


PUBLIC MEETING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

WEDNESDAY JANUARY 15th, 2025 @ 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 January 15th, 2025 @ 2:30 P.M.*

NEW YORK CITY DEPARTMENT OF TRANSPORTATION

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 the Times Square District Management Association, Inc. d/b/a/ Times Square Alliance for the operation and management of a pedestrian plaza located at Broadway and 7th Avenue between 41st Street and West 53rd Street in the Borough of Manhattan. The License provides for (1) one (5) five-year initial term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at DOT's sole discretion.

NEW YORK CITY MAYOR'S OFFICE OF CONTRACT SERVICES

No. 2: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval, pursuant to Sections 373(d)(1) and 1043 of the New York City Charter, to initiate the rulemaking process under the City Administrative Procedure Act, with respect to proposed changes to the Concession Rules of the City of New York.

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NOTICE OF PUBLIC HEARING

To: Mark Levine, Manhattan Borough President
Bradley Sherburne, Chair, Manhattan CB 5

From: Michelle Craven, Associate Deputy Commissioner for Cityscape and Franchises

Subject: Notice of Joint Public Hearing: 1/13/2025; For the operation and management of a pedestrian plaza located along Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan (“Licensed Plaza”), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions

Date: 12/26/2024

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation (“DOT”) to be held on 1/13/2025, at 22 Reade Street, Spector Hall, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to Times Square District Management Association, Inc. d/b/a the Times Square Alliance for the operation and management of a pedestrian plaza located on Broadway and 7th Avenue between West 41st and West 53rd Streets in the Borough of Manhattan.

The License provides for one five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two additional five-year terms, exercisable at the sole discretion of DOT.

Compensation to the City will be as follows: The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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 DOT at concessions@dot.nyc.gov from 12/26/2024 through 1/8/2025.
2. Submit a written request by mail to Department of 55 Water Street Transportation 9th Floor, New York, NY 10038 Attn: Concessions and Franchises. Written requests must be received by 1/8/2025. For mail-in requests, please include your name, return address, and agreement name and ID of Times Square Plaza Concession / 2025Con05.

The agenda 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.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Times Square Plaza Concession

Concession ID 2025Con05

Description For the operation and management of a pedestrian plaza located along Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions

Agency Department of Transportation
(DOT)

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

Recommended Concessionaire

Name Times Square District Management Association, Inc. d/b/a Times Square Alliance

Telephone 212-768-1560

Address 1560 Broadway, Suite 1001, New York, NY 10036

☒ EIN or ☐ SSN # 13-3627527

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

Recommended Concession Agreement Term

Initial Term NTP to 5 years from NTP

Renewal Option(s) One to Five Year

One to Five year

Total Potential Term 15 years

☐ >20 years – FCRC unanimously approved term on ___/___/___

Concession Site(s) ☒ Yes ☐ No

Address Broadway and 7th Ave

between W 41st and W 53rd

Borough MN Community Board 5

Block# _____ Lot# _____

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

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 05 / 01 / 24

☐ 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 would permit Times Square Alliance ("Concessionaire") to provide for the operation and management of a pedestrian plaza located on Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

Award Requirements

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

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

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

☒ [IF REQUIRED] a public hearing was conducted on: 01 / 13 / 25

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 12 / 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 01 / 15 / 25 (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 Michelle Craven

Title Associate Deputy Commissioner for Cityscape and Franchises 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

Times Square Plaza Concession

2025Con05

Concession Title _____**Concession ID** _____**Description** For the operation, management and maintenance of the pedestrian plazas on Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions.**Agency** Department of Transportation
(DOT)**Concession Agreement Recommendation For Award Memorandum Cover Sheet****Description:**

For the operation and management of a pedestrian plaza located along Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcessions

Negotiation Requirements:

The License would permit Times Square Alliance ("Concessionaire") to provide for to provide for the operation and management of a pedestrian plaza located on Broadway and 7th Avenue between West 41st and West 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

Award Requirements:

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

Recommended Concession Agreement Term

Renewal Options: Two (2) five-year renewal options, exercisable at the sole discretion of DOT

Recommended Annual Revenue

Checked box for Other: Concessionaire will be required to invest revenue generated by this concession into the maintenance of the premises of the Licensed Plaza

THIS LICENSE, made as of _____, 20__ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and Times Square District Management Association, Inc. d/b/a Times Square Alliance ("PLAZA PARTNER"), a New York not-for-profit corporation.

WITNESSETH

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

WHEREAS, PLAZA PARTNER was formed in 1992 to improve and enhance the Times Square area in the borough of Manhattan, City and State of New York ("Times Square Area"), including but not limited to the improvement and maintenance of public space therein; and

WHEREAS, the pedestrian plaza blocks in the Times Square Area, are located along Broadway and 7th Avenue between 41st Street and 53rd Street, in Manhattan, New York ("Licensed Plaza"). The Licensed Plaza consists of 12 blocks as illustrated in **Exhibit A**; and

WHEREAS, DOT has jurisdiction over the Licensed Plaza and designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

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

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

WHEREAS, PLAZA PARTNER has operated and managed portions of the Licensed Plaza, and assisted DOT to maintain and/or repair certain amenities within portions of the Licensed Plaza since 2009; and

WHEREAS, DOT in coordination with PLAZA PARTNER, initiated a Uniform Land Use Review Procedure ("ULURP") application in 2023 for a major concession to authorize the PLAZA PARTNER to manage and operate the Licensed Plaza which exceeds 42,500 square feet. Such ULURP application was approved in June 2024; and

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

WHEREAS, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Times Square Area; and

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

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

WHEREAS, a major concession was approved pursuant to City Planning Commission on June 24, 2024.

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

1. SCOPE OF LICENSE

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

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

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

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

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

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

2. TERM

A. The term of this License ("Term") shall be five (5) years, commencing upon written Notice to Proceed ("Commencement Date"). This License may be renewed for up to two (2) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days' advance written notice of its intent to renew.

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

3. SERVICES

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

(1) For the purposes of this License, the term "maintain" shall mean cleaning, sweeping, trash removal, snow and ice removal in accordance with the snow map illustrated in **Exhibit C**, landscaping, and graffiti removal, which shall be performed during the PLAZA PARTNER's hours of operation.

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

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

(4) For the purposes of this License, the PLAZA PARTNER shall not be responsible for maintaining or repairing the City, Public, and Utility Infrastructure listed in **Exhibit B-1**. For avoidance of doubt, the City shall retain responsibility for the maintenance and repair of any item listed in **Exhibit B-1** as City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

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

(1) Maintenance:

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

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

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

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

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

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

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

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

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

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice in accordance with the snow map illustrated in **Exhibit C**.

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

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

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

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

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

(2) Repair:

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

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

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

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

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

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

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

(h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use good faith efforts to provide PLAZA PARTNER with copies of such applicable construction warranties and facilitate discussions between the appropriate parties.

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

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

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

(j) For items listed in **Exhibit B** under the heading “Event Infrastructure”, DOT shall provide PLAZA PARTNER with access to the Event Infrastructure, and a joint inspection with DOT and PLAZA PARTNER shall take place at a mutually agreed upon date. After such joint inspection, PLAZA PARTNER shall provide DOT with a report of the state of the accessed Event Infrastructure, which shall be deemed to be the “baseline”. PLAZA PARTNER shall be responsible for maintaining, repairing and replacing the Event Infrastructure to its baseline functionality. Any further maintenance, repair or replacement of Event Infrastructure shall be at PLAZA PARTNER’s discretion and shall not alter the baseline or PLAZA PARTNER’s responsibilities with respect to the Event Infrastructure. PLAZA PARTNER is granted the right to utilize the Event Infrastructure for purposes of the operation and management of the Licensed Plaza. In accordance with Section 3(F) below, PLAZA PARTNER, at its sole cost and expense, shall obtain and maintain a separate account with the appropriate utility provider for any electrical service associated with the Event Infrastructure.

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

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

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

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

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

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

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

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

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

I. PLAZA PARTNER shall maintain the Licensed Plaza's pavement in a safe and attractive condition until such time as it has demonstrated to the satisfaction of DOT that it has expended \$150,000 annually. Thirty days prior to PLAZA PARTNER's annual expenditure of \$150,000 on the maintenance of the Licensed Plaza's pavements, PLAZA PARTNER will provide DOT all necessary documents or data supporting this expenditure. If and when the maintenance of the Licensed Plaza's pavements exceeds \$150,000 and PLAZA PARTNER has adequately shown such accounting, the Licensed Plaza's pavement shall be deemed to be DOT Standard for purposes of this License for the duration of said License year, and DOT will perform 10 crew days of maintenance work (one crew day consists of five DOT employees working a shift of seven hours) on the Licensed Plaza pavements based on DOT's assessment of the pavement.

4. BUDGET

A. On or before April 1st of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2025 shall be submitted within thirty (30) days of the Commencement Date.

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

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

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

5. REVENUE

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

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

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

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

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

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

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

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

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

E. Revenue does not include funds collected or received by PLAZA PARTNER (such as grants, donations, bequests and contributions) other than in the course of PLAZA PARTNER's use

or operation of the Licensed Plaza. Applicable law governs PLAZA PARTNER's use of such other revenues.

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

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

6. SUBCONCESSION(S)

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

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

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

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

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

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

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless as set forth herein. Any subconcession agreement(s) and/or other agreements entered into on or after the Commencement Date of this License that involve operations in the Licensed Plaza shall include the following, provided that the terms "SUBLICENSEE" and "PLAZA PARTNER" shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:

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

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including without limitation attorneys' fees and disbursements) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

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

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

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

7. OPERATION OF THE SUBCONCESSION(S)

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

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

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

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

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

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

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

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this

License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

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

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

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

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

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

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

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

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

I. PLAZA PARTNER shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession

structure, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. PLAZA EVENTS

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

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

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

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

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

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

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

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

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

D. The City may use the Licensed Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use

with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event.

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

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

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

9. SPONSORSHIPS AND GIFTS

A. Sponsorships

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

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

B. Gifts

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

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

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

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

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

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

10. INSPECTION AND AUDIT OF RECORDS

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

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

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

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, and will make available for

consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York (“Comptroller”), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

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

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, PLAZA PARTNER shall prepare and provide to DOT any other reports as requested by DOT and/or pursuant to this License.

(1) Notwithstanding the above, for each fiscal year in which PLAZA PARTNER generates less than \$150,000 in Revenue, PLAZA PARTNER, may, in lieu of the audited and certified financial statement related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof, furnish to DOT a reviewed financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of

amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such review shall be conducted by an independent certified public accountant at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year.

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

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

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within 10 business days of the end of each quarter during the Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by

audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

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

K. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

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

11. INSURANCE

A. PLAZA PARTNER’s Obligation to Insure

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

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

B. Commercial General Liability Insurance

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury

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

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured ("Additional Insured") for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

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

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

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

(1) PLAZA PARTNER shall maintain and shall cause its subconcessionaire or others to maintain Workers' Compensation insurance, Employers' Liability insurance, and Disability and Paid Family Leave Benefits insurance in accordance with the law on behalf of, or

with regard to, all employees involved in the PLAZA PARTNER's operations under this License, and such insurance shall comply with the laws of the State of New York.

D. Commercial Automobile Liability Insurance

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

(2) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

E. Reserved.

F. Reserved.

G. Liquor Law Liability Insurance

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

H. General Requirements for Insurance Coverage and Policies

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

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

(3) Whenever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, PLAZA PARTNER shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies. If the Commissioner authorizes a self-insured retention, the PLAZA PARTNER must allow the City to pay all or part of the self-insured retention upon the PLAZA PARTNER's failure to pay. If the City pays any portion of such self-insured retention, the City may at its option withhold any monies so paid from any monies owing to PLAZA PARTNER, whether under this License or otherwise, and/or may require PLAZA PARTNER to pay such monies upon 30 days' notice.

(5) The City reserves the right to increase the required limits of Commercial Property Insurance at the time it exercises its renewal rights under Section 2(A) above if the Commissioner determines that the existing limits do not adequately protect the City from financial risk due to potential claims for injury or property damage.

(6) In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

I. Proof of Insurance

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

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

(a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;

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

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

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

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

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

J. Miscellaneous

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

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

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

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

(5) Subject to Section 12.B.1, insurance coverage in the minimum amounts provided for in this Section shall not relieve PLAZA PARTNER of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

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

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors, except for those damages or losses for which the City has an obligation to indemnify, defend and hold the PLAZA PARTNER harmless under Section 12(C).

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section and such insurance shall include the City, including its officials and

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

In the event PLAZA PARTNER receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

A. PLAZA PARTNER Responsibilities

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

(2) PLAZA PARTNER shall take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

B. PLAZA PARTNER Indemnification

(1) Notwithstanding any other provisions of this License, the maximum amount for which the PLAZA PARTNER is liable per policy year for third party bodily injury (including death) and property damage caused by the PLAZA PARTNER’s operations under this License shall

not exceed the Commercial General Liability limits required in Section 11(B)(1) above, (“Limitation of Liability”). The Limitation of Liability shall not apply to PLAZA PARTNER’s contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)’s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of the License, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of the following:

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

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

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

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

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

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

C. City Indemnification

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

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

(3) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees, including utilities and the Metropolitan Transportation Authority (MTA), when contracting with the City, to list the PLAZA PARTNER as additional insured and indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of their presence, operations or work in and around the Licensed Plaza. The City will contractually require this obligation from City contractors with presence, operations or doing work in these areas. For the sake of clarity, the map of the Licensed Plaza attached hereto as **Exhibit A** identifies all known utility and MTA infrastructure in the Licensed Plaza as of the date of this License, which are deemed to be outside the scope of PLAZA PARTNER's responsibilities under this License.

(4) To the fullest extent permitted by law, the City shall, or shall cause its contractors, licensee, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of: (i) the design and construction of the Licensed Plaza; (ii) any subsurface structural conditions at the Licensed Plaza; (iii) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of PLAZA PARTNER; and (iv) any other cause outside the scope of PLAZA PARTNER's responsibilities under this License, including any Force Majeure Events as defined in Section 19(F).

(5) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any City infrastructure, amenity, item or equipment not identified in **Exhibit B** that is located in or around the Licensed Plaza.

(6) To the fullest extent permitted by law, the City shall or shall cause its contractors, licensees, or permittees to indemnify defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of security elements within and around the Licensed Plaza (including placement or failure to place such security elements), such as bollards and barricades, except where explicitly agreed to in **Exhibit B**. The PLAZA PARTNER is only responsible for cleaning the security elements but not the structural integrity or repair or placement of such security elements. Provided however that this indemnification shall not apply to barricades placed by the PLAZA PARTNER or its contractors, subcontractors, permittees or subconcessionaires, or any Liabilities caused by the

PLAZA PARTNER's actions, except to the extent that the such placement or actions were at the direction of the City.

(7) The PLAZA PARTNER is only responsible for snow removal to the extent set forth in the agreement herein (if applicable).

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

13. ASSIGNMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

14. CAPITAL IMPROVEMENTS AND ALTERATIONS

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

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. PLAZA

PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such alterations.

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

- (1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;
- (2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);
- (3) any work, excluding maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;
- (4) removal of perimeter planters on the Licensed Plaza;
- (5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

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

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

15. INSPECTION AT SITE

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

16. PERSONNEL

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

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

C. To the extent required by law, PLAZA PARTNER shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment

status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

17. INVESTIGATIONS CLAUSE

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

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

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

C. (1) DOT or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

(1) The disqualification for a period not to exceed five (5) years from the date

of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definition of Terms

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

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

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

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

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

18. NOTICE

All notices, except those related to Sections 11(J)(3) and 12(C)(5) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER 1560 Broadway, Suite 1001, New York, NY 10036, or such other address as may be notified from time to time.

19. TERMINATION

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

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

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

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER becoming insolvent.

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

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

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

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

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

F. Force Majeure Event

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

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

- (a) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom; and
- (e) collapse of buildings, fire, explosion, or citywide blackout.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER shall continue to comply with all provisions of this License as if the License was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this License shall in no way be construed as a renewal or other extension of this License, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this License, including but not limited to, damages and restitution and injunctive relief.

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

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

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

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

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

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. PLAZA PARTNER makes the following representations and warranties:

(1) PLAZA PARTNER is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this License.

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

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

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

(5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this License, PLAZA PARTNER is in compliance with the requirements of the New

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

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

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

22. CONFLICT OF INTEREST

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

23. NO LEASE

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

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 13-3627527.

25. RESERVATION OF RIGHTS AND INTERESTS

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

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

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

26. WAIVER OF JURY TRIAL

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

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

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

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

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

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

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

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

28. CLAIMS AND ACTIONS THEREON

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

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

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

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

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

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

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

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

31. TRADEMARK

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

32. INFRINGEMENTS

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

33. ANTI-TRUST

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

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's

request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

35. DEVELOPMENT PURPOSES

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

36. SEVERABILITY

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

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

38. MODIFICATION

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

39. ENTIRE AGREEMENT

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

40. COUNTERPARTS

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

NO FURTHER TEXT ON THIS PAGE

Agreed to this ____ day of _____, 20__:

By:_____

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

Dated:

By:_____

Tom Harris
President
Times Square District Management Association, Inc. d/b/a Times Square Alliance

Dated:

Approved as to Form and Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

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

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

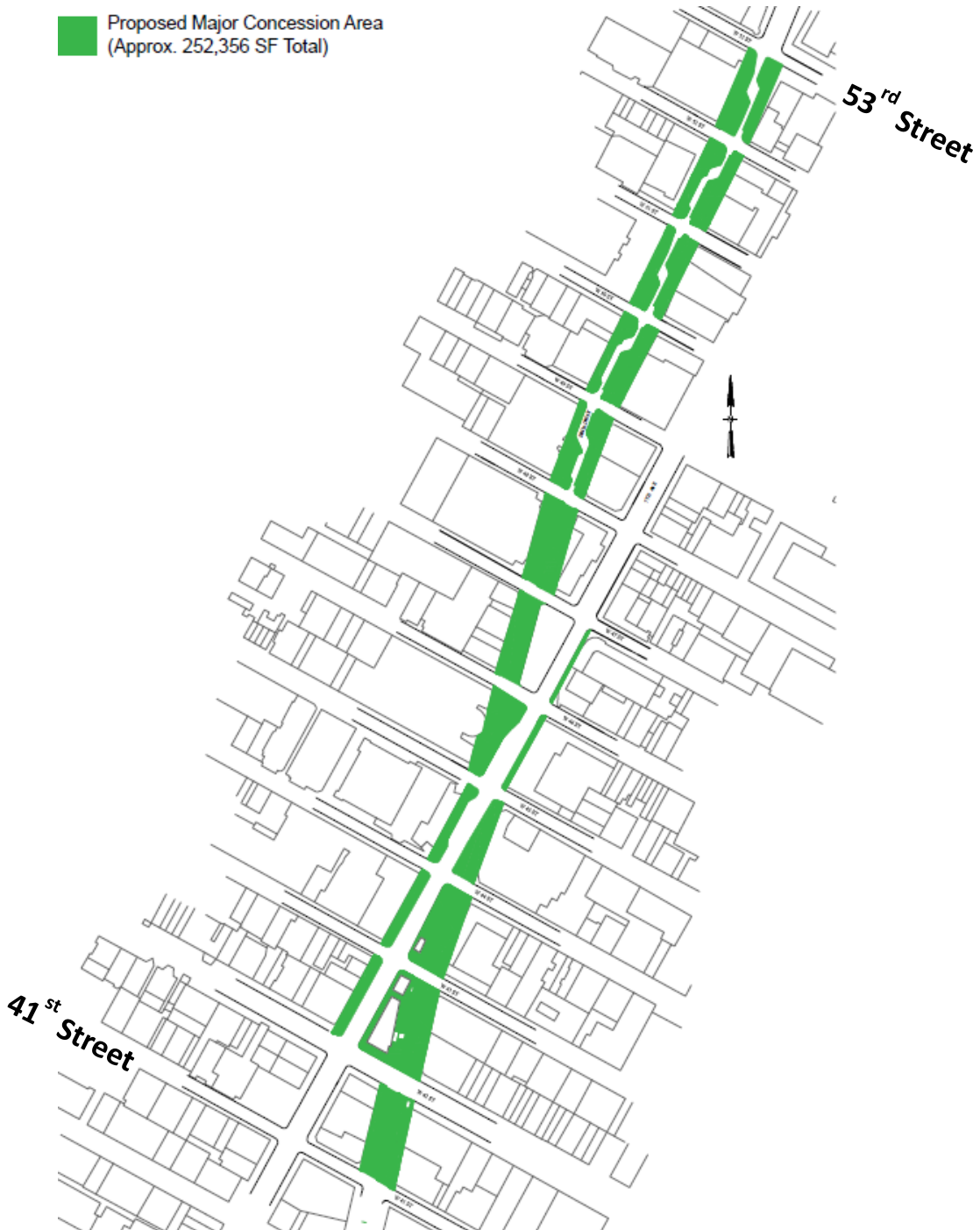
On this day of , 20__ before me personally came Tom Harris, who, being duly sworn by me did depose and say that s/he is the President of the Times Sqare District Management Association, Inc. d/b/a Times Square Alliance, the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in his/her official capacity and for the purposes mentioned therein.

