battery Conservancy ("TBC"), a not-for-profit organization, was formed in 1994 to promote and assist in the restoration, preservation, maintenance, programming, and operations of The Battery, as well as portions of Pier A's Harbor Park Visitor Center, and the Peter Minuit Plaza, which is adjacent to The Battery.

The partnership between TBC and Parks was memorialized in 2007, when TBC and Parks signed a License Agreement for the maintenance and operation of The Battery. Additionally, in 2006 and again in 2017, TBC and Parks entered into a Sole Source License Agreement to provide for the operation and maintenance of two (2) food service kiosks within the Bosque Gardens, and to provide for the operation and maintenance of the Bosque Gardens. In 2010, TBC and Parks entered into a Sole Source License Agreement for the operation and maintenance of a food and beverage concession at Peter Minuit Plaza and to provide for the maintenance of Peter Minuit Plaza. In 2013, TBC and Parks entered into a Sole Source License Agreement for the operation, maintenance, repair and improvement of SeaGlass at The Battery with ancillary food, beverage and merchandise concessions.

The positive transformation of The Battery over the past two decades is in large part a result of the successful partnership between Parks and TBC. TBC has been an effective advocate for The Battery and, through its fundraising efforts, has secured over \$55 million dollars of privately raised funds, leveraging \$109 million dollars in public funds for the benefit of The Battery.

As the landscape of the park has been transformed, the horticulture improved and new recreation amenities, including SeaGlass Carousel, a renovated public restroom, the Battery Oval, the Battery Bikeway, the Battery Woodland, the Battery Urban Farm and Forest Farm, and several garden beds have been created, the maintenance needs of the park have increased significantly. TBC has assumed a growing role in the maintenance and operations of The Battery, funding additional gardeners, maintenance workers and seasonal staff to care for The Battery.

Thanks, in large part, to the transformation of The Battery's spaces and amenities and its unique location connecting to all five boroughs, Liberty and Ellis Islands, The Battery has never been more popular. While limited to 25 acres, visitorship to the park has exploded over the past several years, with annual visitation reaching nearly 45 million people, roughly equivalent to Central Park. This level of foot traffic creates additional maintenance challenges for park management.

This new Sole Source License Agreement for the maintenance and operations of The Battery between Parks and TBC provide a new revenue share to help offset TBC's required expenditures. Such revenue-generating programming shall include, but not be limited to, temporary or seasonal markets for food or other Parks appropriate items for sale approved by Parks, and special events at The Battery.

All gross receipts received by TBC will be used exclusively to provide for the maintenance, operation, and programming at the Licensed Premises in performing TBC's obligations and providing services required or permitted by this License.

TBC has extensive experience providing valuable public amenities and has been an excellent steward of The Battery. Given TBC's demonstrated and firm commitment to maintaining and improving The Battery, and their increase in responsibilities and expenditures, Parks believes that it is in the best interest of the City to enter into a Sole Source License Agreement with TBC.

LICENSE AGREEMENT

BETWEEN

THE BATTERY CONSERVANCY, INC.

AND

**CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION**

for

THE OPERATION AND MAINTENANCE OF THE BATTERY

MANHATTAN, NEW YORK

M 005-O

DATED: _____, 2024

NYLD Approval: _____

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EXHIBIT A Licensed Premises

EXHIBIT B Form of Report under New York City Administrative Code Section 18-134

EXHIBIT C Paid Safe and Sick Leave Law Concession Agreement Rider

EXHIBIT D Form of Certification by Insurance Broker or Agent

EXHIBIT E Payment Guarantee

LICENSE AGREEMENT (this “License Agreement” or “License” or “Agreement”) made this _____ day of _____, 2024 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 The Battery Conservancy, Inc. (“TBC” or “Licensee”), located at 90 Broad Street, Suite 1503 New York, NY 10004 (hope.cohen@thebattery.org).

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

WHEREAS, the Commissioner has jurisdiction over The Battery (the “Licensed Premises” or “Premises”), located in the Borough of Manhattan; and,

WHEREAS, The Battery is located between State Street, Whitehall Street, and Battery Place, and including Peter Minuit Plaza in Manhattan, New York, and is a property under the jurisdiction of Parks; and

WHEREAS, the City desires to encourage the participation of interested not-for-profit corporations in providing supplemental services, including maintenance, recreational and educational programs, for the benefit of the public; and,

WHEREAS, TBC is a Type B not-for-profit corporation, incorporated on May 20, 1994, pursuant to Section 201 of the New York State Not-for-Profit Corporation Law and a 501(c) (3) entity for Federal tax purposes; and

WHEREAS, TBC was formed in 1994 to promote and assist in the improvement, maintenance, management, programming, preservation, and cultivation of the Premises, by acting as an advocate for the Premises through fundraising for the maintenance, landscape design, cultivation, and general improvement of the Premises, to supplement those services provided by the City; and

WHEREAS, TBC additionally assists the National Park Service in the restoration, preservation, maintenance, programming, and operations of the Castle Clinton National Monument (“NPS Premises”); and

WHEREAS, TBC has been an effective advocate for The Battery, and through its fundraising efforts has secured over \$55 million dollars of privately raised funds, leveraging \$109 million dollars in public funds for the benefit of The Battery; and

WHEREAS, TBC has been instrumental in raising money and coordinating efforts with Parks to design and construct the Admiral Dewey Promenade, the Upper Promenade and Gardens of Remembrance, the Bosque Gardens, the Battery Bikeway and Bikeway Gardens, the Battery Oval, the Battery Woodland, the Battery Urban Farm, New Amsterdam Pavilion and Peter Minuit Plaza, and SeaGlass Carousel and Tiffany Woodland Gardens in The Battery, and to design the Battery Playscape; and

WHEREAS, TBC allots more than 80% of its privately raised funds annually to maintain and operate this global destination, requiring staffing throughout the daylight hours and more, every day of the year; and

WHEREAS, these privately raised funds are inadequate to purchase supplies and equipment (including, but not limited to, trash removal materials, irrigation parts, restroom supplies, sod and seed, lawn and gardening equipment, snow removal equipment), engage contractors (including, but not limited to, pest control, trenching and paving, fence installation), and pay year-round and seasonal gardeners and operations staff to maintain and operate a park with annual visitorship of over 44 million; and

WHEREAS, TBC has been and shall continue to be valuable in coordinating between City, New York State, and Federal jurisdictional overlays in the Premises and the NPS Premises area; and

WHEREAS, the Commissioner and The Battery Conservancy, Inc. desire to assure that their coordinated efforts will continue to serve the best interest of the public; and

WHEREAS, Parks and TBC have collectively created an effective public-private partnership whereby Parks and TBC complement each other's efforts in connection with improving and administering the Licensed Premises; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") of the City of New York has specifically authorized Parks to enter into a Sole Source License Agreement for the maintenance, operation, and renovation of the Battery; and

WHEREAS, notwithstanding termination of the License Agreement between Parks and TBC dated February 26, 2007 (the "2007 Agreement") and the replacement of the 2007 Agreement with this License Agreement, those certain separate concession agreements known as the Kiosks and Bosque License Agreement, dated June 1, 2006 and March 10, 2017, by and among the City of New York, Parks, and TBC, the Peter Minit Plaza License Agreement, dated January 25, 2010, by and among the City of New York, Parks and TBC, the Carousel License Agreement, dated September 10, 2013, by and between the City of New York and TBC, (collectively, the "Legacy Concession Agreements") will remain in full force and effect in accordance with their terms, and the provisions included in this License Agreement do not change, modify, amend, cancel, or supersede the terms of the Legacy Concession Agreements.

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

1. GRANT OF LICENSE

1.1 (a) Parks hereby grants to Licensee and Licensee hereby accepts from Parks a license to operate and maintain the Licensed Premises for the use and enjoyment of the general public, including a share of the concession revenue generated at the Licensed Premises (the "Concession"), in accordance with the terms set forth in this License Agreement and to the satisfaction of the Commissioner. Licensee will be responsible for the operation and maintenance of the Licensed Premises on the terms provided herein.