Notary Public

Exhibit A

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

See more detailed maps attached





Project:
TSA / DOT
EXHIBIT A Map

Site:
**Broadway
Plazas
42-48**

Drawing No:
A1

Sheet:
42-53 Plazas

Scale:
**24' x 36'
Arch D**



Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org


Version:
v8

Revised:
11/13/24

KEY:

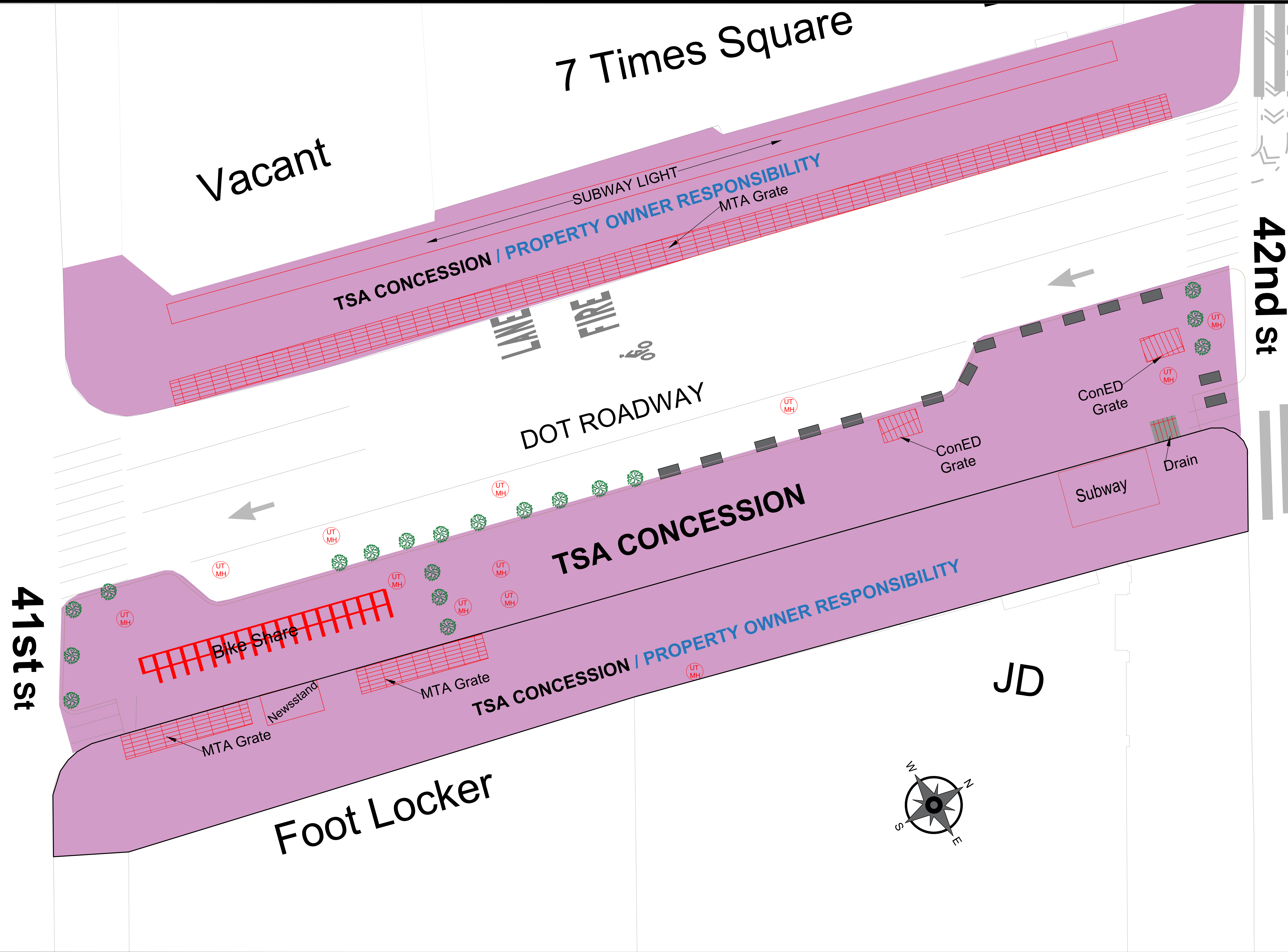
-  TSA Concession
-  Outside of Concession
- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

** City crosswalks, roadbeds, bike lanes, and standard sidewalks are NOT the Alliance responsibility to maintain, repair, or replace.*

-  Property Owner Responsibility

All Rights Reserved





Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A2

Sheet:
41-42 Plaza

Scale:
24' x 36'
Arch D

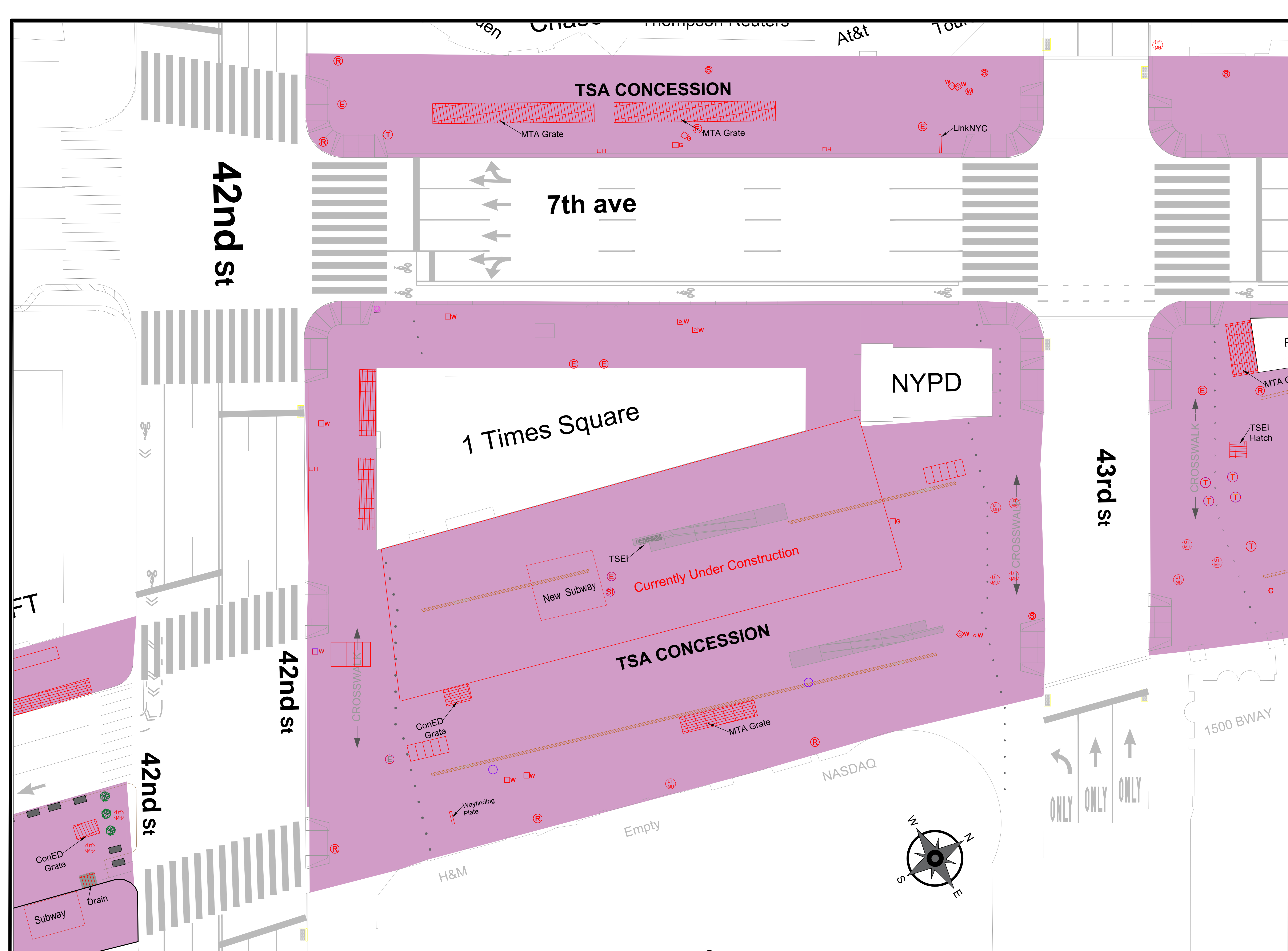
Event Date:
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Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

Revised:
11/13/24

KEY:
TSA Concession
Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks
* City crosswalks, roadbeds,
bike lanes, and standard sidewalks
are NOT the Alliance responsibility
to maintain, repair, or replace.
Property Owner Responsibility



Project:

TSA / DOT

EXHIBIT A Map

Site:

Broadway
Plazas
41-48

Drawing No:

A3

Sheet:

42-43 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v8

Revised:

11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes

Privately Maintained Tree Pits

Hydrants

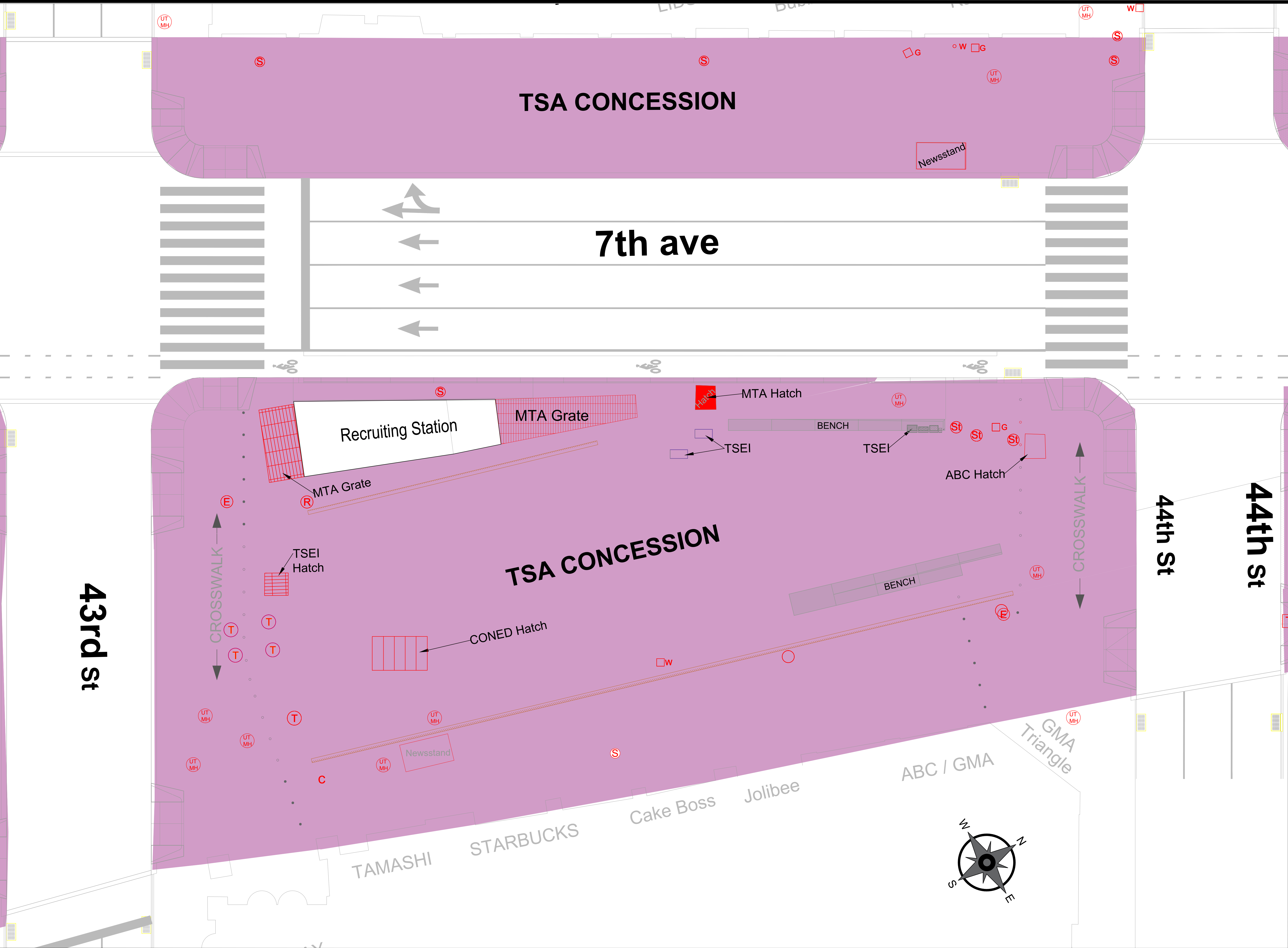
Bike Racks

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bike lanes, and standard sidewalks
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to maintain, repair, or replace.

Property Owner Responsibility

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TIMES
SQUARE
ALLIANCE



Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A4

Sheet:
43-44 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

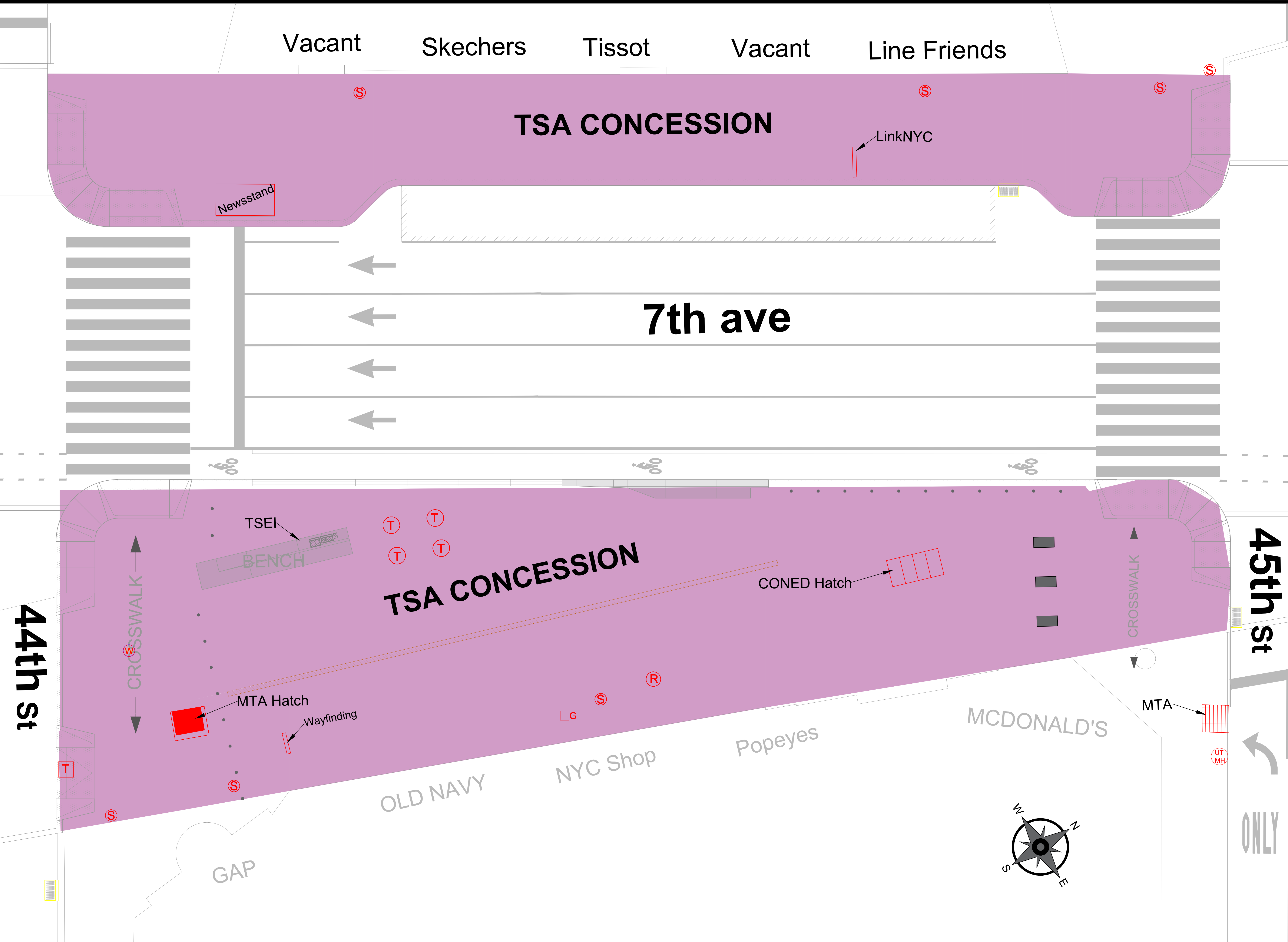
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Version:
v8

Revised:
11/13/24

- KEY:
- TSA Concession
 - Outside of Concession
 - Utilities
 - MTA
 - Newsstands
 - Link NYC
 - Wayfinding
 - Manholes
 - Privately Maintained Tree Pits
 - Hydrants
 - Bike Racks
- * City crosswalks, roadbeds, bike lanes, and standard sidewalks are NOT the Alliance responsibility to maintain, repair, or replace.
- Property Owner Responsibility
- All Rights Reserved





Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A5

Sheet:
44-45 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

Revised:
11/13/24

KEY:

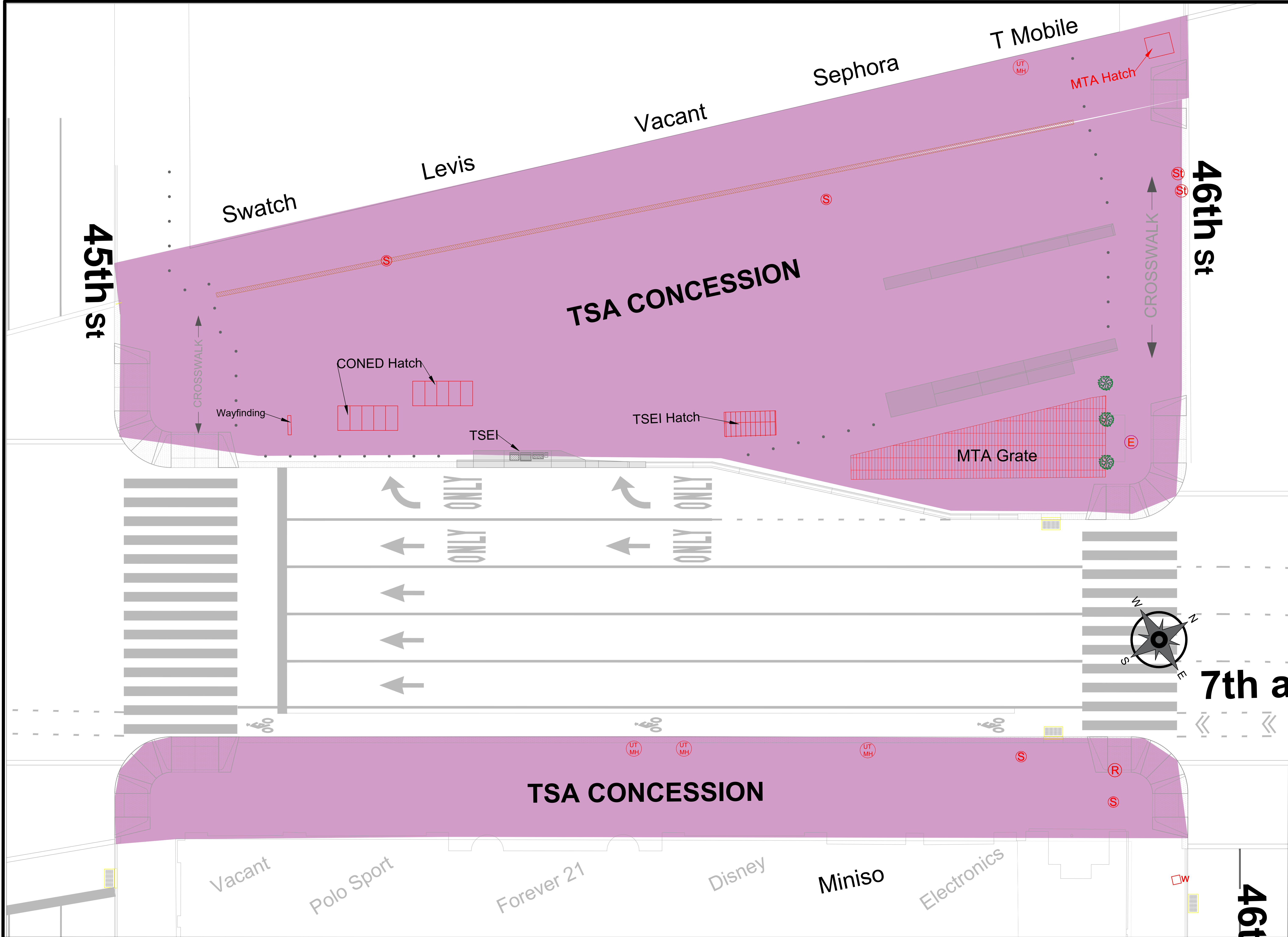
- TSA Concession
- Outside of Concession
- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

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Property Owner Responsibility

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TIMES SQUARE ALLIANCE



Project:

TSA / DOT

EXHIBIT A Map

Site:

Broadway

Plazas

41-48

Drawing No:

A6

Sheet:

45-46 Plaza

Scale:

24' x 36'

Arch D

Event Date:

N/A

Drawn:

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Version:

v8

Revised:

11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes

Privately Maintained Tree Pits


Hydrants

Bike Racks

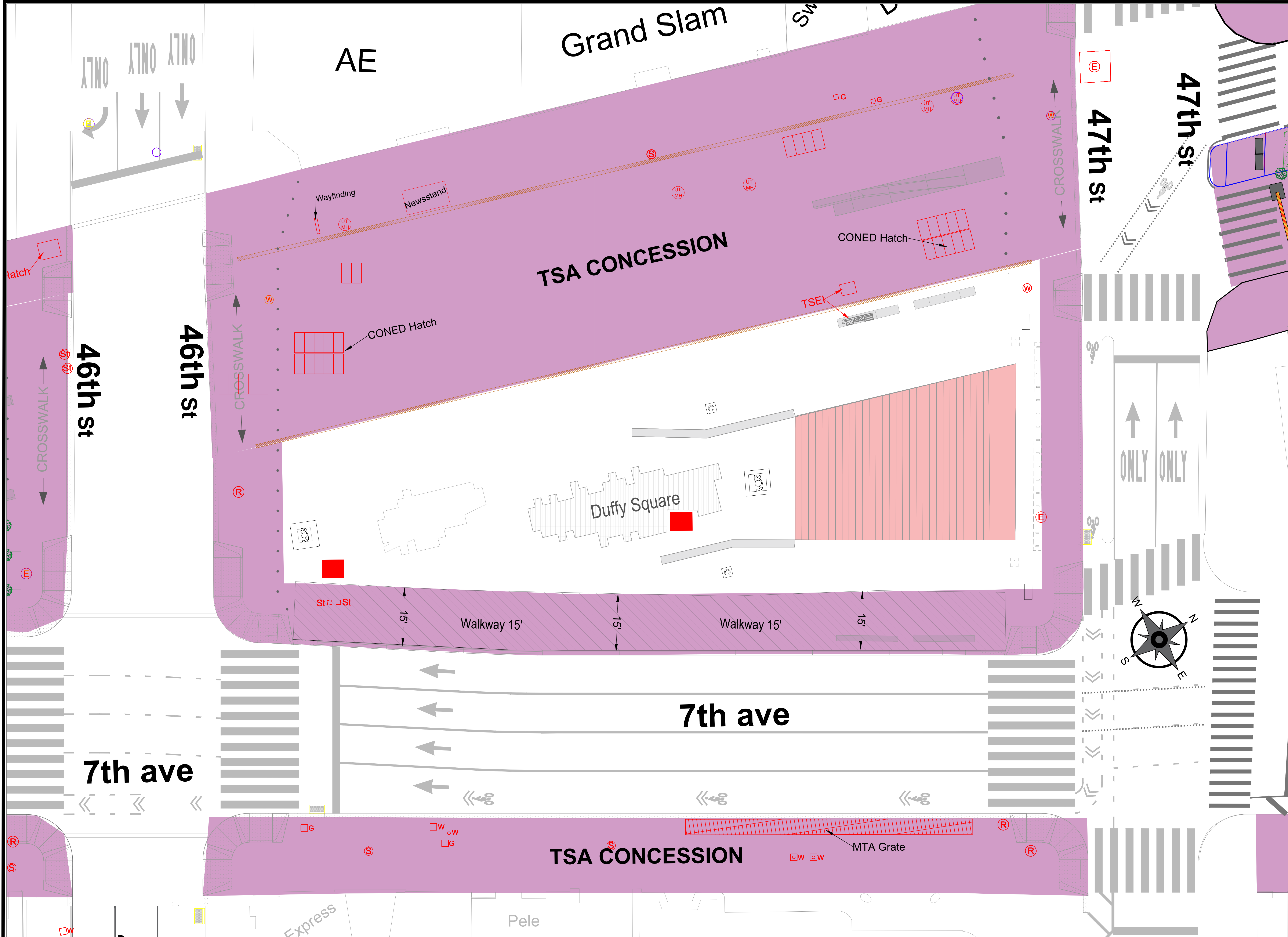
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Property Owner Responsibility

All Rights Reserved



TIMES SQUARE ALLIANCE



Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A7

Sheet:
46-47 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
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DSANTUCCI@TSQ.org

Version:
v8

Revised:
11/13/24

KEY:


TSA Concession

Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

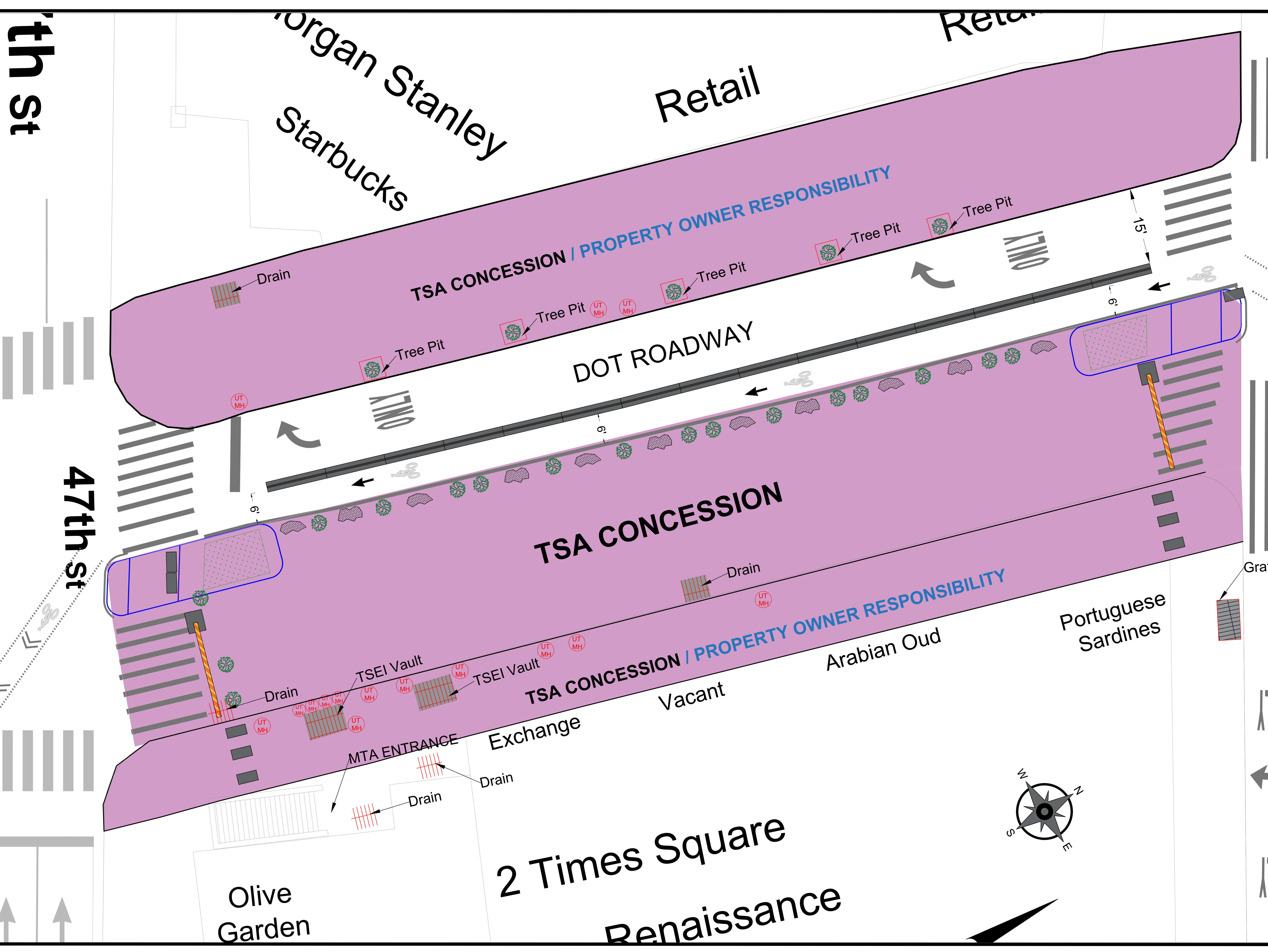
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Property Owner Responsibility

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TIMES
SQUARE
ALLIANCE



Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A8

Sheet:
47-48 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

Revised:
11/13/24

KEY:

- TSA Concession
- Outside of Concession
- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

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Property Owner Responsibility

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TIMES SQUARE ALLIANCE

Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A9

Sheet:
48-49 Plaza



Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

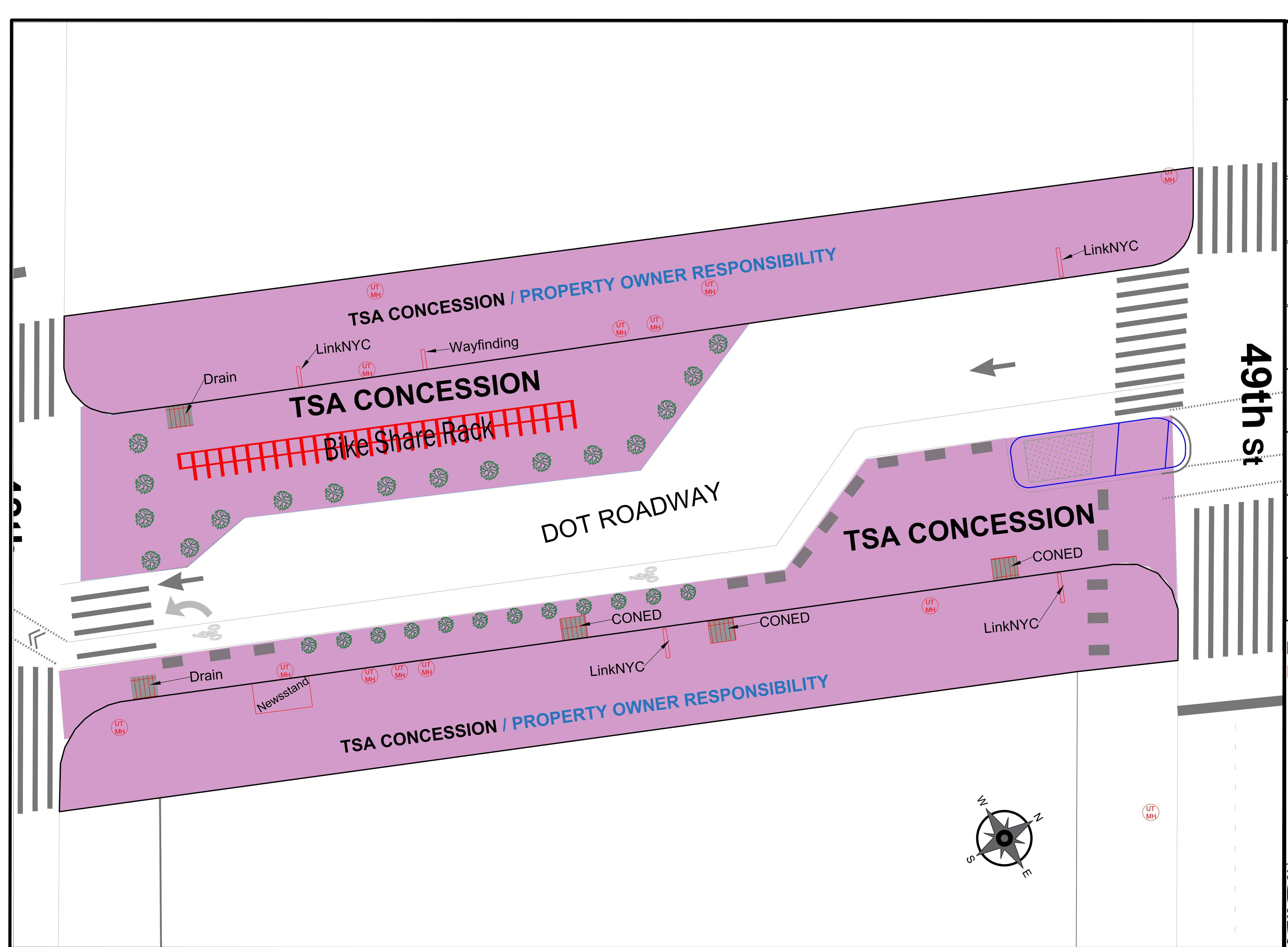
Revised:
11/13/24

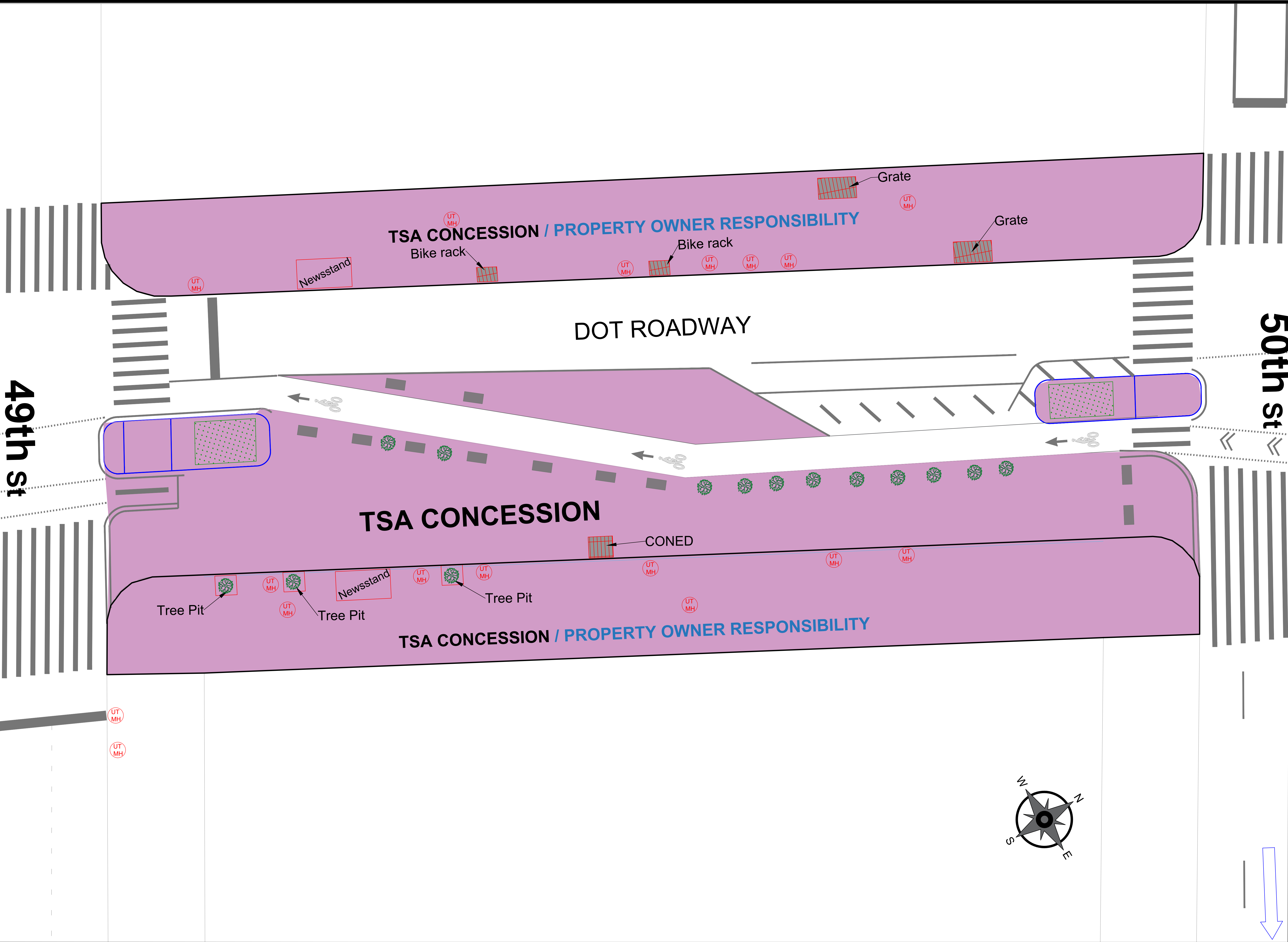
KEY:
 TSA Concession
 Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