(b) Licensee is hereby authorized to provide programming and activities including, but not limited to:

(i) Maintenance; and

(ii) Free visitor services and public programming to the general public, including but not limited to agricultural, horticultural, cultural and educational activities and events, either directly or, subject to the prior written approval of Parks, through sublicense, operating or other types of agreements (all of which would be subordinate to this License Agreement); and

(iii) Revenue-Generating Programming

In addition to free programming open to the public as described in Section 1.1(b)(ii) above, Licensee is hereby authorized to provide revenue-generating programming including, but not limited to:

(1) Temporary or seasonal markets for food or other Parks appropriate items (e.g., holiday market, farmers' market and food kiosks) for sale approved by Parks ("Temporary Markets"). Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses (in accordance with Section 1.1(c)(i)) to third parties to operate and maintain Temporary Markets in the Park. The design and placement of all Temporary Markets are subject to Parks' prior written approval; and

(2) Special Events (as defined in 56 RCNY Section 1-02) permitted by Parks at the Licensed Premises. Subject to this Section 1 and Section 13.1, Licensee shall have the right to host and operate Special Events in the Park—including the TBC gala—either itself or partnered with third parties ("Licensee's Special Event(s)").

(3) Permission. All Licensee's Special Events shall require permits from Parks as required by Parks rules and approval as provided in 1.1(d)(1) below.

(4) Fees to Parks. No fees (other than nominal application or similar fees) shall be payable to Parks by TBC or its partners for (i) the TBC gala, benefit luncheon and other TBC fundraisers held in the park ("TBC Fundraising Events"), (ii) Donor Benefit Programming and (iii) up to 7 (seven) other Licensee's Special Events per annum.

(5) Use of Gross Receipts. All Gross Receipts (as hereinafter defined) are to be expended solely for "Expenses" as defined in Section 2.1(i) of this Agreement; provided that (a) no part of proceeds from the TBC Fundraising Events nor (b) any payment by a Licensee's Special Event partner or sponsor that takes the form of a Charitable Contribution, shall constitute Gross Receipts.

(6) In any case, Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits.

(c) (i) Subject to the prior written approval of Parks, Licensee may sublicense portions of the Licensed Premises (variously, the “Sublicensed Premises”) for the operation of Temporary Markets, and other visitor services and events authorized by Parks, to sublicensees approved in advance in writing by Parks. The terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation of any sublicense shall be equally applicable to any sublicensee except as may be otherwise expressly noted in this Agreement. Licensee shall require any sublicensee to agree in writing that it will comply with Parks’ directives and the provisions of this License applicable to Licensee and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, such sublicensee’s operations shall be terminated by Licensee upon direction of Parks. No sublicense may be assigned without the prior written consent of Parks.

(ii) In selecting a sublicensee, Licensee shall comply with the written procedures, established by the Licensee and approved by Parks, for soliciting requests for proposals (“RFP”) from qualified proposers and for selecting a qualified proposer with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed sublicensee in accordance with Parks’ usual procedures and requirements and subject to Parks’ approval. Parks’ disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(d) (i) Licensee may operate the Licensed Premises for Licensee’s Special Events. All Licensee’s Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner. Licensee shall give the Commissioner at least twenty-one (21) days’ (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee’s Special Event. Licensee’s Special Events may not restrict public access to the Licensed Premises without Parks’ prior written consent. Licensee’s Special Events involving a partner shall not require a sublicense with such partner, but any arrangement with any partner shall require compliance with Licensee’s obligation under this License Agreement. Any signage for Licensee’s Special Events that includes sponsor recognition shall require Parks’ prior written consent.

(ii) Licensee, as part of its mission and in connection with Licensee’s Special Events, may provide free services and programming open to the public in the Licensed Premises, including, without limitation, horticulture, education, athletics, maintenance, tours, food, products, and programs.

(iii) Licensee may operate the Licensed Premises for “Donor Benefit Programming.” “Donor Benefit Programming” shall include fund raising and development programs which provide benefits to organizations that have made Charitable Contributions to Licensee, such as the currently established program of benefits for corporate donors, that involve de minimis group activities on the Licensed Premises (e.g. corporate employee volunteer maintenance opportunities, nature walks, or similar team building exercises), provided (i) such

activities shall not materially restrict public access to the Licensed Premises and (ii) no site or event fees are payable in connection with the event. Donor Benefit Programming with more than 20 attendees, including organizers and staff, shall require the prior written approval of Parks on at least 30 days' notice, which approval shall not be unreasonably denied.

(iv) All aspects of Licensee's Special Events shall comply with Parks Rules and Regulations (found at Title 56 of the Rules of the City of New York), including, but not limited to obtaining Parks permits where applicable. Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits. Any sound or music equipment shall be operated in accordance with 56 RCNY §1-05(d), the Administrative Code of the City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. A cabaret license will be strictly prohibited at the Licensed Premises. Licensee shall be responsible for all additional security required at Licensee's Special Events.

(e) Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or other entities as may be required for any music or music programming during its programming.

(f) All proceeds required to be treated as Licensee's Gross Receipts (as defined in Section 2.1(n) of this License) shall be accounted for within the general ledger accounts of Licensee in a clearly identifiable manner and will be used by Licensee exclusively to pay Expenses (as hereinafter defined). Any Excess Revenues (as hereinafter defined in Section 2.1(g)) for any Fiscal Year and any disbursements therefrom shall be accounted for by Licensee in the general ledger accounts referenced above in a clearly identifiable manner, and any Excess Revenues shall be used exclusively to pay: i) accumulated Expenses incurred in the prior Fiscal Year that exceed Licensee's Gross Receipts for that Fiscal Year; or ii) Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in Section 4.2(c).

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by City, State, and Federal laws, rules, regulations and orders which are or may become necessary to operate and maintain the Licensed Premises in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill, in all material respects, all obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill any obligations herein for any reason.

1.3 It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Term of this License (as provided in Article 3 of this License), Licensee shall have the use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with in all

material respects (subject to any applicable notice and cure periods) and so long as this License is not terminated by Commissioner.

1.4 Licensee shall provide, and shall cause any sublicensee to provide, at all times, full and free access to the Licensed Premises to the Commissioner or the Commissioner's representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License and any sublicensee's compliance with the terms of this License or any sublicenses.

1.5 (a) Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property **(i)** developed or designed by the City or its employees, contractors, or others on the City's behalf, or **(ii)** in the case of trademarks, used by the City in commerce unless Licensee is a prior or current user of any trademark in commerce ("**City IP**") are the property of the City. To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("**Licensee Activities**"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for the Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for the Licensee's Activities in support of the Licensed Premises. To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require Parks' prior, written agreement, on terms to be agreed by the Parties, and any revenue derived by Licensee shall be used exclusively to benefit the Licensed Premises and the programs and activities provided at the Licensed Premises by Licensee. Upon Parks' request, Licensee shall provide Parks with an accounting of revenue derived from commercial use of City IP, and its use. To the extent that Parks' prior permission and approval had already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

(b) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("**Licensee Specific IP**") are the property of Licensee; such intellectual property **(i)** was created by or on Licensee's behalf, its employees, contractors, or others, other than at the City or Parks' specific direction, and **(ii)** includes no City IP (as defined in subparagraph (a) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee's Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee's Activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this Agreement exclusively in connection with Licensee Activities, but this restriction shall terminate on the expiration or termination of this Agreement. Licensee in this Agreement grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to the City and Parks to make use of, display and

maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to or which does generate revenue) without the Licensee's prior written approval.

(c) All goodwill associated with the City IP or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner, which could be inconsistent with, or damaging to the owner's name and reputation. Either party shall have the right to terminate this Agreement, upon written notice if any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit or immoral purpose or activity. If any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, before exercising the right of termination provided for in this subparagraph (c), shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(d) During the Term, each party may make only the uses described in subparagraphs (a) and (b) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City nor Licensee shall acquire any rights in the Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(e) The parties will not use the name of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed.

(f) All provisions of this Section 1.5 will survive any termination of this Agreement except as otherwise set forth in this Article.

2. DEFINITIONS

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

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

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

(ii) any work or construction which would or might affect in any manner or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas;

(iii) any work affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems;

(iv) affixing or installing any equipment to any area of the Licensed Premises;

(v) any seasonal landscaping that constitutes a significant departure from landscaping previously done by Licensee.