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 Property Owner Responsibility

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Project:
**TSA / DOT
EXHIBIT A Map**

Site:
**Broadway
Plazas
41-48**

Drawing No:
A10

Sheet:
49-50 Plaza

Scale:
**24' x 36'
Arch D**

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

Revised:
11/13/24

KEY:

- TSA Concession
- Outside of Concession
- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

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**TIMES
SQUARE
ALLIANCE**

Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A11

Sheet:
50-51 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

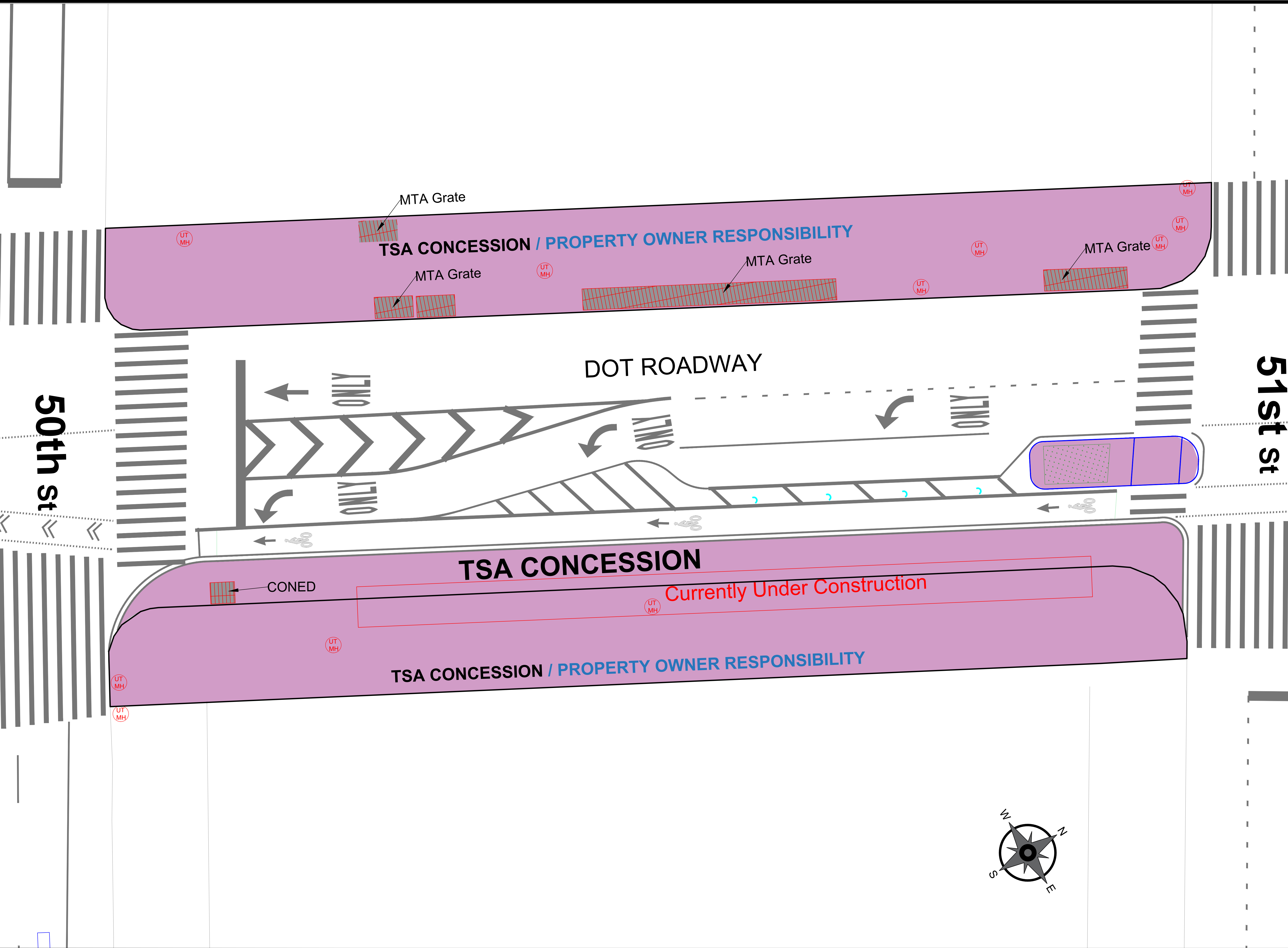
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DSANTUCCI@TSQ.org

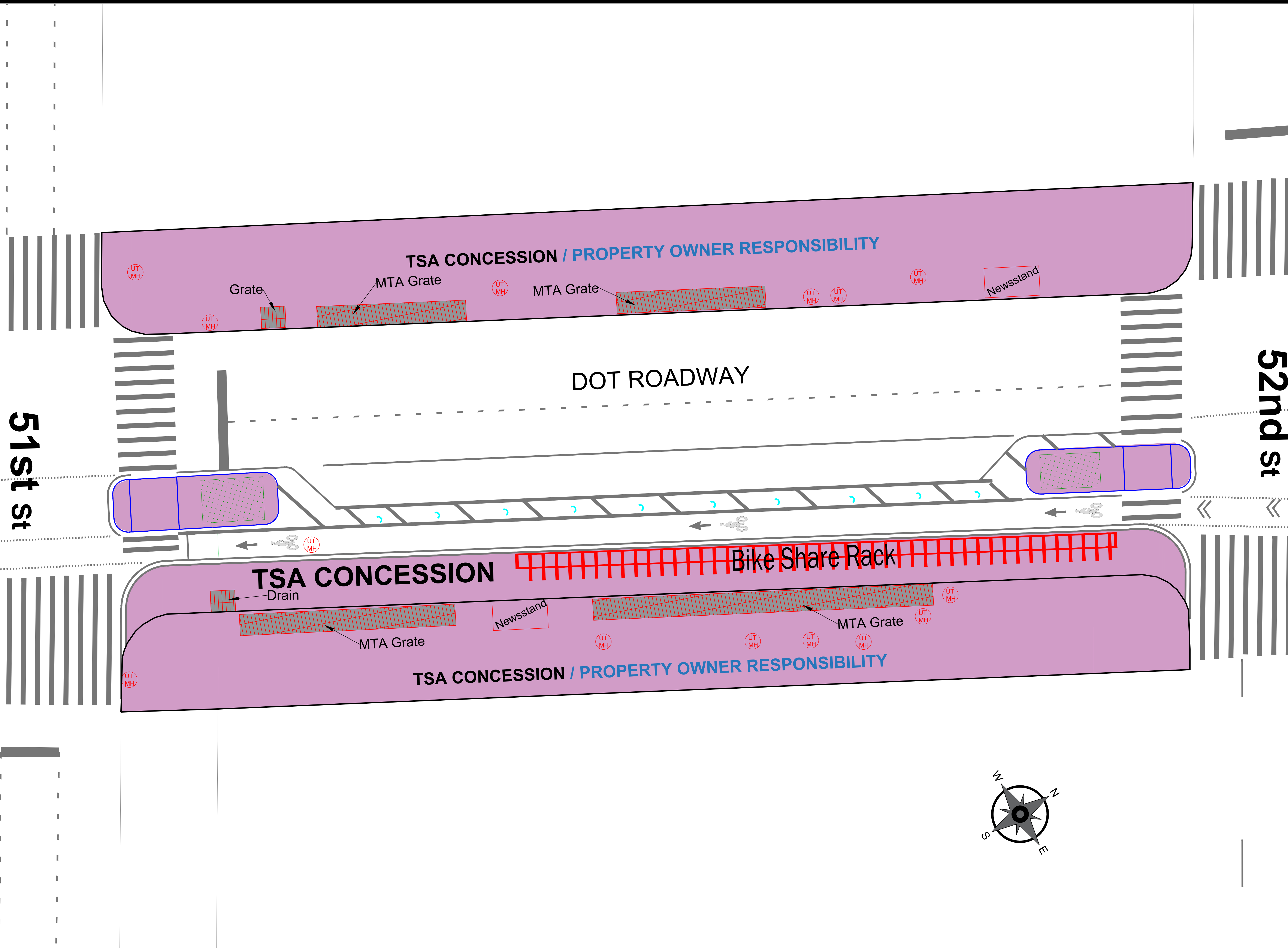
Version:
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Revised:
11/13/24

- KEY:
- TSA Concession
 - Outside of Concession
 - Utilities
 - MTA
 - Newsstands
 - Link NYC
 - Wayfinding
 - Manholes
 - Privately Maintained Tree Pits
 - Hydrants
 - Bike Racks
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Project:
TSA / DOT
EXHIBIT A Map

Site:
Broadway
Plazas
41-48

Drawing No:
A12

Sheet:
51-52 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v8

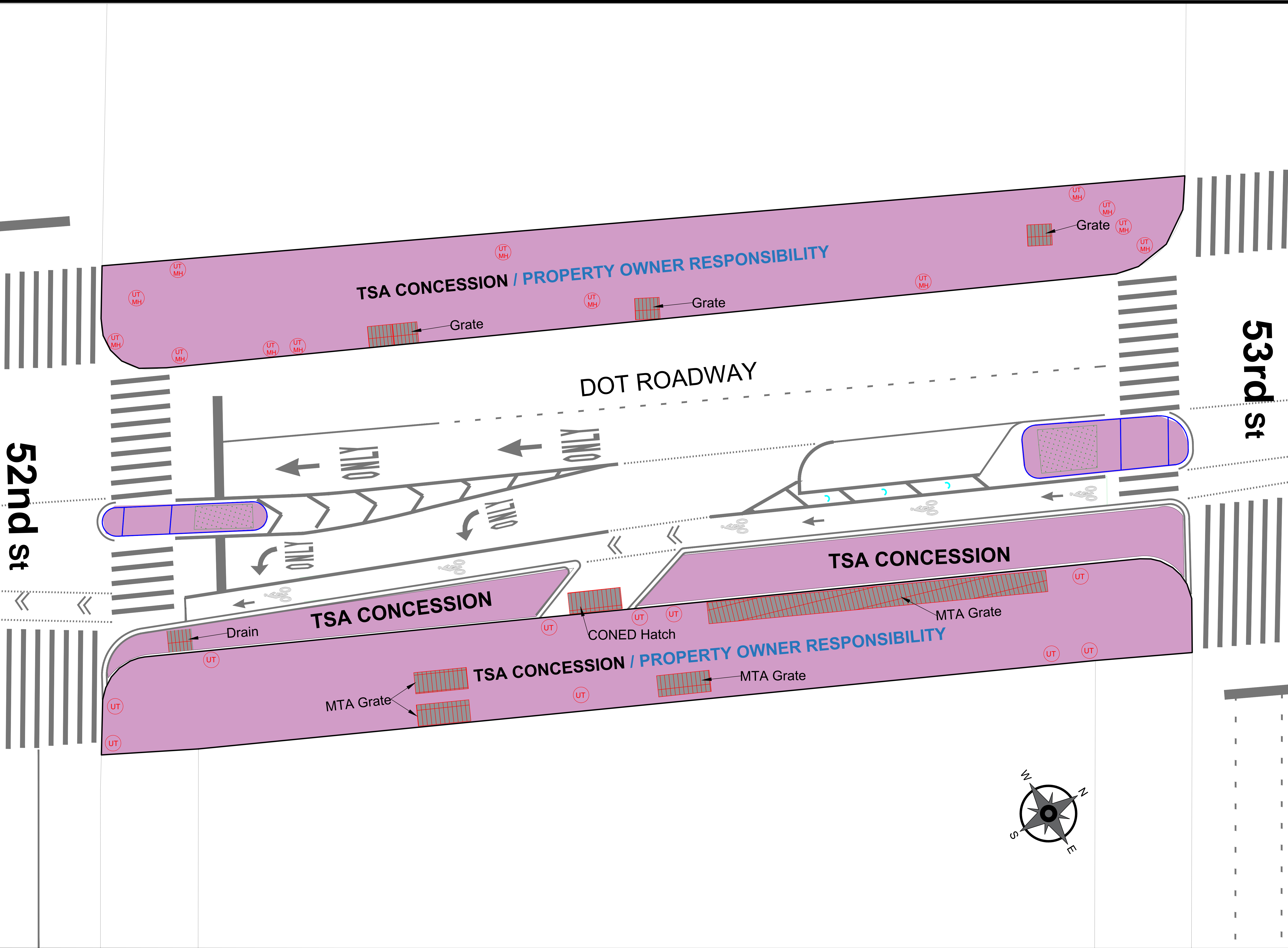
Revised:
11/13/24

KEY:

- TSA Concession
- Outside of Concession
 - Utilities
 - MTA
 - Newsstands
 - Link NYC
 - Wayfinding
 - Manholes
 - Privately Maintained Tree Pits
 - Hydrants
 - Bike Racks
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Project:

TSA / DOT
EXHIBIT A Map

Site:

Broadway
Plazas
41-48

Drawing No:

A13

Sheet:

52-53 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v8

Revised:

11/13/24

KEY:

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes

Privately Maintained Tree Pits


Hydrants

Bike Racks

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TIMES
SQUARE
ALLIANCE

52nd St

53rd St

DOT ROADWAY

TSA CONCESSION / PROPERTY OWNER RESPONSIBILITY

TSA CONCESSION

TSA CONCESSION

TSA CONCESSION / PROPERTY OWNER RESPONSIBILITY

Drain

CONED Hatch

MTA Grate

MTA Grate

MTA Grate

Grate

Grate

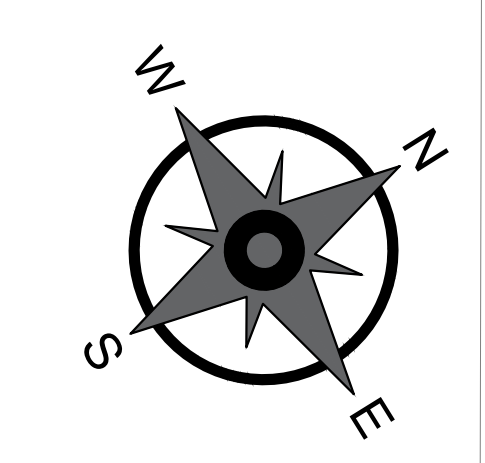


Exhibit B

[List of Amenities (all quantities listed below are approximations)]

Plaza Paving

- Distinctive Concrete Precast and Granite Pavers (approximately 115,650 sf)
- Surface Trench Drains
 - 42-43: (3) 55', 55', 166'
 - 43-44: (2) 69', 166'
 - 44-45: (1) 109'
 - 45-46: (1) 185'
 - 46-47: (2) 206', 206'
- Painted Designated Activity Zones (DAZs)
- Pedestrian Flow Zone Markings

Furnishings & Event Infrastructure

- Moveable café tables (133)
- Moveable café chairs (400)
- Granite Benches (10)
- Vestry Step Benches (8)
- Planters placed on granite blocks (7)
- DOT Standard Wayfinding signs (5)
- Big Belly trash compactors (315)
- Storage lockers (4)
- Pedestrian Flow Zone, DAZ, & Plaza Signage (31)
- Moveable Stage on 45-46 (12'x16')
- Rolling information racks with pamphlets (3)
- DOT Standard City Light Poles
 - Single Luminaire (29)
 - Double Luminaire (10)
- Event Infrastructure (5)
 - Bench panels, hatches/vaults with power and dark fiber
 - 42-44, 45-47: 300amp/3 phase, 200amp/3phase, 110v
 - 44-45: 200amp/3phase, 110v

Structures

- Subconcession Operator Kiosks (4)
- Community Assistance Kiosk (1)

Security Elements

- Square Granite Blocks (9)
- 180' Long Granite Knee Walls (4)
- Rounded Concrete Blocks (13)

DOT Standard

- DOT Standard Terracast Planters (140)
- DOT Standard Concrete Traffic island tree pits + plantings (10)

- DOT Standard Wayfinding signs (5)
- DOT Standard City Light Poles
 - Single Luminaire (29)
 - Double Luminaire (10)
- DOT Standard Stainless Steel Security Bollards (151)
- DOT Standard Jersey barrier (1)

Exhibit B-1

[List of City, Public and Utility Infrastructure (all quantities listed below are approximations)]

City Infrastructure:

- Citi Bike stations (2)
- Newsstands (10)
- New York City Department of Environmental Protection (NYC DEP) catch basins
- NYC DEP utility access covers/manholes
- NYC Fire Department (FDNY) fire hydrants
- NYC Police Department (NYPD) Security Blocks (28)
 - 42-41 (1)
 - 45-46 (1)
 - 47-48 (26)
- NYPD Security Gates (2)

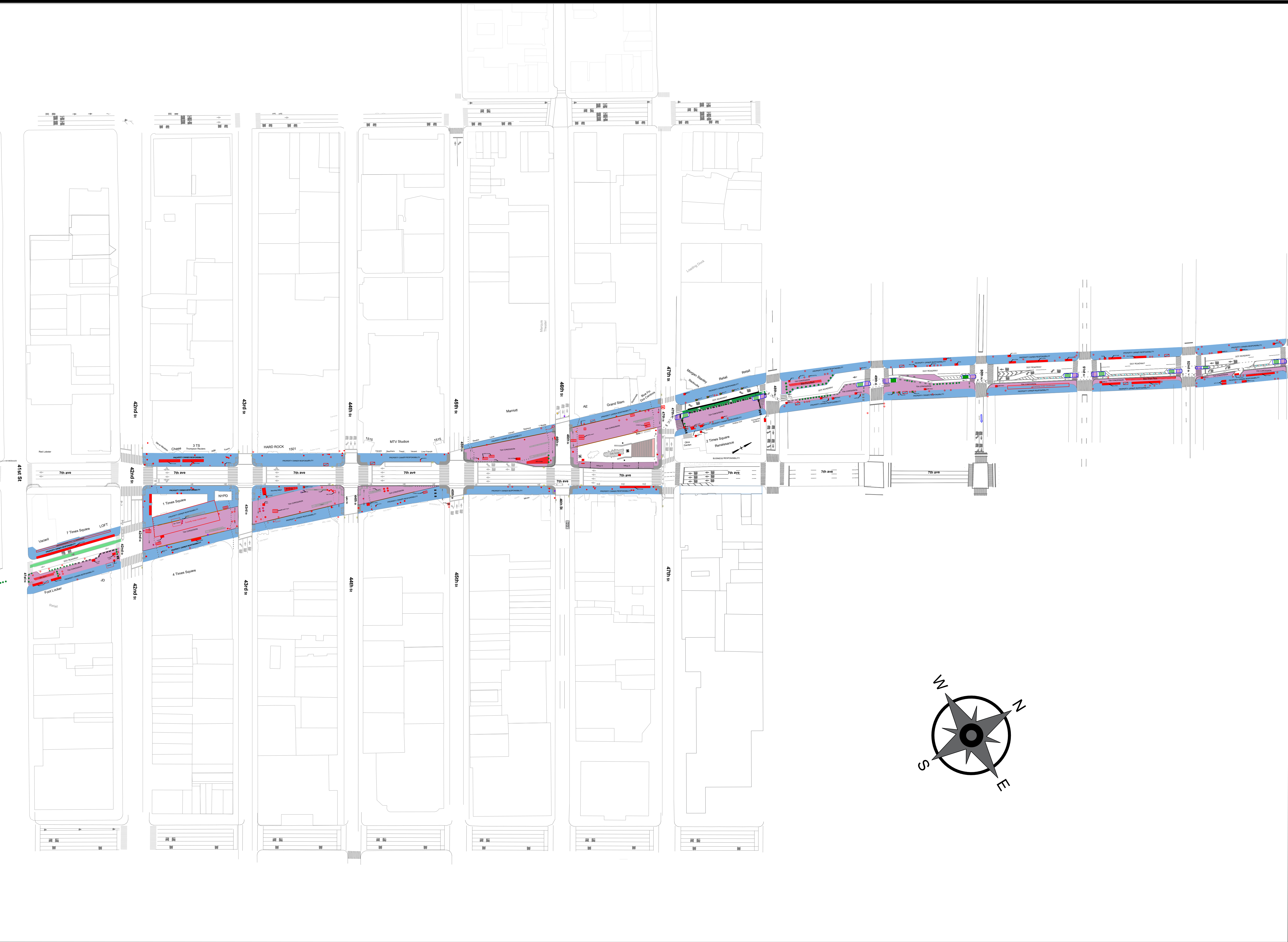
Public Infrastructure:

- Metropolitan Transit Authority (MTA) access covers
- MTA ventilation grates

Utility Infrastructure:

- Con Edison utility access covers/manholes

Exhibit C
[Snow Removal Map]



Project:

TSA / DOT
EXHIBIT C Snow

Site:

Broadway
Plazas
42-48

Drawing No:

A1

Sheet:

42-53 Plazas

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v7

Revised:

11/13/24


KEY:

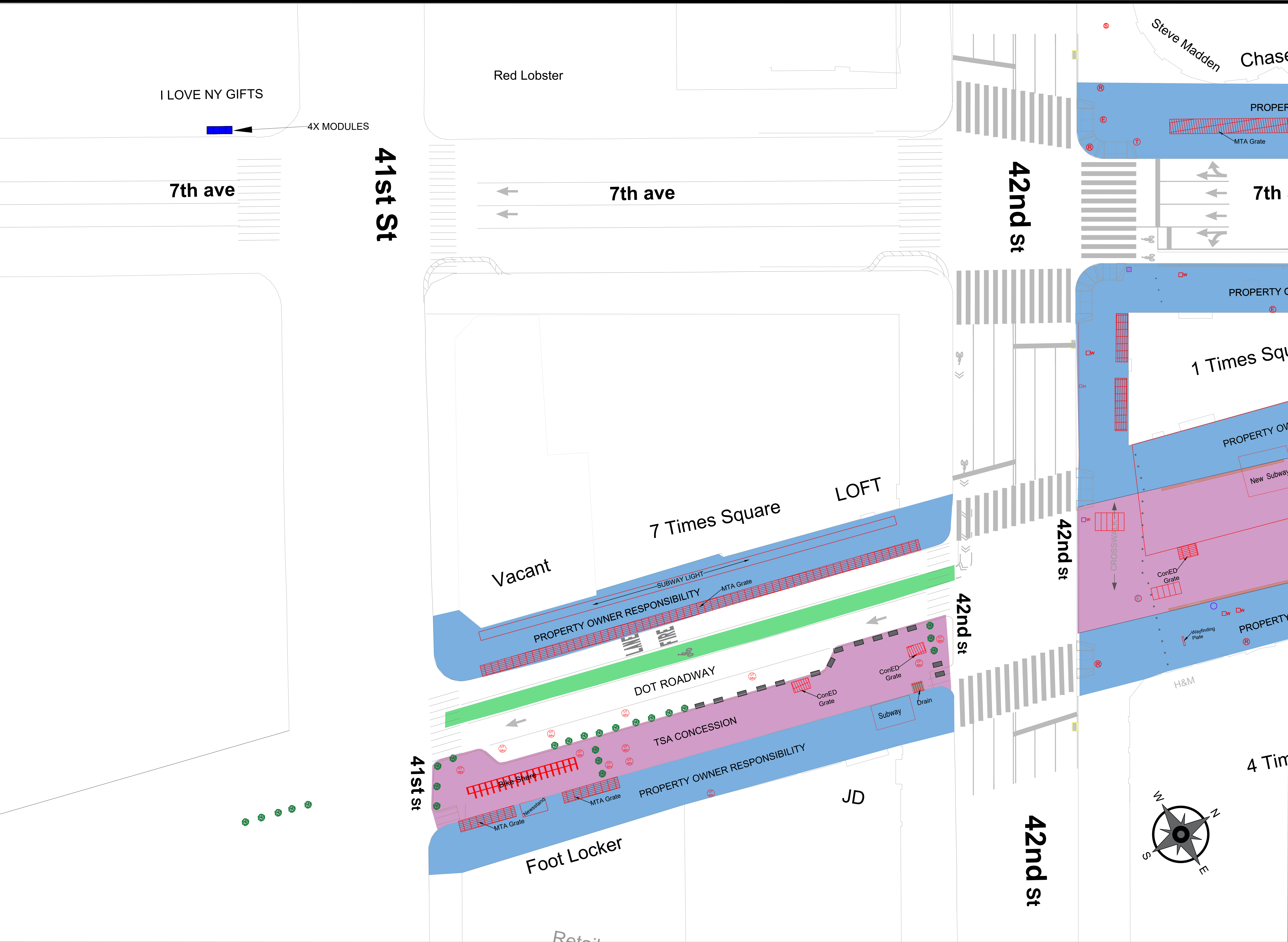
TSA Concession

Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

Property Owner Responsibility

All Rights Reserved

TIMES
SQUARE
ALLIANCE



Project:

TSA / DOT

EXHIBIT C Snow

Site:

Broadway
Plazas
41-48

Drawing No:

A2

Sheet:

41-42 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI

DSANTUCCI@TSQ.org

Version:

v7

Revised:

11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes

Privately Maintained Tree Pits

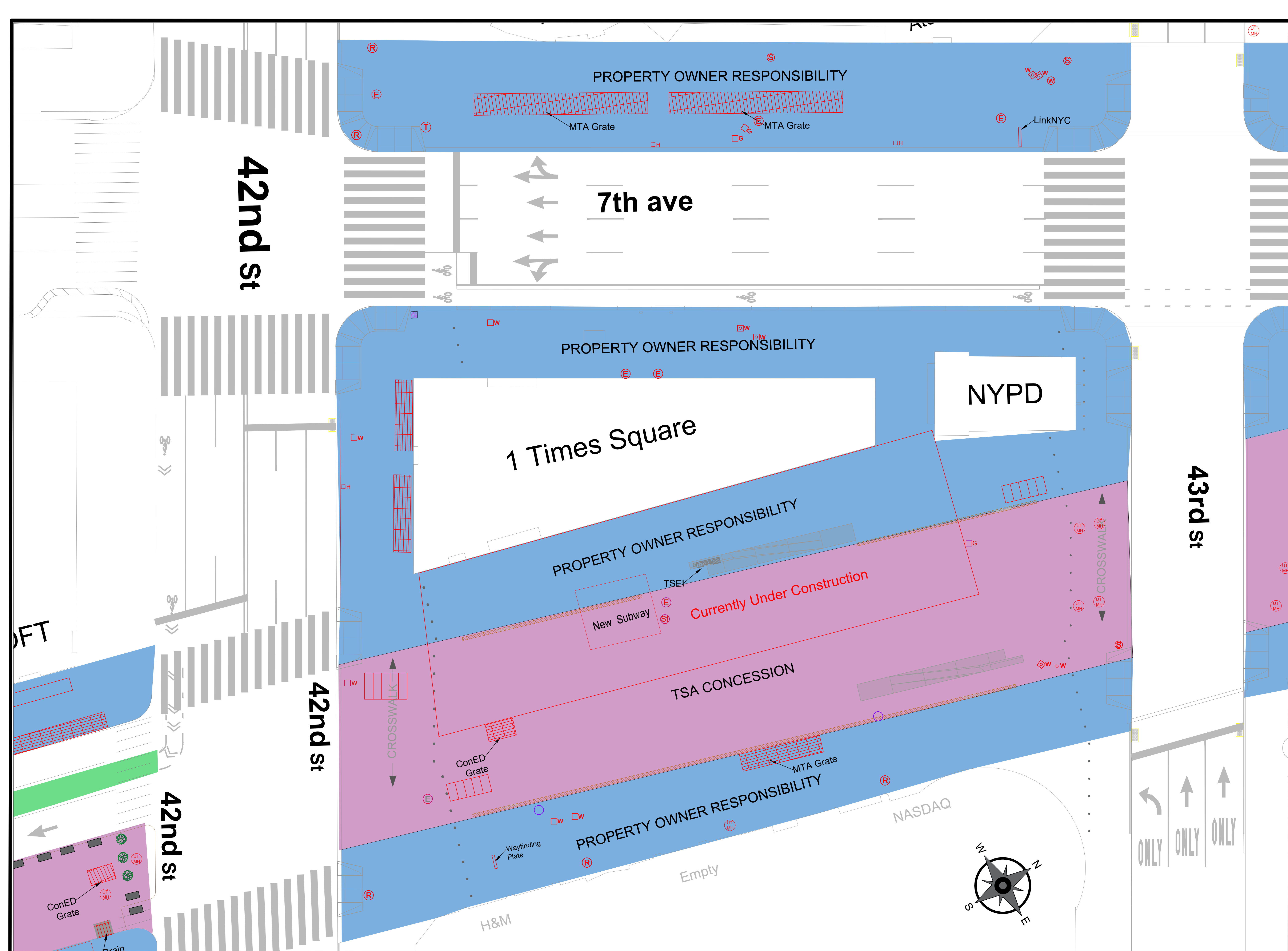
Hydrants

Bike Racks

Property Owner Responsibility

All Rights Reserved

TIMES
SQUARE
ALLIANCE



Project:

TSA / DOT
EXHIBIT C Snow

Site:

Broadway
Plazas
41-48

Drawing No:

A3

Sheet:

42-43 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v7

Revised:

11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes


Privately Maintained Tree Pits

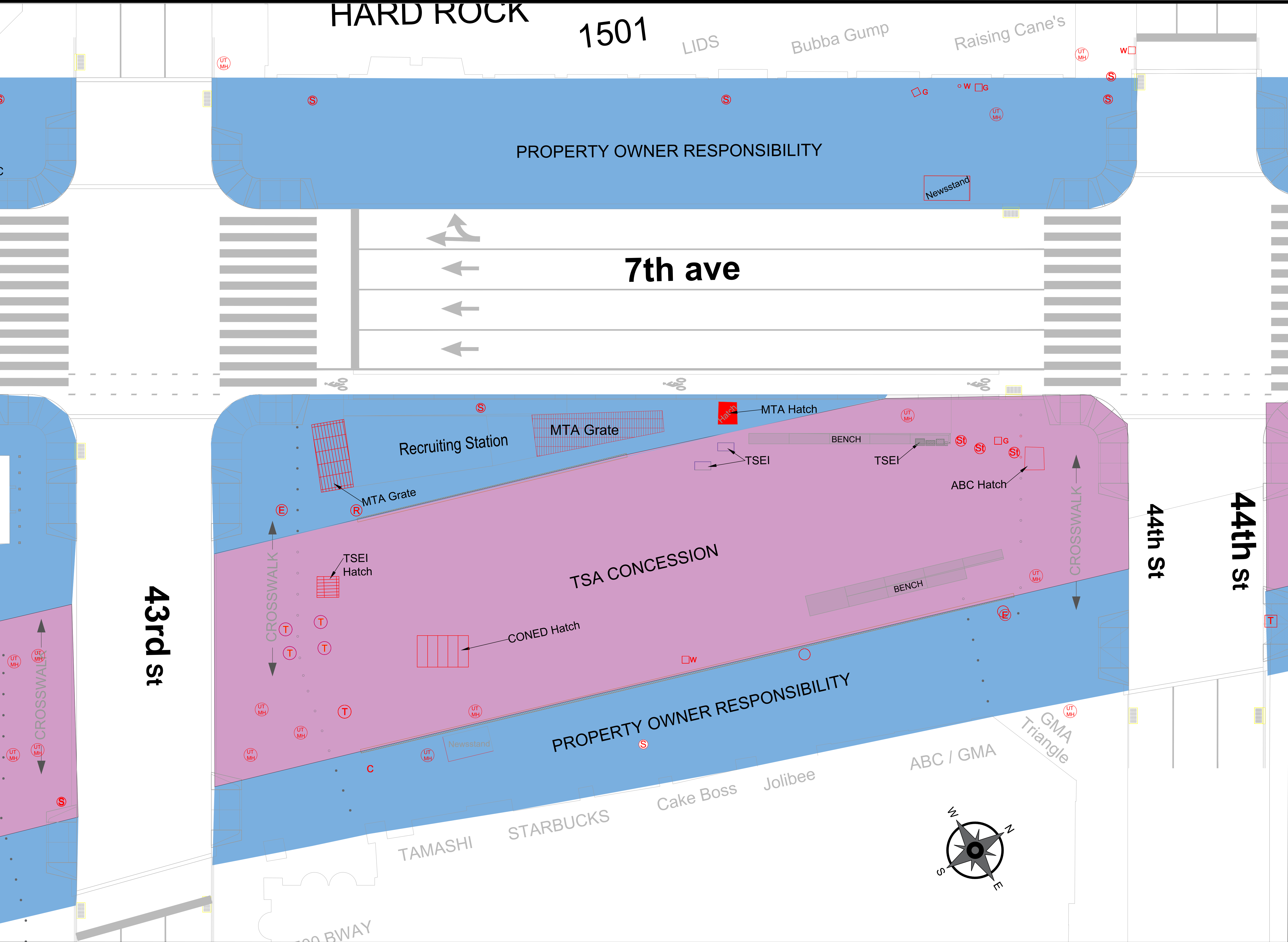
Hydrants

Bike Racks

Property Owner Responsibility

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TIMES
SQUARE
ALLIANCE



Project:

TSA / DOT

EXHIBIT C Snow

Site:

Broadway
Plazas
41-48

Drawing No:

A4

Sheet:

43-44 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI

DSANTUCCI@TSQ.org

Version:

v7

Revised:


11/13/24

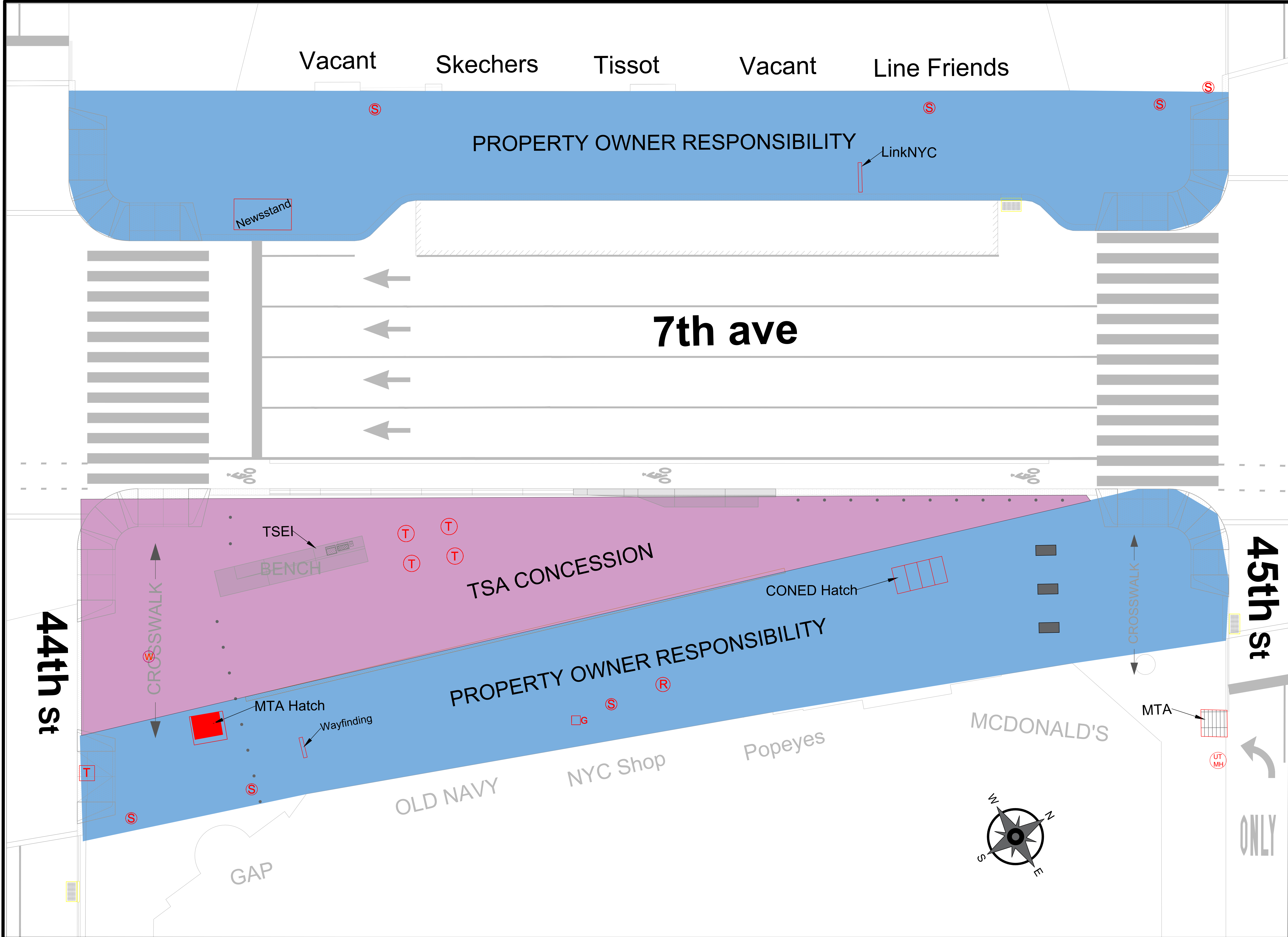
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Property Owner Responsibility

Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

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TIMES
SQUARE
ALLIANCE



Project:

TSA / DOT
EXHIBIT C Snow

Site:

Broadway
Plazas
41-48

Drawing No:

A5

Sheet:

44-45 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v7

Revised:

11/13/24

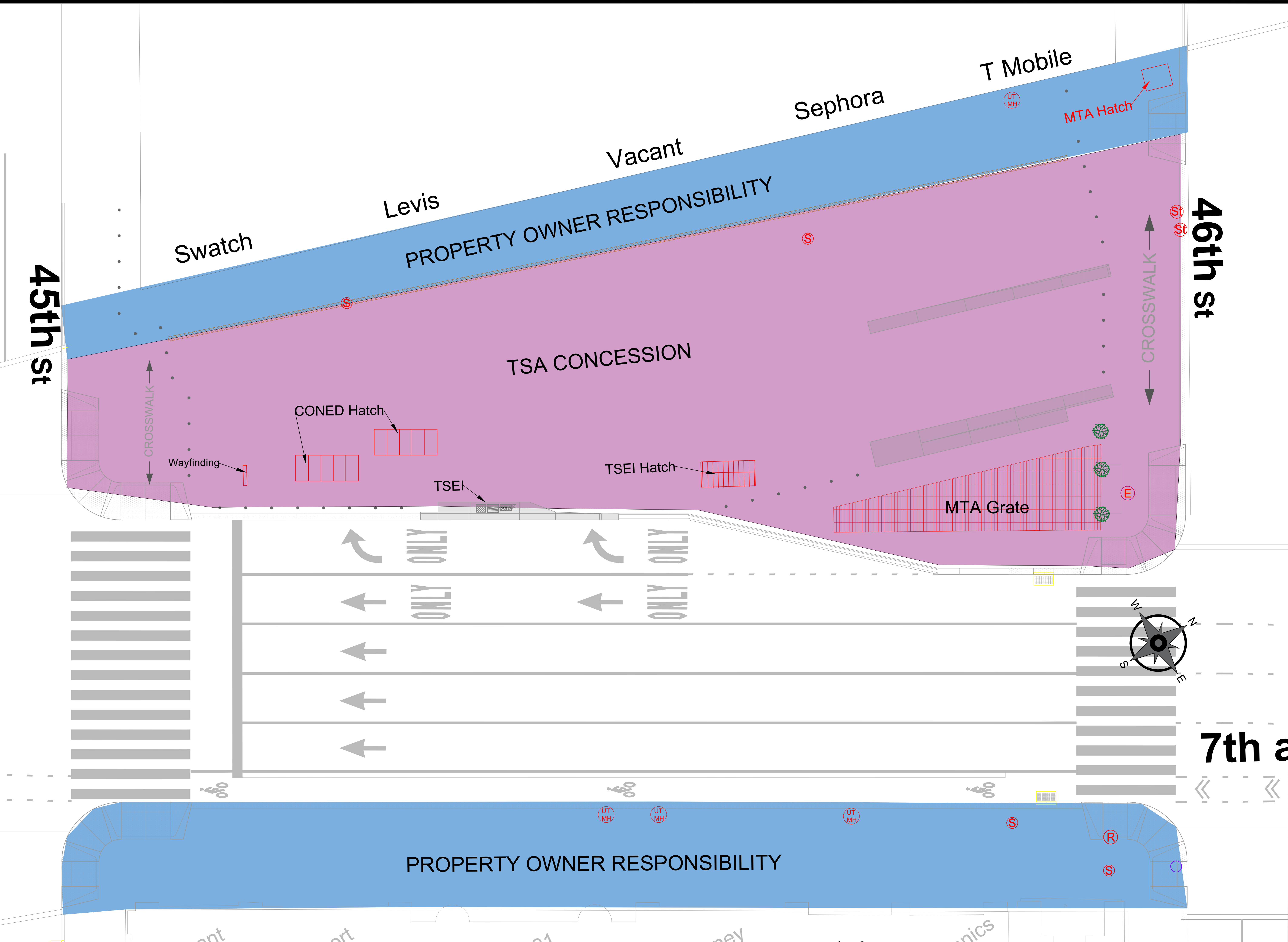
KEY:

Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

Property Owner Responsibility

All Rights Reserved

TIMES
SQUARE
ALLIANCE



Project:

TSA / DOT
EXHIBIT C Snow

Site:

Broadway
Plazas
41-48

Drawing No:

A6

Sheet:

45-46 Plaza

Scale:

24' x 36'
Arch D

Event Date:

N/A

Drawn:

SANTUCCI
DSANTUCCI@TSQ.org

Version:

v7

Revised:

11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes


Privately Maintained Tree Pits

Hydrants

Bike Racks

Property Owner Responsibility

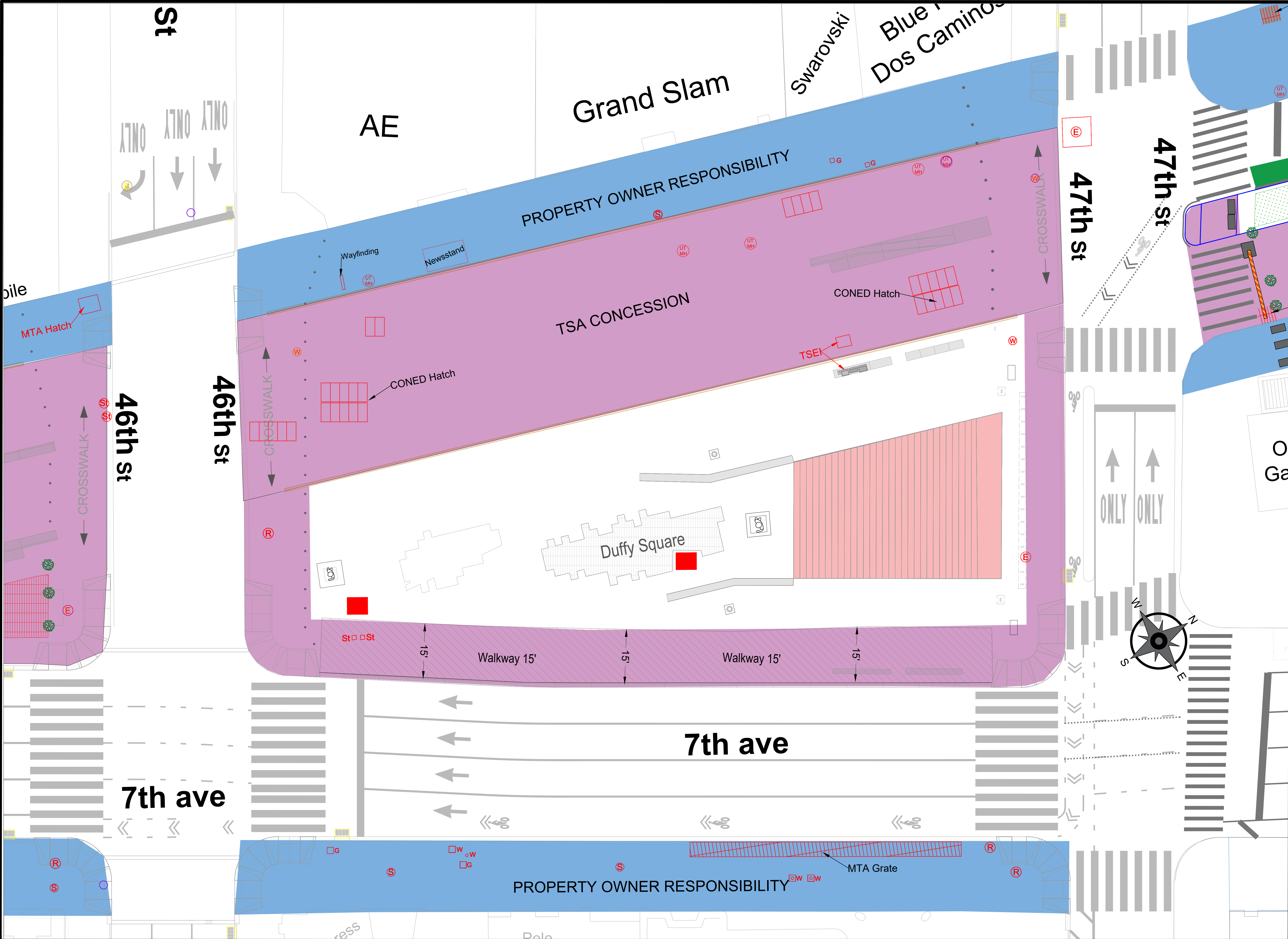
All Rights Reserved

TIMES
SQUARE
ALLIANCE

46th st

45th st

7th ave



Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A7

Sheet:
46-47 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v7

Revised:
11/13/24

KEY:


TSA Concession

Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

* City crosswalks, roadbeds,
bike lanes, and sidewalks are NOT
the Alliance responsibility

Property Owner Responsibility

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**TIMES
SQUARE
ALLIANCE**

Project:
TSA / DOT
EXHIBIT C Snow

Site: Broadway
Plazas
41-48

Drawing No:

A8

Sheet:

47-48 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:

SANTUCCI



DSANTUCCI@TSQ.org

Version:

v7

Revised:
11/13/24

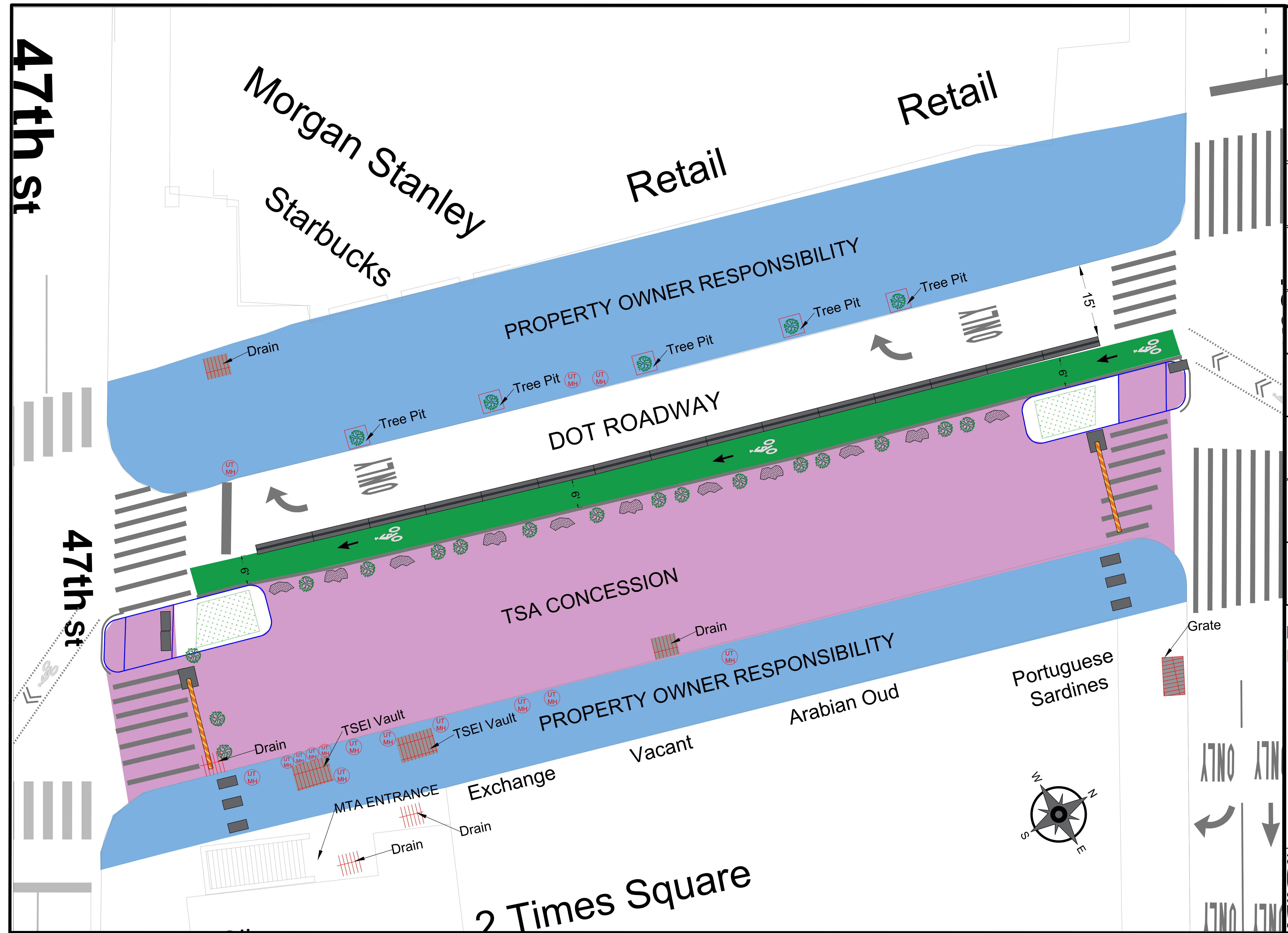
KEY:

	TSA Concession
	Outside of Concession

- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

Property Owner Responsibility

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Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A9

Sheet:
48-49 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

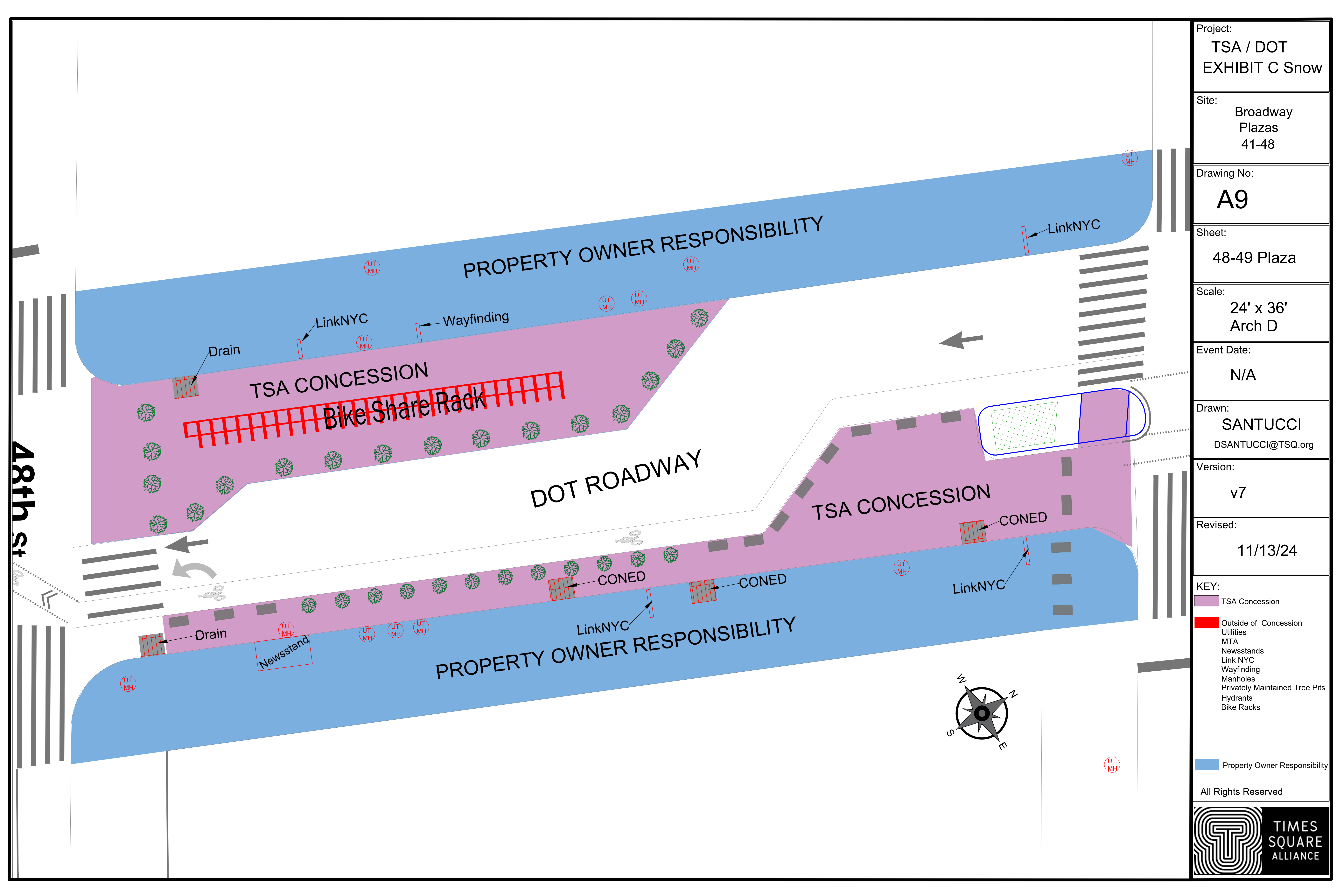
Version:
v7

Revised:
11/13/24

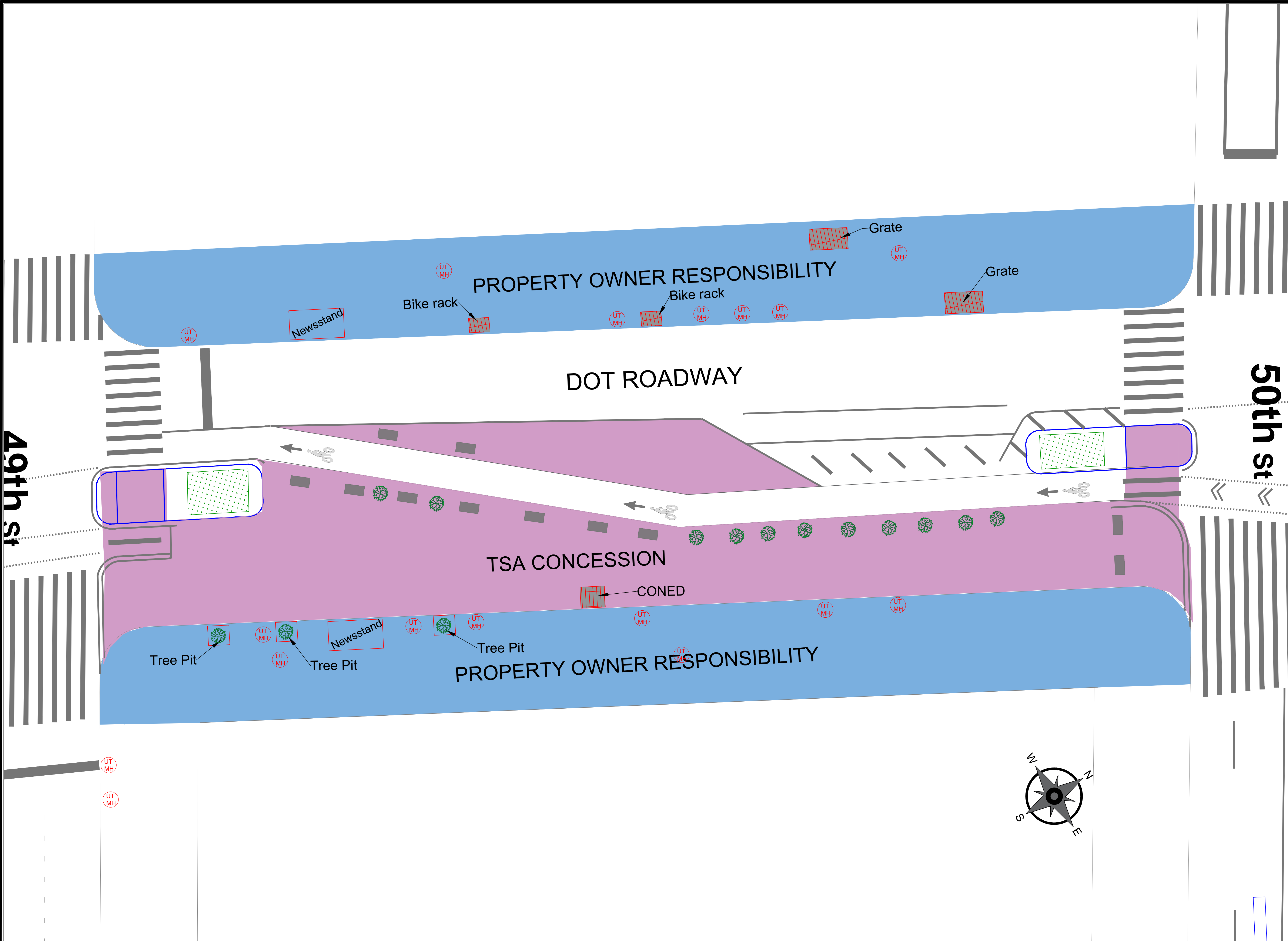
KEY:
TSA Concession
Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

Property Owner Responsibility

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48th St



Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A10

Sheet:
49-50 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v7

Revised:
11/13/24

KEY:

TSA Concession

Outside of Concession

Utilities

MTA

Newsstands

Link NYC

Wayfinding

Manholes


Privately Maintained Tree Pits

Hydrants

Bike Racks

Property Owner Responsibility

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TIMES
SQUARE
ALLIANCE

Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A11

Sheet:
50-51 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

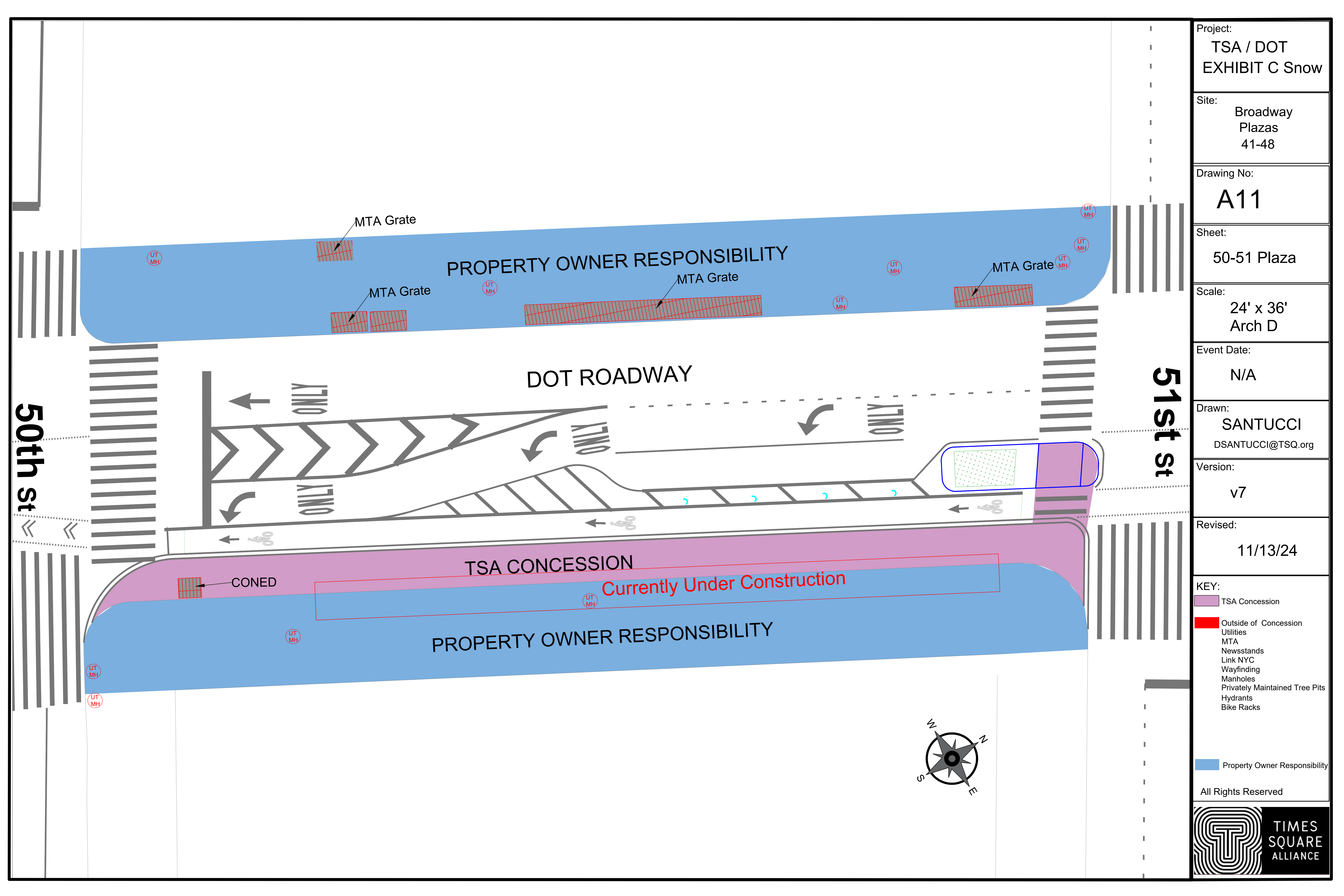
Version:
v7

Revised:
11/13/24

- KEY:
- TSA Concession
 - Outside of Concession
 - Utilities
 - MTA
 - Newsstands
 - Link NYC
 - Wayfinding
 - Manholes
 - Privately Maintained Tree Pits
 - Hydrants
 - Bike Racks

Property Owner Responsibility

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Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A12

Sheet:
51-52 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

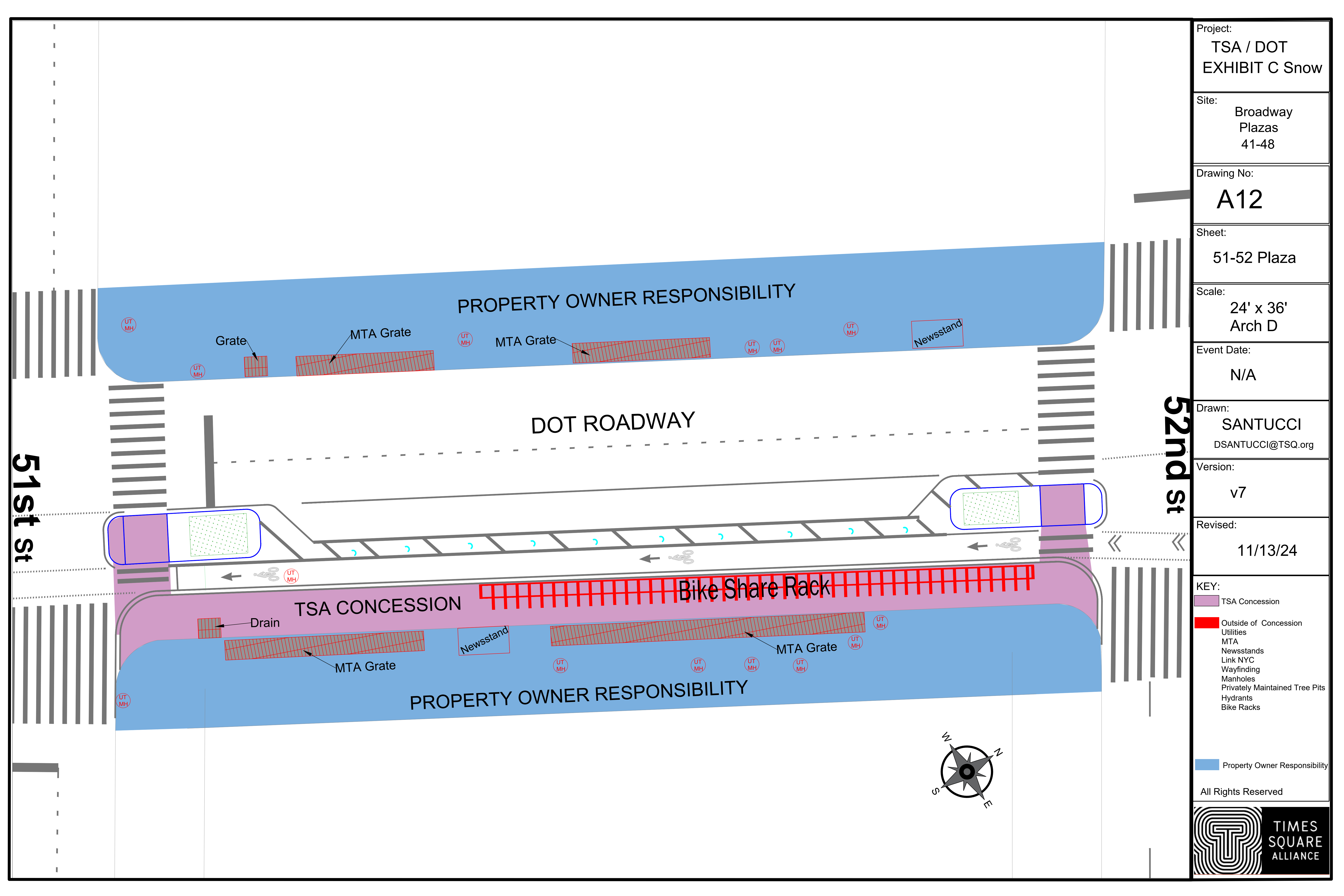
Version:
v7

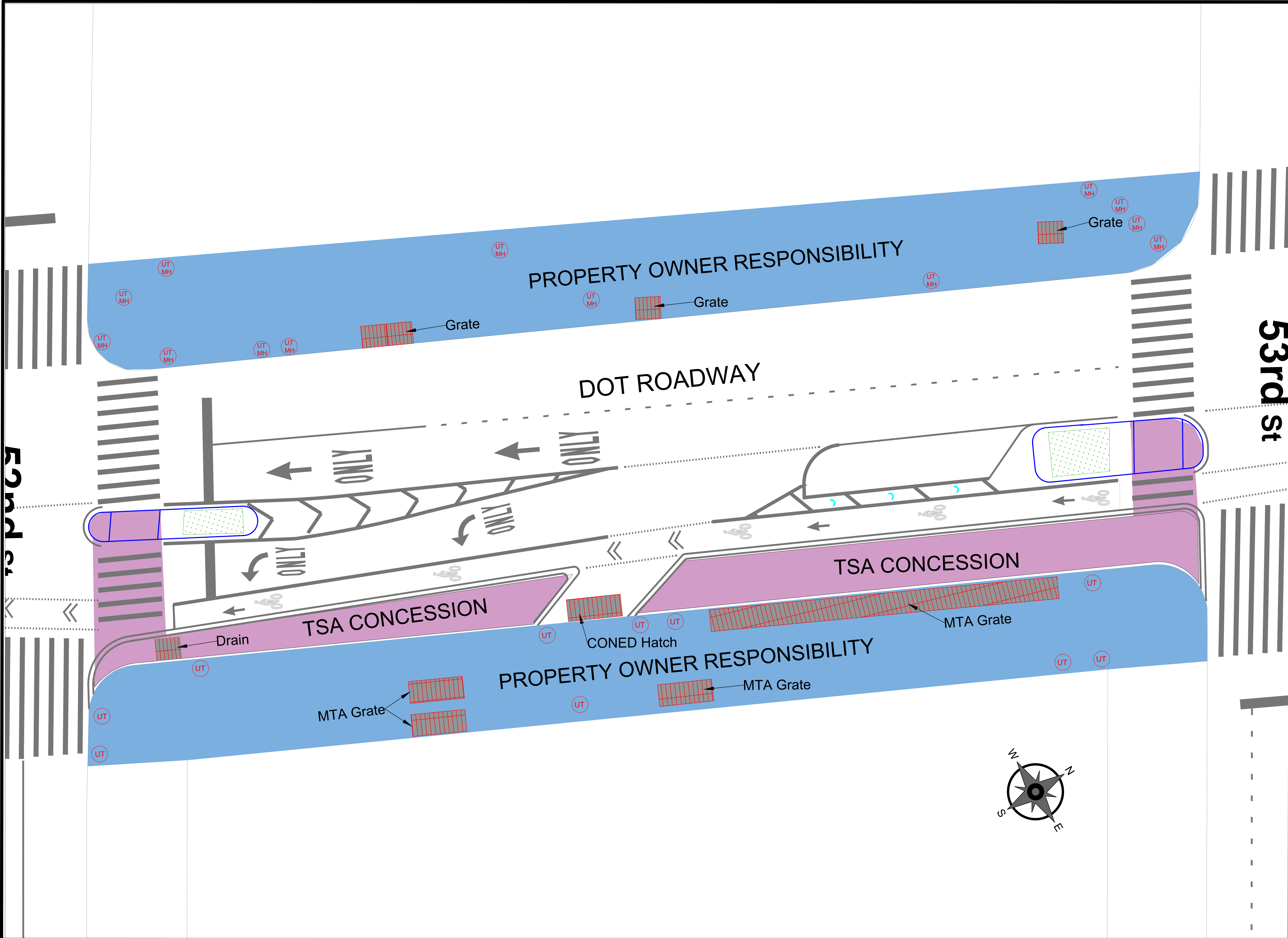
Revised:
11/13/24

KEY:
TSA Concession
Outside of Concession
Utilities
MTA
Newsstands
Link NYC
Wayfinding
Manholes
Privately Maintained Tree Pits
Hydrants
Bike Racks

Property Owner Responsibility

All Rights Reserved





Project:
TSA / DOT
EXHIBIT C Snow

Site:
Broadway
Plazas
41-48

Drawing No:
A13

Sheet:
52-53 Plaza

Scale:
24' x 36'
Arch D

Event Date:
N/A

Drawn:
SANTUCCI
DSANTUCCI@TSQ.org

Version:
v7

Revised:
11/13/24

KEY:

- TSA Concession
- Outside of Concession
- Utilities
- MTA
- Newsstands
- Link NYC
- Wayfinding
- Manholes
- Privately Maintained Tree Pits
- Hydrants
- Bike Racks

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TIMES SQUARE ALLIANCE

Exhibit D
[PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE 26412

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

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

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



Justin Garrett Moore
Executive Director

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

Exhibit E

[Paid Sick Leave Law Concession Rider]

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. Concessionaires 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 Concessionaire 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 Concessionaire 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 Concessionaire must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer 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 Concessionaire 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, Concessionaire will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Concessionaire 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 Concessionaire. The Concessionaire is advised to review the ESSTA and the DCWP Rules in their entirety. The Concessionaire 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 Concessionaire can get more information about how to comply with the ESSTA and the DCWP Rules. The Concessionaire 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;

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.

- 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 F

[Tender Representation Process]

1. Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with Section 12(C), PLAZA PARTNER shall promptly notify the Law Department, the Chief Public Realm Officer, and DOT of its request to tender representation by email. PLAZA PARTNER shall include the following documents with its notice:
 - A. A formal tender letter on the tendering entity's letterhead naming each entity for which a defense is sought;
 - B. The Summons & Complaint as served on each entity;
 - C. A complete, fully executed, copy of the Agreement(s), Leases and/or Contracts, that provides for representation and indemnification;
 - D. Name and contact information of PLAZA PARTNER's insurance carrier claims adjuster;
 - E. Any other supporting documentation available, including accident reports, photographs, notices of claim, etc.
2. The Law Department will confirm receipt within 10 days of notification.
3. The Law Department will evaluate the request to tender representation. Within 30 days of the PLAZA PARTNER's notification, the Law Department will notify PLAZA PARTNER and their insurer of its determination, which may include acceptance of tender, declination of tender, or a statement that a determination cannot be made at this time.

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Plaza Events]

Event Size	Small	Medium	Large	Extra Large
Fee per Event Day	\$15,000	\$31,000	\$50,000	\$66,000

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

BE IT RESOLVED that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation ("DOT") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("License") with the Times Square District Management Association, Inc. d/b/a Times Square Alliance ("Concessionaire") to provide for the operation and management of a pedestrian plaza located along Broadway and 7th Avenue between 41st and 53rd Streets, in the borough of Manhattan ("Licensed Plaza"), and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of a Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award. The License provides for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to two (2) additional five-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated this concession into the maintenance and/or repair of certain amenities within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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

1/15/2025

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Franchise and Concession Review Committee (“FCRC”) is proposing changes to the FCRC Concession Rules under Title 12 of the Rules of the City of New York to bring them up to date with the standards set forth in the Procurement Policy Board rules, provide stronger safe guards for the concessions process, streamline date and timing requirements, and generally modernize the means by which the City solicits and manages concessions.

When and where is the hearing? The FCRC will hold a public hearing on the proposed rules. The public hearing will take place [date] at [time]. The hearing will be at [venue].

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the FCRC through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to FCRC@mocs.nyc.gov.
- **Mail.** You can mail comments to:

Attn: Franchise and Concession Review Committee
Mayor’s Office of Contract Services
255 Greenwich St, 9th Floor
New York, NY 10007

- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by emailing FCRC@mocs.nyc.gov, or calling [number]. While there will be an opportunity during the hearing to indicate that you would like to comment, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline to submit written comments will be [date].

What if I need assistance to participate in the hearing? You must tell the Disability Service Facilitator if you need a reasonable accommodation of a disability at the hearing, including, but not limited to, a sign language interpreter. You can contact the Disability Service Facilitator by email at DisabilityAffairs@mocs.nyc.gov, by telephone at (212) 298-0800 or by mail at the address provided above with an attention line to “Disability Service Facilitator.” Advance notice is requested to allow sufficient time to arrange the accommodation. Please notify the Disability Service Facilitator at least five (5) business days in advance of the hearing.

This location has the following accessibility option(s) available: Wheelchair accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Within a reasonable time after the hearing, copies of all written comments and a summary of oral comments concerning the proposed rules will be available to the public on MOCS' website at <https://www.nyc.gov/site/mocs/regulations/ppb.page> and at MOCS' office located at 255 Greenwich St, 9th Floor, New York, NY 10007.

What authorizes the FCRC to make these rules? Sections 373 and 1043 of the New York City Charter authorize the FCRC to make the proposed rules.

Where can I find the FCRC's rules? The FCRC's rules are in Title 12 of the Rules of the City of New York.

What laws govern the rulemaking process? The FCRC must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the New York City Charter.

For Final Certification:

Notice of Adoption of Rules

Pursuant to the authority vested in the Franchise and Concession Review Committee by Section 373 of the New York City Charter and in accordance with the requirements of Section 1043 of said Charter, the FCRC has adopted amendments to Title 12 of the Rules of the City of New York.

Statement of Basis and Purpose of [Proposed/Final] Rules

The [proposed/final] Franchise and Concession Review Committee (FCRC) amendments would update the provisions of the FCRC Rules relating to the entirety of Title 12 of the Rules of the City of New York to bring them up to date with the standards set forth in the Procurement Policy Board rules, provide stronger safe guards for the concessions process, streamline date and timing requirements, and generally modernize the means by which the City solicits and manages concessions.

The FCRC is proposing various amendments to the Concession Rules. The specific amendments are as follows:

- Throughout the rules, updated for consistency the capitalization of “Federal, State and Local Law”.
- Throughout the rules, replaced “Vendex” with “PASSport” to reflect the City’s current procurement system.
- Throughout the rules, revised all citations to match revisions for consistency.
- Throughout the rules, standardized language between “Concession” and “Concession Agreement” for accuracy.
- Throughout the rules, updated the representation of numerical values from words to numbers for the purpose of uniform formatting.
- In § 1-01, revised § 1-01(a) to expand scope of rules to cover modifications, time extensions, and permits for Concessions.
- In § 1-01, added § 1-01(b)-(e) to set out clear ethics standards, confirm the City's policy goals for economic and financial opportunity, goals for equal employment opportunity, and the general delegability of authority of these rules in line with the standards set in the Procurement Policy Board Rules.
- In § 1-02, revised or added definitions for Administrative Costs, Compensation, Concession Agreements, Concession File, Executed, In Writing, PASSPort, Program-based Concession, Registration, Renewal, Rule, Significant Concession, and Solicitation to match updates elsewhere in the rules or bring them up to current standards in the PPB Rules. Deleted the definitions for Non-for-Profit and VENDEX due to lack of use.
- In § 1-06(c), revised the distribution requirements for written determinations of non-responsiveness to remove the Committee and include the concession file and Mayor’s Office of Contract Services.
- In § 1-07(b), revised the list of factors impacting a prospective concessionaire’s responsibility determination to include proof of timely tax filing, certificate of insurance, and other financial documents as required by OMB or the Comptroller.
- In § 1-07(d), revised the list of items that a prospective concessionaire may provide to demonstrate necessary financing, equipment, expertise, and personnel to include, if applicable, a copy of the prospective concessionaire’s latest financial audit report.