(b) “Charitable Contributions” shall mean a monetary or in-kind donation to Licensee, including, without limitation, those made in connection with Licensee’s Special Event, Licensee Programming, Donor Benefit Programming, or TBC Fundraising Events, as long as the donation is at the discretion of the donor.

(c) “City” shall mean the City of New York, its departments and political subdivisions.

(d) “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or the Commissioner’s designee.

(e) “Comptroller” shall mean the Comptroller of the City of New York.

(f) “Donor Benefit Programming” is defined in Section 1.1(d)(iii).

(g) “Excess Revenues” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and Expenses for such Fiscal Year.

(h) “Expendable Equipment” or “Personal Equipment” shall mean all equipment and property, other than Additional Fixed Equipment, provided by Licensee.

(i) “Expenses” means all costs incurred by Licensee in operating and maintaining the Licensed Premises; in performing Licensee’s obligations and providing services required or permitted by this License, including sanitation, programming (including but not limited to free programming pursuant to Section 1.1(b)(ii)), insurance, Licensee’s Special Events and horticulture, performing Alterations, installing Additional Fixed Equipment and Expendable Equipment, and performing other work that does not constitute an Alteration; as well as any overhead and administrative costs solely incurred in providing those services or incurring such costs. Such overhead and administrative costs shall exclude any allocation of office rents or overhead, any portion of the salary of the President of Licensee or any successor title, expenses attributable to Licensee’s charitable fund-raising, and any other cost that is expressly stated to be a cost to be borne by Licensee pursuant to this License.

(j) “Fiscal Year” shall mean the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(k) “Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises as of the date set forth in the written notice to proceed issued by Parks to Licensee, whether or not removal of said equipment would damage Licensed Premises.

(i) “Additional Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises subsequent to the date set forth in the written notice to proceed issued by Parks to Licensee.

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

(l) (i) “Gross Receipts” for purposes of this Agreement shall include:

(1) amounts received in connection with Licensee’s operations at the Licensed Premises, including but not limited to tickets and sales from programming and/or events (but excluding proceeds received in connection with TBC Fundraising Events or Donor Benefit Programming),

(2) amounts received in connection with Licensee’s Special Events, including but not limited to, tickets and sales (except Charitable Contributions, as excluded below and proceeds in connection with TBC Fundraising Events),

(3) Sublicense fees paid to Licensee in connection with Parks-approved sublicenses (including subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee’s subcontractors or sublicensees),

(4) All of the revenues and concession fees generated by any Parks’ Special Event and actually collected by Licensee pursuant to Section 13.1 of this agreement.

(ii) As pertains to Section 2.1(l)(i), Gross Receipts shall include any funds received for orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, and shall include all receipts of Licensee or any sublicensee for orders taken at the Licensed Premises by Licensee or any sublicensee for services to be rendered by Licensee or any sublicensee in the future either at or outside of the Licensed Premises. For example, if Licensee or any sublicensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(iii) For purposes of this agreement, Gross Receipts shall not include:

- (1) the amount of any City, State, and Federal sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee or any sublicensee, as against Licensee or any sublicensee's sales,
- (2) the amount of any and all Charitable Contributions to Licensee,
- (3) proceeds from any events taking place off of the Licensed Premises,
- (4) amounts received from any proceeds in connection with TBC Fundraising Events.
- (5) amounts received directly by approved sublicensees from customers (as opposed to the amounts paid or passed on by the approved sublicensees to Licensee, which are included).

(iv) Subject to subclause (iii)(5) immediately above, Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, provided however that any gratuities transmitted by Licensee or any sublicensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection:

(1) With respect to non-catered food and beverages service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's or any sublicensee's customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any sublicensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a "food service worker" pursuant to NY Labor Law Section 652(4). Upon Parks' request Licensee shall provide, and shall cause any sublicensee to provide, documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee or any sublicensee, as applicable. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(2) With respect to catered events, a "Gratuity" shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee's or any sublicensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee or any sublicensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or

customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Upon Parks' request Licensee shall provide, and shall cause any sublicensee to provide, documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee or sublicensee, as applicable.

(3) Notwithstanding anything to the contrary herein, Gross Receipts shall not include deposits made with Licensee for damage to the Licensed Premises unless and to the extent that Licensee retains such deposits for damage actually incurred.

(v) Notwithstanding anything set forth in this Section, Licensee shall comply, and shall cause any sublicensees to comply, with all applicable laws, rules, and regulations, including but not limited to City, State, and Federal labor laws.

(m) "Licensed Premises" or "Premises" shall mean the designated area described within the site plan attached hereto as **Exhibit A**.

(n) "Licensee's Gross Receipts" shall mean the Gross Receipts received by Licensee, but expressly excluding Gross Receipts received only by any sublicensee.

(o) "Licensee's Special Events" is defined in Section 1.1(b)(iii)(2).

(p) "Sublicensee's Gross Receipts" shall mean the Gross Receipts received only by any sublicensee, but not received by Licensee.

(q) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year, except that the final Year of the Term (as hereinafter defined) of the License shall end on the Expiration Date (as hereinafter defined).

3. TERM OF LICENSE

3.1 This License shall become effective upon registration with the Comptroller, and shall commence on the date set forth in the written notice to proceed issued by Parks to Licensee ("Commencement Date") and, unless terminated sooner in accordance with this License Agreement, shall terminate ten (10) years from the Commencement Date or on the last day of any subsequent renewal periods that are exercised pursuant to this License ("Termination Date" or "Expiration Date"). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the "Term." At Parks' option, this License may be renewed for up to two (2) additional five-year periods, exercisable in the sole discretion of the Commissioner and upon no less than six (6) months' written notice to Licensee.

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

3.3 Licensee may relinquish and terminate this License Agreement at any time upon no less than three (3) months' written notice to the Commissioner.

3.4 Parks may terminate this License for cause as follows:

(a) Should Licensee or any sublicensee breach or fail to comply in any material respect with any of the provisions of this License or fail to comply in any respect with any Federal, State or local law, rule, regulation or order affecting the License, such sublicensee, or the Licensed Premises with regard to any and all matters, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If such breach or failure arises from the acts or omissions of a sublicensee, as reasonably determined by the Commissioner, the cure period shall be reasonably extended by the Commissioner beyond such thirty (30) days (not to exceed an additional 30 days) to give Licensee time to induce such sublicensee to comply with such breach or failure or, if such sublicensee fails to remedy such breach or failure in a timely manner, for Licensee to terminate the applicable sublicensee Agreement and regain possession of the Sublicensed Premises. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, the Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors by Licensee; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; and the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days. Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the Commissioner may terminate this License.

3.5 Upon the expiration or sooner termination of this License by the Commissioner, all rights of Licensee and/or any sublicensee shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the Commissioner, Parks or the City.

3.6 In the event the Commissioner terminates this License for reasons related to Section 3.4 above, any property of the Licensee or any sublicensee on the Licensed Premises may be held and used by the Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

3.7 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease operations and cause any sublicensee to cease all operations pursuant to this License and shall vacate and cause any sublicensee to vacate the Licensed Premises 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, the City reserves the right to take immediate possession of the Licensed Premises.

3.8 Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and cause any sublicensee to remove all personal possessions from the Premises unless such property is held by the Commissioner pursuant to Section 3.6. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned unless such property is held by the Commissioner pursuant to Section 3.6. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement.

3.9 If this License is terminated as provided in this License, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any sublicensee by summary proceedings or otherwise, without court order or other judicial approval.

3.10 If this License is terminated as provided in Sections 3.3 or 3.4 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee or any sublicensee of any liability under this License or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee or any sublicensee of any liability under this License or to otherwise affect any such liability.

3.11 In the event this License is terminated, Parks will not reimburse Licensee's or any sublicensee's unamortized capital improvement cost.

4. FINANCIAL RECORDS AND REPORTS

4.1 In lieu of a license fee, Licensee will use all Licensee Gross Receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the

operation and management of the Licensed Premises through the payment of Expenses, in accordance with the terms of this License. Licensee shall submit such reports to Parks and permit Parks such audit of its books and records as Parks shall reasonably require to assure that such Licensee Gross Receipts are so used. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

(a) In the event Parks agrees to direct an amount to Licensee from future Statue of Liberty/Ellis Island Concessions (as defined below) and provided that Licensee continues to make available to Parks a portion of Licensee's Peter Minuit Plaza License Agreement premises, which Parks may make available to the Statue of Liberty/Ellis Island Concessionaire for ticketing or other purposes, the amount actually directed to Licensee shall be included in Licensee Gross Receipts. Parties will obtain approval from the FCRC for any future agreements that direct revenue amounts to Licensee from Statue of Liberty/Ellis Island Concessions.

(b) "Statue of Liberty/Ellis Island Concession" means the license granted and/or any agreement or arrangement which replaces it, between Parks and another party facilitating in any way a commercial ferry service between The Battery and any destinations in or surrounding New York Harbor.

4.2 (a) On or before the one hundred twentieth (120) day following the end of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any Licensee's Gross Receipts generated from operations under this License during the preceding Year. The obligation to submit a final report of Licensee's Gross Receipts shall survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(b) Within one hundred twenty (120) days after the end of each Year, Licensee shall submit detailed income and expense statements for itself for operating the Licensed Premises during the preceding Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with Section 1.1(f) hereof. Such report must contain a certification from Licensee's Chief Financial Officer certifying that all of Licensee's Gross Receipts, including any Excess Revenues, to the extent expended, were applied solely to pay Expenses, or remain available to pay for future Expenses.

(c) Pursuant to New York City Administrative Code Section 18-134, Licensee shall provide to Parks, in a form that complies with the report attached as **Exhibit B** to this License Agreement or other form acceptable to Parks, data concerning any funds that Licensee has expended at the Licensed Premises for the preceding period of July 1 to June 30 no later than October 31 each year. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

(d) Licensee is, and shall cause any sublicensee to be, solely responsible for the payment of all Federal, State and local taxes applicable to the operation of the Licensed Premises.

With the exception of City, State, and Federal sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

(e) In addition to the foregoing reports, Licensee shall furnish Parks with the following reports:

(i) **Financial Statement:** Licensee shall furnish to the Commissioner a detailed financial statement prepared in accordance with Generally Accepted Accounting Principles (“GAAP”) for each Year during the Term and any renewal thereof, which shall include the aggregate amount of all salaries of all paid staff whose personnel costs are included in Expenses and shall be audited by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than one hundred twenty (120) days after the close of each Year of the Term of this Agreement together with a supplemental unaudited statement setting forth an itemization of such salaries.

(ii) **Form 990.** Licensee shall make Licensee’s form 990 filing for each year during the Term of this Agreement available to the Commissioner after such form has been filed with the Internal Revenue Service.

(iii) **Monthly Operations Report:** Licensee shall furnish to Parks a monthly report to be submitted within fifteen (15) days of the previous months’ end that shall include, but not be limited to, operations activities (repairs, maintenance, etc.), Capital Improvements (as defined in Section 6.1 of this License) and Alterations, tree inspection reports and tree pruning reports, upcoming public programs and events, future/ongoing initiatives, personnel, incidents/unusual activity, inquiries or publications from press or media, major accidents or unusual incidents occurring on the Licensed Premises.

4.3 Consistent with the notion of a public-private partnership and in an effort to ensure the efficient allocation of applicable resources, the Licensee and Parks annually shall coordinate the preparation of operating, expense, fundraising, and capital budgets by the Licensee (including any amendments thereof) for the Premises. Additionally, the Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations including City of New York budget allocations, maintenance, operation, program priorities, requests for proposals or expressions of interest, and the like.

(a) **Annual Meeting with NYC Parks:** The Parties shall conduct an annual budget and operations coordination meeting before the start of Licensee’s fiscal year to review the Licensee’s “Annual Operating Budget and Operating Plan”.

(b) **Board Meetings:** Licensee will provide notice to the Commissioner of all meetings, hearings, and proceedings of Licensee’s Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. Licensee shall invite the Commissioner to all of Licensee’s Board of Directors’ meetings.

(c) **Other Reports:** Licensee shall prepare and provide to Parks other reports as reasonably requested by the Commissioner and/or pursuant to this License.

(d) Account and Use of Excess Revenues: If Licensee derives Excess Revenues in a particular Year, Licensee shall expend such Excess Revenue consistent with the requirements of this License and shall report such expenditures consistent with this License. If Licensee is unable to make such a report, Licensee must immediately remit such Excess Revenues to the City. In addition, if there are any unexpended Excess Revenues at the end of the Term, or any renewal thereof, or upon the earlier termination of this License, Licensee may apply such Excess Revenues to any Expenses arising under this License provided that Licensee provides a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay such Expenses and Licensee shall remit the remaining balance of such Excess Revenues to the City within six (6) months from the end of the Term, or any renewal thereof, or upon the earlier termination of this License. However, if Licensee provides the Commissioner with a certification from Licensee's Chief Financial Officer identifying the specific Expenses that cannot reasonably be determined within six (6) months of the termination of the License and the Commissioner reasonably agrees with such certification, Licensee can retain such Excess Revenues only so long as is reasonably necessary to determine the specific Expenses in question and must remit remaining balance of such Excess Revenues to the City immediately.

4.4 (a) During the Term, Licensee shall maintain, and shall cause each sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues of Licensee, in a form and manner reasonably acceptable to the City. If Licensee's operations include the sale of food or other items by Licensee, this revenue control system shall maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, the item(s) sold, time, date of sale and price of the item sold. All accounting and internal control related records of Licensee shall be maintained for a minimum of ten (10) years from the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all Federal, State and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall, and shall cause any sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee and any sublicensee 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 the Licensee and any sublicensee. Licensee shall, and shall cause any sublicensee to, maintain each year's records, books of account and data for a minimum of ten (10) years from the date of creation of the record.

4.5 The failure or refusal of Licensee to, or to cause any sublicensee to, furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article shall be presumed to be a failure to substantially

comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License.

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any sublicensee to verify compliance with this License Agreement and/or Gross Receipts as reported by the Licensee. Licensee shall, and shall cause any sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any sublicensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any sublicensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such sublicensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location. Audits by Parks will be performed in a manner that will not unreasonably interrupt the operation of the business at the Licensed Premises.

5.2 The failure or refusal of the Licensee to, or cause any sublicensee to, permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's or any sublicensee's records, books of account and data or the interference in any way by the Licensee or any sublicensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods pursuant to Section 3.4(a) hereof.

5.3 Notwithstanding the foregoing, 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.

6. CAPITAL IMPROVEMENTS

6.1 The City has final authority over all capital projects and capital programs except maintenance capital expenditures ("Capital Improvements") undertaken at the Licensed Premises, and the Licensee has final authority over deciding the Capital Improvements for which it will raise money from private sources and/or expend its own funds. Consistent with the notion of a public-private partnership and in an effort to allocate applicable resources, the Licensee and Parks shall annually coordinate the preparation of operating, expense, fundraising, and capital budgets, including any amendments for the Licensed Premises. Additionally, the Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations, maintenance, operation, program priorities, requests for proposals or expressions of interest, and the like. Furthermore, Parks shall use its best efforts to aid in the facilitation of any and all projects undertaken by Licensee, including, but not limited to, design review, communication and coordination with the New York City Landmarks Preservation Commission and the New York City Public Design Commission, and the making and submitting

of applications for permits, authorizations, approvals and consents from City agencies that own or control the City property at issue, such as the New York City Department of Buildings and the New York City Department of Environmental Protection.

6.2 Licensee will regularly update Parks on any potential Capital Improvements the Licensee is contemplating advancing, including but not limited to any Capital Improvement stemming from any master plan.

6.3 In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks' approval, the Licensee may enter into contracts for approved Parks Capital Improvements and may supplement Parks and/or other public capital funds with the Licensee funds for the development of such approved Parks projects.

6.4 Capital Improvements shall become property of the City, at its option, upon their attachment, installation, or affixing.

7. ALTERATIONS

7.1 Licensee and any sublicensee may perform Alterations to Licensed Premises only in accordance with the requirements of Article 7. Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing.

7.2 To perform an Alteration to the Licensed Premises, Licensee must:

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

(b) Ensure that work performed and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to subsection (a) of this Section 7.2, in a good and workmanlike manner, and within a reasonable time;

(c) Notify the Commissioner of the completion of and the date of final payment for such Alteration within ten (10) days after the occurrence of said completion and final payment; and

(d) Comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for review of any proposed Alteration constituting a landscape redesign, renovation, and rehabilitation project in the Licensed Premises.

7.3 The Commissioner may, in the Commissioner's discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require the Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation, or any sublicensee's obligation, herein in any respect. Parks shall use reasonable efforts to give Licensee at least fourteen (14) days' written notice of any such work and not to interfere substantially with Licensee's operations or use, or that of any sublicensee, of

the Licensed Premises. Parks shall use its reasonable efforts to perform such work in a way which minimizes interference with Licensee's operations, or any sublicensee's operations, at the Licensed Premises.

7.4 To guarantee prompt payment of monies due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the performance of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee shall post, or cause to be posted by such contractor or subcontractor, a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 7.4: (i) Licensee guarantees payment in accordance with the provisions of **Exhibit E**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project

7.5 For any work performed by or on behalf of Licensee at the Licensed Premises, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before such work is performed, and the quality of such work shall meet Parks' standards.

7.6 All Alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, sublicensees or contractors shall be at the Licensee's (or its sublicensee's) sole cost and expense (other than any agreed contribution from the City or Parks, and contributions from other public or private sector partners or donors) and such work shall not commence until the Licensee obtains written approval from the Commissioner, or the Commissioner's designee as well as any City or other governmental authorizations and approvals that may be necessary.

8. FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, to the reasonable satisfaction of the Commissioner and either at its sole cost and expense or through any sublicensee, provide and replace, if necessary, all equipment and materials necessary for the successful operation of this License, provided that (i) Licensee shall have no responsibility for any capital repairs and replacements (i.e., any cost which under GAAP is not ordinarily expensed during the year incurred) and (ii) Parks will, in accordance with past practice, continue to provide consultation, guidance, and work in connection with the many monuments located in or around the Licensed Premises. Licensee shall, and shall cause any sublicensee to, put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

8.2 City has title to all Fixed Equipment on the Premises as of the Commencement Date. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, to remove such equipment and restore the Licensed Premises to Parks in a condition no worse than at the commencement of the Term.

8.3 Licensee shall supply and replace, or cause any sublicensee to supply and replace, at its own cost and expense, all Expendable Equipment, materials and supplies required for the proper operation of this License, and shall repair or replace, or cause any sublicensee to repair or replace, all Expendable Equipment, materials and supplies required for the proper operation of this License, at their own cost and expense when reasonably requested by the Commissioner.

8.4 Licensee shall, and shall cause any sublicensee to, acquire, replace or repair, install or affix, at their sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by the Commissioner.

8.5 Title to all Expendable Equipment obtained by Licensee or any sublicensee shall remain in Licensee or such sublicensee, as applicable, and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, the Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

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

8.7 The Expendable Equipment to be removed by Licensee shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Licensee shall remain liable to the City for any damages it or any sublicensee may have caused to the Licensed Premises.

9. UTILITIES

9.1 Parks shall be responsible for providing electricity, gas, water, and sewage services currently provided to the Licensed Premises and shall maintain those services in good condition. Except for the utilities currently provided by Parks, Licensee shall, at its sole cost and expense, directly pay for all other utility costs associated with the operations of the Licensed Premises, which shall include, but not be limited to, telecommunications and internet services. Licensee shall not undertake the installation of any new utility lines without first having obtained

all necessary permits and approvals from Parks and such other City, State, and Federal agencies or entities as have jurisdiction over the operation of the Licensed Premises.

9.2 Licensee acknowledges that it is responsible for providing, or causing any approved concession sublicensee to provide, all utility services necessary to operate the Concession Licensed Premises. Licensee, or any approved concession sublicensee of Licensee, shall at its sole cost and expense directly pay for all other utility costs associated with the operations of the Concession Licensed Premises.

10. OPERATIONS

10.1 Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction, except for those activities and services specifically stated elsewhere in this Agreement to be the responsibility and cost of Parks. Licensee may only operate at the Licensed Premises as set forth herein and only when the Park is open. All hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the License Agreement.

10.2 (a) Licensee shall not and shall cause any sublicensee not to advertise, sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, or other tobacco products, non-tobacco smoking products, or electronic cigarettes.

(b) Smoking anywhere on the Licensed Premises is strictly prohibited.

(c) Additionally, Licensee shall not, and shall cause any sublicensee not to, use in their operations any polystyrene packaging or food containers.

(d) Licensee shall not, and shall cause any sublicensee not to, sell any beverages in glass bottles. All beverages must be in non-glass, shatter-proof containers.

(e) Licensee shall, and shall cause any sublicensee to, adhere to and strictly enforce the provisions of this Section 10.2.

10.3 Licensee shall, and shall cause any sublicensee to, obtain the written approval of Parks prior to entering into any marketing agreement with respect to regular sales of products or services at the Licensed Premises. In the event Licensee or any sublicensee breaches this provision, Licensee shall or shall cause its sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interest.

10.4 An officer or member of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the

event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever reasonably requested by the Commissioner.

10.5 Licensee shall, and shall cause any sublicensee to, provide equipment which will provide security for all monies received. Licensee shall, and shall cause any sublicensee to, provide for the transfer of all monies collected to the banking institution of Licensee or any sublicensee, as applicable. Licensee shall and shall cause any sublicensee to, as applicable, bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

(a) Licensee shall, and shall cause any sublicensee to, at its sole cost and expense, provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to: (a) collecting and safeguarding all monies generated under this License; (b) maintaining the Licensed Premises; and (c) conducting and supervising all activities to be engaged in upon the Licensed Premises. All payments due to the Daily Community Service Workers (“DCSW”), shall be borne by the City, with no portion of the payments due to the DCSW to be borne by Licensee, provided that Parks determines that the DCSW should perform duties at the Licensed Premises. Should Parks decide that the DCSW should not perform duties at the Licensed Premises, then Parks and the City will have no responsibility to procure the services of the DCSW or pay for these services, and Licensee will have no responsibility to permit the DCSW services at the Licensed Premises.

10.6 Reserved.

10.7 Licensee must, and shall require any sublicensee to, provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall comply with all City, State, and Federal laws relating to access for persons with disabilities. The Licensee shall, and shall cause any sublicensee to, also comply with all City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall, and shall cause any sublicensee to, include in its advertising and promotion program, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

10.8 Should the Commissioner, in the Commissioner’s sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises, the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. The Commissioner, in the Commissioner’s sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.9 Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee or any sublicensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

10.10 Licensee shall promptly notify the Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

10.11 Licensee shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department, and Parks shall consult with Licensee regarding Parks Enforcement Patrol officers assigned to the Licensed Premises and shall in any event ensure that not fewer than two (2) full-time-equivalent Patrol Enforcement Officers are dedicated to the Licensed Premises at all times (Licensee shall, as needed, provide additional security services during Licensee Special Events hosted at the Licensed Premises or otherwise). Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee and Parks shall use their respective best efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of same.

10.12 Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense or through any sublicensee, will be responsible for the storage of all equipment and personal property. Licensee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation or maintenance of the Licensed Premises. Licensee shall not, and shall cause any sublicensee to not, store any equipment or supplies at the Licensed Premises without the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval which shall not be unreasonably withheld or delayed.

10.13 Licensee shall, and shall cause any sublicensee to, comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for music or music programming. Licensee and any sublicensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved by Parks, which approval shall not be unreasonably withheld or delayed. A cabaret license will be strictly prohibited at the Licensed Premises

10.14 Licensee shall comply with, and shall cause any sublicensee to comply with, the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as a Licensee of the City of New York as set forth in the NYC Earned Safe and Sick Time Act Concession Rider annexed hereto as **Exhibit C**.

10.15 Licensee shall, and shall cause any sublicensee to, comply with all national safety guidelines and City, State, and Federal laws, rules and regulations related to the management and operation of the Licensed Premises.

10.16 Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion.

11. MAINTENANCE, SANITATION AND REPAIRS

11.1 (a) Licensee, at its sole cost and expense as provided in this License, will maintain and operate the Licensed Premises in a good and safe condition consistent with the Licensee obligations set forth in this Article (which, for clarity, shall not apply to the rebuilding or replacement of structures destroyed or damaged by flood or other calamity). To ensure Parks' satisfaction with Licensee's compliance with the standards set forth in this Article 11, Licensee shall provide Parks with full and free access to the Licensed Premises. All such maintenance and repair shall be performed in a good and worker-like manner and in accordance with the following standards:

(i) Dirt, waste, garbage, refuse, rubbish, litter and obstructions shall be collected as needed, and trash and leaves collected as needed, for daily removal by Parks, so as to maintain the Licensed Premises in a clean, neat and good condition. Parks shall continue to haul away trash from the Licensed Premises on a daily basis.

(ii) All walkways, sidewalks and all other improvements and facilities in the Licensed Premises shall be routinely cleaned so as to keep such improvements and facilities in a clean, neat and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(v) Power washing, as needed.

(vi) Snow and ice shall be removed as promptly as possible from all walkways and paved surfaces within the Licensed Premises, and from all fire hydrants and curb cuts within the Licensed Premises, so as not to interfere with safe passage, however no later than twenty-four hours after each snowfall or accumulation of ice. All snow and ice shall be removed from sidewalks in accordance with New York City Administrative Code Section 16-123.

(vii) Maintenance of all turf, trees, plants, flower beds and landscaped areas shall include, but not be limited to, watering, seeding, pruning, sodding and fertilizing.

(viii) Should Licensee's activities damage or impact in any way any monuments in the Licensed Premises, Licensee shall perform the necessary repairs and return the monument to its original condition.

(ix) Licensee shall inspect, maintain, and repair all Park furniture and equipment, so as to keep such improvements in a clean, neat and good condition.

(b) Licensee shall comply with the rating standards for all applicable enumerated categories set forth in the Parks Inspection Program ("PIP") to the extent such standards and categories apply to the Licensed Premises. Notwithstanding this provision, Licensee shall maintain the Licensed Premises in accordance with Parks' standards, including, but not limited to, the applicable categories as set forth in the PIP Manual and/or any other standards that Parks may require in the future. Licensee acknowledges receipt of the PIP Manual.

11.2 Licensee shall water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition. Licensee shall provide additional seasonal plantings to supplement Parks' plantings at the Licensed Premises. Certain major landscaping work constituting Alterations shall require the approval of Parks as set forth in Article 7. Licensee shall also comply with the following with respect to trees in the Licensed Premises:

(a) Branches or trees damaged or felled by excessive winds, ice, vandalism, or by any other reasons whatsoever shall be promptly removed, unless such removal requires climbing or arborist expertise, in which case, in accordance with present practice, Licensee shall notify Parks, which shall deploy the necessary experts. In the event of an imminent threat to public safety and delay in Parks' ability to deploy its experts, Licensee is authorized, but not required, to call in the required expertise from third parties.

(b) Licensee may not cut down, replant or remove any tree from the Park without prior written approval from the Commissioner, except that Licensee may replace potted trees as needed without prior approval. Licensee shall only be required to perform tree pruning or removal at the prior written request of Parks and upon Licensee's confirmation that it possesses the necessary expertise and agrees to perform the requested work. Any plans developed by Licensee for gardens or other horticultural installations in the Licensed Premises shall be submitted for the Commissioner's approval in advance of any planting.

(c) Within the first year of the Term (unless already completed sufficiently recently that Parks in its discretion determines it is not then required), Licensee shall engage the services of a certified arborist to conduct an initial aerial inspection of the trees in the Park, i.e. by climbing or use of a bucket/lift (also known as a Level 3 Inspection as defined by the International Society of Arboriculture), and to generate a report of the findings. A copy of the inspection report shall be provided to Parks.

(d) On an annual basis, Licensee shall engage the services of a certified arborist to conduct a diagnostic inspection (also known as a Level 2 Inspection as defined by the International Society of Arboriculture) of the trees in the Park for potential defects and to generate

a report of the findings. A copy of the report shall be provided to Parks. In the event there are any conditions warranting further inspection, Licensee shall conduct a Level 3 Inspection.

(e) Licensee shall conduct visual inspections of the trees in the Park on a monthly basis to identify any potential defects (also known as a Level 1 Inspection as defined by the International Society of Arboriculture). Any such potential defects shall be promptly reported to the Parks Director of Manhattan Forestry.

11.3 At the expiration or sooner termination of this License, consistent with the maintenance responsibility required of Licensee by this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted.

11.4 Licensee will be responsible for regular pest control inspections and extermination as needed. To the extent that Licensee applies pesticides to the Licensed Premises or any portion thereof, Licensee or any subcontractor hired by Licensee shall comply with applicable laws, including Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

11.5 For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100gallon capacity, Licensee shall, and shall cause any sublicensee to, maintain up-to-date Petroleum Bulk Storage (“PBS”) registrations with State Department of Environmental Conservation (“DEC”) and register such tanks with the DEP. Licensee shall, and shall cause any sublicensee to, assume all registration and update costs. Licensee shall, and shall cause any sublicensee to, keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randall’s Island, New York. Licensee shall, and shall cause any sublicensee to, perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks which shall not be unreasonably withheld or delayed.

12. APPROVALS

12.1 Licensee is solely responsible for obtaining all approvals, permits and licenses required by City, State, and Federal laws, regulations, rules and orders for the lawful operation, management and maintenance of the concession granted by this License.

12.2 Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner.

13. PARKS’ SPECIAL EVENTS

13.1 For the purposes of this Article 13 the term “Parks’ Special Event(s)” shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall, and shall cause any sublicensee to, cooperate with Parks in connection with Parks’ Special

Events and unanticipated events and emergencies at the Licensed Premises. It is expressly understood that this Article 13 shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to provide reasonable notice to Licensee and ensure that such third parties will be responsible for maintenance, security, and clean-up associated with any such Parks' Special Event. For Special Events concession fees, revenues generated by a Parks' Special Event shall be apportioned as follows: Licensee may collect eighty (80%) of the Special Event concession fees from third parties under Section 2-10 of the Parks Rules and Regulations, and such income shall be considered Licensee Gross Receipts. Parks shall retain the remaining twenty percent (20%). These payments must be issued in two separate checks.

13.2 Should the management of Special Events at the Licensed Premises be performed by a City agency other than Parks, and the fees for such Special Event no longer be payable to Parks, then Section 13.1 shall no longer be applicable.

13.3 Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of the Parks Rules and Regulations, where such Demonstrations do not unreasonably interfere with previously scheduled (and Parks-approved) Licensee's Special Events as reasonably determined by Parks.

14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

14.1 Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by the Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment or sublicense documents as provided herein. The Commissioner may request any additional information Commissioner deems necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises (other than a change in voting control effected through resignations or elections of members of the Board of Directors of Licensee), without the prior written consent of the Commissioner. Licensee shall present to the Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for

such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

14.3 No consent to or approval of any assignment or sublicense granted pursuant to this Article 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

15. PARKS CONSTRUCTION

15.1 Parks reserves the right to perform safety, maintenance or construction work deemed necessary by the Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. Licensee shall, and shall cause any sublicensee to, cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one week's notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall, and shall cause sublicensee to, be responsible for security of all Licensee's property or sublicensee's property, as applicable on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee or any sublicensee.

16. COMPLIANCE WITH LAWS

16.1 Licensee shall comply and cause its employees and agents and sublicensees to comply with all laws, rules, regulations and orders now or hereafter prescribed by the Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

16.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

17. NON-DISCRIMINATION

17.1 Licensee shall not, and any sublicensee shall not, unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

17.2 All advertising for employment for Licensee or any sublicensee shall indicate that Licensee or such sublicensee, as applicable, is an Equal Opportunity Employer.

18. NO WAIVER OF RIGHTS

18.1 No acceptance by the Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of the Commissioner to terminate this License. No waiver by the Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

19. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

19.1 (a) As between the Parties, Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its sublicensees, contractors or subcontractors. Parks shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its sublicensees, contractors or subcontractors.

(b) As between the Parties, Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all of its operations under this License. Parks shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all of the operations by Parks in the Licensed Premises.

(c) As between the Parties, Licensee shall be solely responsible for City Liabilities arising from injuries to any and all persons, including death, and damage to any and all property, in each case arising out of or related to its operations under this License, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person. The City shall be solely responsible for City Liabilities arising from injuries to any and all persons, including death, and damage to any and all property, in each case arising out of or related to its or Parks' operations in the Licensed Premises, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person.

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts,

permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

19.2 To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and its officials and employees (a “City Indemnified Party”) harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of Licensee’s operations under this License Agreement (“City Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any City Claims (together with City Claims, “City Liabilities”), arising out of or related to any of Licensee’s operations under this License and/or Licensee’s or sublicensee’s or any of their respective employees, agents, servants, contractors or subcontractor’s failure to comply with the law or any of the requirements of this License; provided, however, that the foregoing indemnification shall exclude City Liabilities to visitors to the Licensed Premises where such City Liabilities do not arise out of or are not related to specific Licensee actions or conduct, or actions or conduct of Licensee’s or its sublicensee’s respective employees, agent, servants, contractor or subcontractors. Insofar as the facts or law relating to any of the foregoing would preclude a City Indemnified Party from being completely indemnified by Licensee, the City Indemnified Party shall be partially indemnified by Licensee to the fullest extent permitted by law.

19.3 To the fullest extent permitted by law, the City shall indemnify, defend and hold the Licensee and its directors and employees (a “Licensee Indemnified Party”) harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of the City’s or Parks’ operations in the Licensed Premises (“Licensee Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Licensee Claims (together with Licensee Claims, “Licensee Liabilities”), arising out of or related to any of The City’s or Parks’ operations in the Licensed Premises and/or the City or Parks or any of their respective employees, agents, servants, contractors or subcontractor’s failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude a Licensee Indemnified Party from being completely indemnified by City, the Licensee Indemnified Party shall be partially indemnified by City to the fullest extent permitted by law. With respect to the City’s defense obligations hereunder, Licensee consents to having any such defense provided by the New York City Law Department.

(a) Licensee shall include the following indemnification (or a substantially comparable provision) in each sublicense entered into during the Term of this License:

(i) To the fullest extent permitted by law, sublicensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against

any and all claims and demands of third parties for injury (including death) or property damage arising out of operations under this sublicense (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of or related to Licensee’s operations under this sublicense and/or sublicensee’s, or any of its employees, agents, servants, contractors or subcontractors, failure to comply with the law or any of the requirements of this sublicense; provided, however, that the foregoing indemnification shall exclude Liabilities to visitors to the Licensed Premises where such Liabilities do not arise out of or are not related to specific sublicensee actions or conduct, or actions or conduct of sublicensee’s respective employees, agent, servants, contractor or subcontractors. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by sublicensee to the fullest extent permitted by law.

(ii) To the extent Liabilities arise from the following, they shall be excluded from sublicensee’s indemnification and defense obligations under this paragraph: (i) any construction performed by Parks or Parks’ contractors, (ii) any Parks’ Special Event, or (iii) the negligence or intentional tortious acts or omissions of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any sublicensee in the performance of its maintenance obligations under this Agreement).

(b) To the fullest extent permitted by law, the Licensee shall defend, indemnify, and hold harmless the Indemnified Parties against any and all Claims and Liabilities that the Indemnified Parties may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Licensee, any sublicensee or any of their respective employees, agents, servants, contractors or subcontractors in the operations under this License including any such infringement, violation, or unauthorized use arising while Licensee is in compliance with the License. Insofar as the facts or law relating to any of the foregoing would preclude an Indemnified Party from being completely indemnified by the Licensee, the Indemnified Party shall be partially indemnified by the Licensee to the fullest extent permitted by law.

19.4 Licensee’s obligation to defend, indemnify and hold an Indemnified Party harmless shall not be (i) limited in any way by Licensee’s obligations to obtain and maintain insurance under this Licensee, nor (ii) adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

20. INSURANCE

20.1 (a) Throughout the Term, Licensee shall, or shall cause its sublicensees to, maintain insurance that adheres to the requirements of this Article 20. Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force covering the Licensed Premises, and that such insurance adheres to all requirements herein. The City may require higher liability limits or other types of insurance if, in the reasonable opinion of the Commissioner, Licensee’s operations warrant it.

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

20.2 (a) The Licensee shall maintain commercial liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). 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 Commissioner, and shall be “occurrence” based rather than “claims-made.”

(b) Such commercial liability insurance shall name 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 Form CG 20 26, and the limits for the City shall be no lower than Licensee’s. “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 Form CG 20 26.

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

20.4 (a) With regard to all operations under this License or any approved sublicense in which automobiles are used, if any, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) for each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(b) 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.

20.5 (a) Should in the future Licensee be permitted to construct any buildings, structures, equipment and fixtures on the Licensed Premises for its sole use, and which are not covered by a Legacy Concession Agreement or a future concession agreement separate from this License Agreement (“Future TBC Structures”), Licensee shall maintain comprehensive broad form property insurance (such as an “All Risk” policy), whether existing at the Notice to Proceed or built at any time before the Termination Date. Such insurance shall provide full Replacement Cost coverage for the Future TBC Structures (without depreciation or obsolescence clause) at a value reasonably determined by Parks and include, without limitation, coverage for loss or damage by acts of terrorism and water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the

Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(b) The limit of such property insurance shall be no less than the full Replacement Cost of any and all Future TBC Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “all risk” or “special perils form” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Future TBC Structures.

(c) In the event of any loss to any of the Future TBC Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Future TBC Structure that the City owns or in which the City has an interest, Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim, provided, however, that Licensee would not be obligated to maintain or replace any structures on the Licensed Premises except to the extent Licensee is otherwise obligated to do so by the future concession agreement with respect to such structure.

20.6 Notwithstanding anything in this License Agreement, any terms and provisions relating to insurance included as part of the Legacy Concession Agreements shall remain in full force and effect and shall not be subject to the provisions of this Article 20.

20.7 Licensee represents and warrants that its operations at the Licensed Premises will not involve asbestos, lead, PCB’s or any other hazardous materials.

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

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

(c) Whenever this article 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 Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by

traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

(g) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

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

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

(c) For all insurance required under this Article other than Workers Compensation, Employer's Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee'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 annexed hereto as **Exhibit D** or as otherwise required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

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

(b) Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy. All such premiums, and deductibles and retentions to the extent actual liability is incurred thereunder, shall qualify as “Expenses” of Licensee pursuant to Section 2.1(i).

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

(d) Licensee’s failure to secure and maintain insurance in complete conformity with this Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this License Agreement.

Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(e) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License Agreement, 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 Agreement or the law.

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

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

(h) Licensee shall require its contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, 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 Licensee 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 Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name 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).

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

21. WAIVER OF COMPENSATION

21.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado,

explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges the Commissioner, her agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

21.2 Licensee further 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 the Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

22. INVESTIGATIONS

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

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

(ii) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

(1) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of any 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 Section 22.1(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in 22.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

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

23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

23.1 This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

23.2 (a) Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) 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 Agreement and its intent, Licensee agrees:

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

(c) With respect to any action between the City and the Licensee in New York State Courts, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

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

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

24. WAIVER OF TRIAL BY JURY

24.1 (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) 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 Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within twelve (12) months of the termination or conclusion of this License, or within twelve (12) months after the accrual of the cause of action, whichever first occurs.

(d) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and City are adverse parties, Licensee and the City shall reasonably cooperate with each other without additional compensation to the extent that either party may reasonably require of the other.

25. CUMULATIVE REMEDIES - NO WAIVER

25.1 The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

26. EMPLOYEES

26.1 All experts, independent contractors, consultants, specialists, trainees, servants, agents, and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

27. INDEPENDENT STATUS OF LICENSEE

27.1 Licensee is not an employee of the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

28. CONFLICT OF INTEREST

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

29. PROCUREMENT OF AGREEMENT

29.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

29.2 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any, and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this License. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

31. ALL LEGAL PROVISIONS DEEMED INCLUDED

31.1 Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted. 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 expressly amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

32. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

32.1 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

33. JUDICIAL INTERPRETATION

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

34. MODIFICATION OF AGREEMENT

34.1 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may only be modified by an agreement in writing and duly executed by the party or parties affected by said modification.

35. NOTICES

35.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to the Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by reputable overnight delivery service such as Federal express. Notices may also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement.

36. LICENSEE ORGANIZATION, POWER AND AUTHORITY

36.1 Licensee represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has

the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

37. MISCELLANEOUS

37.1 The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

38. CONCESSIONS

38.1 Licensee and Parks currently have the following other active Legacy Concession Agreements, which govern the respective concessions therein. In the event of a conflict between such agreements and this License, the Legacy Concession Agreements will prevail:

(i) The Kiosks and Bosque License Agreement, dated June 1, 2006 and March 10, 2017, by and among the City of New York, Parks, and Licensee;

(ii) The Peter Minuit Plaza License Agreement, dated January 25, 2010, by and among the City of New York, Parks, and Licensee; and

(iii) The Carousel License Agreement, dated September 10, 2013, by and between the City of New York and Licensee.

38.2 Parks agrees to consult and coordinate with Licensee with regard to (i) renewal of concessions located in the Licensed Premises not held by Licensee, and (ii) future concessions located within the Licensed Premises.

39. EXISTING LICENSE

39.1 Except as otherwise provided herein, this License supersedes in its entirety the 2007 Agreement.

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

CITY OF NEW YORK DEPARTMENT OF
PARKS & RECREATION

THE BATTERY CONSERVANCY,
INC.

By: _____

By: _____

Dated: _____

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 _____, 2024 before me personally came _____ to me known, and known to be the _____ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing 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 _____

On this _____ day of _____, 2024 before me personally came _____ to me known and who, being duly sworn by me, did depose and say that (s)he is the _____ of The Battery Conservancy, Inc. and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

Notary Public

EXHIBIT A
LICENSED PREMISES



EXHIBIT B

**FORM OF REPORT UNDER NEW YORK CITY ADMINISTRATIVE CODE
SECTION 18-134**

Local Law 28 of 2008 Partnership Reporting Form						
Reporting Period: January 1 – December 31 Fiscal Year: XXXX						
Partner	Park Location	Borough	Fiscal Year-end	Total Spending - Maintenance and Operations	Total Spending - Programming	Total Spending - Capital
TBC	The Battery	Manhattan	31-Dec			

EXHIBIT C

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Licensees of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Licensee must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Concession Manager in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to www.nyc.gov/PaidSickLeave for 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee

¹¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the

employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT D

FORM OF CERTIFICATE BY INSURANCE BROKER OR AGENT

(§29.7)

Instructions to New York City Agencies, Departments and Offices

One of the following must accompany all certificates of insurance (except certificates of insurance solely evidencing Workers ' Compensation Insurance, Employer's Liability Insurance and/or Disability Benefits Insurance):

- (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 the policy is available, at which time a certified copy of the policy shall be submitted.

Exhibit E
Payment Guarantee

I. (A) For purposes of this Exhibit E:

(1) "Contractor" means a person, firm or corporation who or which contracts with the Licensee to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to the Licensee in connection with the work for the Capital Improvement Project. The Contractor may also be referred to in this Exhibit E as a "party liable for payment" where applicable;

(2) "Licensee" shall have the meaning given such term in the License Agreement. The Licensee may also be referred to in this Exhibit E as a party liable for payment where applicable; and

(2) "Subcontractor" means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to a Contractor in connection with the work for the Capital Improvement Project. The Subcontractor may also be referred to in this Exhibit E as a "party liable for payment" where applicable.

(B) Licensee shall, in accordance with the terms of this Exhibit E, guarantee payment of all lawful claims for:

(1) Wages and compensation for labor performed and/or services rendered; and

(2) Materials, equipment, and supplies provided, whether incorporated into the Capital Improvement Project or not, when demands have been filed with the Licensee as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof,

in connection with the Capital Improvement Project (hereinafter referred to as a "beneficiary") performed at the direction of the Licensee, the Contractor, or a Subcontractor of the Contractor; and

II. The provisions of Section I.(B) of this Exhibit E are subject to the limitations and conditions in this Section II and in Sections III and IV of this Exhibit E:

(A) The guarantee is made for the benefit of all beneficiaries as defined in Section I.(B) of this Exhibit E, provided that those beneficiaries strictly adhere to the terms and conditions of this Section II of this Exhibit E.

(B) Nothing in this Exhibit E shall prevent a beneficiary providing labor, services or material for the Capital Improvement Project from suing the person, firm or corporation for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

(C) Every person who has furnished labor or material, to the Licensee, a Contractor or to a Subcontractor of the Contractor, in the prosecution of the Capital Improvement Project and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action, by filing a demand hereunder; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.

(D) No action on this payment guarantee shall be commenced after the expiration of two (2) years after the completion of the Capital Improvement Project.

(E) A Contractor shall promptly forward to the Licensee any notice or demand received pursuant to Section II.(C) of this Exhibit E. The Contractor shall inform the Licensee of any defenses to the notice or demand and shall forward to the Licensee any documents the Licensee requests concerning the notice or demand. If the Contractor has a claim against the Licensee as described in the first sentence of Section II.(C) of this Exhibit E, the Contractor shall promptly forward such demand to the Licensee.

(F) All demands made against the Licensee by a beneficiary of this payment guarantee shall be presented to the Licensee along with all written documentation concerning the demand which the Licensee deems reasonably appropriate or necessary, which may include, but shall not be limited to: the contract or subcontract; any invoices presented to the party liable for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the party liable for payment and that the demand has not been paid by the party liable for payment within the time allowed for such payment by the contract or subcontract; and copies of any correspondence between the beneficiary and the party liable for payment concerning such demand. If the party liable for payment is not the Licensee, the Licensee shall notify the party liable for payment that a demand has been made. The party liable for payment shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

(G) The Licensee shall make payment as described in Section IV only if, after considering all defenses presented to the claim for payment, it determines that the payment is due and owing to the beneficiary making the demand.

(H) No beneficiary shall be entitled to interest from the Licensee, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by applicable law.

III. Upon the receipt by the Licensee of a demand pursuant to this Exhibit E, in the case where the Licensee is not the party liable for payment, the Licensee may withhold from any payment otherwise due and owing to the Contractor an amount sufficient to satisfy the demand.

IV. (A) In the event the Licensee determines that the demand is valid and the Licensee is not the party liable for payment, the Licensee shall notify the party liable for payment of such determination and the amount thereof, and direct the party liable for payment to immediately pay such amount to the beneficiary. In the event the party liable for payment, within seven (7) days of receipt of such notification from the Licensee, fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee becomes aware of such failure to pay the beneficiary.

(B) In the event the Licensee determines that the demand is valid and the Licensee is the party liable for payment, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee determines that the demand is valid.

(C) In the event the Licensee determines that the demand is invalid, any amount withheld pending the Licensee's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York. The Licensee shall provide written notification of its determination that the demand is invalid to the beneficiary that made such demand.

V. Nothing in this Exhibit E shall relieve a party liable for payment of the obligation to pay the claims of all persons with valid and lawful claims against such party relating to the Capital Improvement Project.

VI. Notwithstanding any provision to the contrary contained in the License Agreement (including this Exhibit E), the payment guarantee made pursuant to this Exhibit E shall be construed in a manner consistent with Section 5 of the New York Lien Law.



NYC Parks

David Cerron
Assistant Commissioner
Business Development &
Special Events

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**City of New York
Parks & Recreation**

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

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks & Recreation 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 with The Battery Conservancy, Inc. (“Licensee”) for the operation and maintenance of The Battery in Manhattan including a share of the concession revenue generated at the Licensed Premises. The agreement will provide for one (1) ten (10)-year term with two (2) five (5)-year renewal options. All gross receipts received by Licensee will be used exclusively to provide for the maintenance, operation, and programming at the Licensed Premises in performing Licensee’s obligations and providing services required or permitted by this License.

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

5/15/2024

Signed: _____

Title: Chief City Procurement Officer

Date: _____