- In § 1-07(e), added information from news and social media websites, including press articles or customer review to sources of information to support determinations of responsibility or non-responsibility.
- In § 1-07(f), added the Law Department as a required recipient for determinations of non-responsibility.
- In § 1-07(h), added language to include the power for CCPO to also stay the award of a concession or make a determination that it should be stayed due to, or go forward in spite of, a non-responsibility determination and/or appeal. The language added combines what was previously included in the rules in subsection (j), to reduce redundancy.
- Removed § 1-07(j) because it was made redundant by edits to (h). All powers delegated to the CCPO under this rule were added to Renamed § 1-07(k) accordingly.
- In § 1-09(a), revised the window for the publication of the Notice of Award for a concession from 15 to 30 days after registration.
- In § 1-10(a), added a requirement that agencies identify in the Annual Concession Plan whether concessionaires identify as MWBEs. CCPO was also given final approval over the form and content of the Annual Concession Plan.
- In § 1-10(b), the requirement to publish notice ahead of the hearing on the annual report was revised down from 10 issues to 1.
- In § 1-11(b), the number of days before CCPO may affirm a concession, after distributing a notice of the ratification of a Minor Rules Violation to the Committee, was reduced from 10 days to 5.
- In § 1-11(c), the timeframe to publish notice of the ratification of a Minor Rules Violation in the City Record after CCPO ratifies was increased from 10 days to 15.
- In § 1-11(d), failure to conduct special outreach to M/WBEs was added to the list of what cannot be considered Minor Rules Violations.
- In § 1-12(a), revised to allow a reduction of the 40-day notice period at the discretion of CCPO.
- In § 1-12(a), revised to allow an agency to issue or reissue an invitation for bids within 12 months without reissuing the 40-day notice if no material changes have been made to the terms described in the notice.
- In § 1-12(a), revised to add a requirement that agencies must post the 40-day notice in a publicly accessible location on the City's website.
- In § 1-12(a), increased the number of days prior to issuing a significant Request for Proposals the agency must notify community boards and Borough Presidents from 30 days to 40 days.
- In § 1-12(b), increased the required time for an agency to begin the solicitation process from 3 months to six months before a current concession expires.
- In § 1-12(b), revised to require the email address of the agency contact person to be included in an invitation for bids.
- In § 1-12(b), decreased the number of issues of City Record a notice of solicitation must be published from 10 to 1.

- In § 1-12(b), added website and social media postings as other means agencies are encouraged to use to solicit bids.
- In § 1-12(b), revised to require an email address for an agency contact person be included in advertisements to solicit bids.
- In § 1-12(b), revised to require 30 days elapse between a notice of solicitation's first appearance in City Record and the bid deadline.
- In § 1-12(b), added a requirement that agencies provide special outreach to minority and women owned business enterprises when soliciting bids.
- In § 1-12(c), added a requirement that agencies provide special outreach to minority and women owned business enterprises when soliciting proposals.
- In § 1-12(d), revised to require agencies to send, rather than mail, solicitation letters to an established mailing list.
- In § 1-12(g), revised to remove the requirement that bids must be signed in ink and allows for bids to be submitted in the form required by the request for bids.
- In § 1-12(k), revised to require a bid security to be returned to the bidder if a bid is withdrawn in accordance with the rules.
- In § 1-12(p), added a requirement that agencies must make reasonable accommodations to prospective concessionaires with a disability, if requested, during the solicitation process.
- In § 1-13(a), revised to add a requirement that agencies must post the 40-day notice in a publicly accessible location on the City's website.
- In § 1-13(a), revised to allow a reduction of the 40-day notice period at the discretion of CCPO.
- In § 1-13(a), revised to allow an agency to issue or reissue a request for proposals within 12 months without reissuing the 40-day notice if no material changes have been made to the terms described in the notice.
- In § 1-13(a), increased the number of days prior to issuing a significant Request for Proposals the agency must notify community boards and Borough Presidents from 30 days to 40 days.
- In § 1-13(b), increased the required time for an agency to begin the solicitation process from 3 months to six months before a current concession expires.
- In § 1-13(b), revised to require the email address of the agency contact person to be included in a request for proposals.
- In § 1-13(c), decreased the number of issues of City Record a notice of solicitation must be published from 10 to 1.
- In § 1-13(c), added website and social media postings as other means agencies are encouraged to use to solicit proposals.
- In § 1-13(c), revised to require an email address for an agency contact person be included in advertisements to solicit proposals.
- In § 1-13(c), revised to require 30 days elapse between a notice of solicitation's first appearance in City Record and the proposal deadline.
- In § 1-13(c), added a requirement that agencies provide special outreach to minority and women owned business enterprises when soliciting proposals.

- In § 1-13(i), revised to explicitly allow members of the Committee access to opened proposals, and allowing members of the Committee to request clarification from Selection Committee members on proposal evaluation and selection.
- In § 1-13(k), revised to require a proposal security to be returned to the proposer if a proposal is withdrawn in accordance with the rules.
- In § 1-13(o), revised to clarify that all original scores and changes are clearly memorialized and explained on ratings sheets, and allowing electronic copies of ratings sheets.
- In § 1-13(o), revised to update the required affidavit evaluators sign to include a provision attesting that the evaluation has not been impacted by interaction or relationship with a current or prospective concessionaire operating the concession being evaluated.
- In § 1-13(o), revised to allow a common timeframe, as opposed to a common time, for submission of best and final offers.
- In § 1-13(o), revised to require that decisions about negotiations with any proposers must be documented, signed and dated by the selection committee, and saved in the concession folder.
- In § 1-13(p), revised to require amended ratings sheets be provided to the concession manager by the selection committee.
- In § 1-13(p), revised to require written or electronic notice of non-selection to proposers who were selected for final negotiations within 5 days of finding the selected proposer responsible.
- In § 1-13(q), revised to add the requirement that agencies include instruction of how the public may submit written testimony prior to a public hearing.
- In § 1-13(s), added a requirement that agencies must make reasonable accommodations to prospective concessionaires with a disability, if requested, during the solicitation process.
- In § 1-14(b), added a requirement that determinations that an award is in the best interest of the city must be in writing and saved in the concession file.
- In § 1-14(c), revised to reduce the number of issues the notice of intent to enter into negotiations must be published in the City Record from 5 to 1.
- In § 1-14(c), revised to require an agency to include whether a concession is significant or not significant in the notice sent to community boards and Borough Presidents.
- In § 1-14(e), removed an allowance for negotiated concessions less than 30 days to be awarded without Committee review.
- In § 1-14(g), added a requirement that agencies must make reasonable accommodations to prospective concessionaires with a disability, if requested, during the solicitation process.
- In § 1-15(a), updated the maximum compensation to \$249,999, maximum term to 2 years including renewals, and removed language limiting award to competitive process and requiring monetary compensation only.
- In § 1-15(b), expanded the limitation for splitting to also apply to the term and removed language referencing solicitation by competitive process.
- In § 1-15(c), removed entire section concerning solicitation and renumber prior § 1-15(d) to new § 1-15(c).

- In new § 1-15(c), revised to note that award must go to a responsive and responsible concessionaire in accordance with Concession Rules.
- Created new § 1-15(d) which states that small concessions are not subject to registration requirements of Concession Rules, but final small concession agreements must be provided to the FCRC.
- Modified § 1-15(e) to remove unnecessary solicitation materials, clarify certain record requirements, and add evaluations, responsibility findings, and responsiveness findings to the required records.
- Created new § 1-15(f) which lays out renewal requirements and limitations for small concessions.
- Created new § 1-15(g) which establishes CCPO's discretion to revoke an agency's ability to use the small concession solicitation method in cases of failure to comply with requirements.
- Created new § 1-15(h) which sets out basic accessibility requirements for prospective concessionaires in the small concessions process.
- Amended § 1-16(a) to remove Not-for-Profit and add Sole Source and Program-based concessions as examples of different procedures.
- Amended § 1-16(b) to add an option for less than 40 day notice at discretion of CCPO, along with a public website posting requirement.
- Created new § 1-16(e) which lays out the Program-based concession option.
- Created new § 1-16(f) which sets out basic accessibility requirements for prospective concessionaires in the different procedures process.
- Amended § 1-17(c) to note that a copy of the executed agreement is sufficient and clarify that MWBEs will be certified as laid out in Section 1304 of the Charter.
- Created new § 1-17(h) to clarify that all concessions, unless specifically excluded in the rules elsewhere, must be presented to the Comptroller for registration.
- Created new § 1-18 which allows for extension of concession terms by one year with approval by CCPO.

The FCRC's authority to promulgate these rules is found in sections 373 and 1043 of the New York City Charter.

For Final Certification:

***On [date], the FCRC voted to initiate the rulemaking process under the Citywide Administrative Procedure Act for these rule amendments. A proposed version of this amendment was published in the *City Record* on [date]. A public hearing was held on [date]. Please include a brief summary of the public comments.

Upon careful consideration of all the relevant comments, the FCRC adopted the amendments on [DATE].

The new material added in the text of the rule is underlined and the deleted material is in [brackets]. “Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this agency, unless otherwise specified or unless the context clearly indicates otherwise.

Title 12: Franchise and Concession Review Committee

Chapter 1: Concessions

§ 1-01 Scope.

(a) Applicability

This Chapter shall apply to initial grants of concessions as well as to resolicitations, [and] renewals [of concessions], modifications, time extensions, and permits.

(b) Ethics

(1) Public employees have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of their public trust. To this end, public employees and elected officials having responsibility for contracting at all levels shall:

(i) encourage competition, prevent favoritism, and obtain the best value in the interest of the City and the public;

(ii) place professional responsibilities above personal interests;

(iii) ensure fair competitive access to City concession opportunities to a broad cross-section of responsible concessionaires;

(iv) deal with the public and with concessionaires with courtesy, consideration, and even-handedness;

(v) use information gained confidentially in the performance of City duties solely in the City's interest; and

(vi) report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and/or take such other action as is warranted by the situation.

(2) In soliciting, awarding, or administering a concession, under no circumstances may an agency or an official take into consideration the fact that a vendor or associated individual(s) has or has not made or promised to make a campaign contribution.

(3) Concessionaires and their representatives have a responsibility to deal ethically with the City and its employees, and to respect the ethical duties of City employees. Information provided by concessionaires to the City must be complete and accurate. Concessionaires must at all times avoid conduct that is in restraint of competition. Concessionaires must not request City employees to engage in conduct that would violate the law, these Rules, or the principles set forth in this section.

(4) When there is doubt as to whether conduct is prohibited by Chapter 68 of the New York City Charter governing conflicts of interest, employees shall seek guidance from the Conflicts of Interest Board.

(c) Economic and Financial Opportunity. It is the policy of the City of New York to foster the economic empowerment of minorities and women, and to cultivate the development of minority- and women-owned business enterprises, as well as small and locally-based businesses. Through the rules and programs implemented by DSBS, the City will enhance the ability of these businesses to compete for City concessions, will enhance City agencies' awareness of such businesses, and will ensure the meaningful participation of these firms in the City concession process.

(d) Equal Employment Opportunity. It is the policy of the City of New York to promote equal employment opportunity for women and minority group members by City concessionaires and subconcessionaires and to ensure that all persons employed by or seeking employment with such concessionaires and subconcessionaires are protected from unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status (and from any other unlawful discrimination pursuant to federal, state, local laws and executive orders) with regard to all employment decisions, including recruitment, hiring, compensation, fringe benefits, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off, termination, and all other terms and conditions of employment. Through the rules and programs implemented by DSBS, the City will enhance the employment opportunities of minorities and women within the businesses that hold concessions with the City.

(e) General Delegability of Authority. Unless otherwise provided by law, these Rules, Mayoral Executive Order, Comptroller Directive, or City policy or procedure, the Mayor, Comptroller, CCPO, Agency Head, or Concession Manager may delegate any authority vested in that official by these Rules in

writing to other City officials or employees having the knowledge and experience necessary to exercise such authority in the City's interest. Copies of such delegations shall be filled with the CCPO.

§ 1-02 Definitions.

For the purpose of this Chapter:

Administrative Costs. "Administrative Costs" shall mean the costs incurred by [an agency in] a concessionaire in maintaining, operating, and repairing a City-owned property and the cost to an Agency of processing and monitoring a concession.

Agency. "Agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Agency Head. "Agency Head" shall mean the head of an agency granting a concession or his or her designee.

Best and Final Offers. [The] "Best and Final Offers" shall mean the revised and corrected final proposals submitted by proposers upon the request of the concession Selection Committee.

Bid. "Bid" shall include any modification to a bid and any withdrawal of a bid.

CCPO. "CCPO" shall mean the Director of the Mayor's Office of Contract Services, the person to whom the authorization is delegated by the Mayor to perform all Mayoral reviews, make all Mayoral determinations and give all Mayoral approvals and certifications regarding concessions.

Committee. "Committee" shall mean the Franchise and Concession Review Committee.

Compensation. "Compensation" shall include any monetary or non-monetary benefit to the city separate and apart from administrative cost.

Competitive Sealed Bidding. "Competitive Sealed Bidding" shall mean a method of procurement by which sealed bids are publicly solicited and a concession is awarded to the highest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

Competitive Sealed Proposals. "Competitive Sealed Proposals" shall mean a method of procurement by which proposals are publicly solicited and a concession is awarded to the responsible proposer whose proposal is determined to be most advantageous to the city, taking into consideration the revenue to the City and such other factors or criteria as are set forth in the request for proposals.

Concession. "Concession" shall mean a grant made by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents, and leases.

Concession Agreement. "Concession Agreement" shall mean a final contract or written agreement between the City and the selected concessionaire that gives rise to obligations that are enforced and recognized by law.

Concession File. "Concession File" shall mean the file(s), including electronic file(s), maintained by the concession manager for each concession under consideration for renewal, re-solicitation or initial award. The file(s) shall include a record of each solicitation of bids or proposals and any addenda thereto, a list of all entities that were issued a solicitation, each abstract or record of bids or proposals, [each written statement] all correspondence between the agency and the concessionaire or prospective concessionaire including any necessary notices, each written statement, distribution, or determination required to be made pursuant to this Chapter and such other information and documentation as may be appropriate. Concession Managers shall make sure that copies of the concession agreement and other standard information in the Concession File (including information relating to the concessionaire's qualifications and performance evaluations, contract audits, and decisions regarding suspension or debarment) are reasonably available for public inspection as provided by law, with adequate protection for confidential information. The Concession File must be retained within the City for a minimum of 7 years beyond the expiration date of the concession, pursuant to procedures of the Department of Records and Information Services.

Concession Manager. "Concession Manager" shall mean a person, designated by an agency, who has general responsibility for concessions management within the agency, including the supervision of subordinate agency staff in conjunction with the CCPO, and for the making of determinations with respect to concessions.

Concession Officer. "Concession Officer" shall mean a person duly authorized to administer concession agreements and make determinations with respect thereto.

Contract. "Contract" shall have the meaning set forth in § 6-116.2(i) of the New York City Administrative Code.

Day(s). "Day" shall mean calendar day unless otherwise specifically stated in the applicable rule.

Executed. "Executed" shall mean, when referring to a concession agreement, the point at which all requirements for effectiveness of the concession agreement have been fulfilled, including all required signatures and approvals, prior to registration by the Comptroller.

Franchise. "Franchise" shall mean a grant by an agency of a right to occupy or use the inalienable property of the City to provide a public service.

In Ink. "In ink" shall mean a provision specifying the use of a pen to satisfy all signature and initialing requirements. Wherever these Rules provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.

In Writing. "In writing" shall include paper or electronic documents, as defined in the solicitation, unless otherwise stated. Any system used for storage of concession-related documents in electronic form must be such as to provide for the security and integrity of the documents contained in it to an equal or greater degree than a traditional hard copy filing system.

Invitation for Bid. "Invitation for Bid" shall mean all documents, whether attached or incorporated by reference, utilized in soliciting a competitive sealed bid.

Major concession. "Major concession" shall mean a concession that has significant land use impacts and implications, in accordance with rules adopted by the City Planning Commission, or for which the preparation of an environmental impact statement is required by law.

[Not-for-Profit. "Not-for-Profit Concession" shall have the following meaning:

- (1) The organization which enters into a concession with an agency, or on agreement with an agency authorizing sub-concessions, is a tax exempt organization under § 501(c)(3) or other provisions of the Internal Revenue Code;
- (2) The purpose of the concession or sub-concession is related to the tax exempt, non-profit purposes of such organization; and
- (3) There is no substantial revenue derived from a concession unrelated to the tax exempt, non-profit purposes of such organization.]

PASSPort. "PASSPort" shall mean a computerized citywide system providing comprehensive contract management information.

Program-based Concession. "Program-based Concession" shall mean a concession where an agency has established a separate process for potential concessionaires to express interest and be considered for particular types of Concessions. All such Program-based Concessions shall still be subject to FCRC approval in accordance with 12 RCNY § 1-16(e).

Proposal. "Proposal" shall mean an offer made by one person to another as a basis for negotiations for entering into a concession, and shall include any modification to a proposal and any withdrawal of a proposal.

Registration. "Registration" shall mean the process through which the Comptroller (1) maintains a registry of City concession agreements; (2) presents objections if, in the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the concession agreement or that the proposed contractor is involved in corrupt activity, and (3) tracks City expenditures and revenues associated with those concession agreements.

Renewal. "Renewals" shall be defined as re-registration of previous concession agreements with the same vendor, with substantially unchanged terms and conditions, but possibly revised quantities, lists, or schedules or items to be supplied.

Request for Proposal. "Request for Proposal" shall mean all documents, whether attached or incorporated by reference, utilized in soliciting a competitive sealed proposal.

Revocable Consent. "Revocable Consent" shall mean a grant by the City of a right, revocable at will,

- (1) to any person to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over inalienable property,
- (2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for such purposes as may be permitted by rules of the Department of Transportation or the Department of Telecommunications, or
- (3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to July 1, 1990.

Rule. "Rule" shall mean, as used herein, the statement or communication that prescribes mandatory standards for the concession of goods, services, and construction.

Significant Concession. "Significant Concession" shall mean any concession which has a term of 10 years or greater (including option periods) or a projected annual income to the City of [more than] \$[100] 250,000 or more, or is a major concession pursuant to rules adopted by the City Planning Commission.

Sole Source Concession. "Sole Source Concession" shall mean a concession granted by an agency without competition when an agency determines that there is either only one source for the required concession or that it is to the best advantage of the City to grant the concession to one source.

[**VENDEX.** "VENDEX" shall mean a computerized citywide system providing comprehensive contract management information.]

Solicitation. "Solicitation" shall mean the process of notifying prospective concessionaires that a governmental body wishes to receive bids or proposals for furnishing goods, services, or construction. The process may consist of public advertising, mailing invitations for bids or requests for proposals, posting notices, telephone or facsimile messages to prospective concessionaires, or all of these.

§ 1-03 Construction of Rules.

The rules in this Chapter shall be liberally construed to achieve the purpose for which they are intended.

§ 1-04 Decision to Permit Use of City Property for Administrative Cost.

The concession manager must document any decision to issue any permit for the use of City property for a period of over 30 days for a fee to cover administrative costs, rather than a concession. A copy of such documentation shall be forwarded to the Committee.

§ 1-05 Term of Concession.

No agency shall enter into a concession agreement for a term of more than 20 years (including option periods). Notwithstanding the foregoing, in extraordinary circumstances described in a detailed written statement to the Committee, an agency may issue a solicitation for a concession with a term in excess of [twenty (20)] 20 years upon the unanimous approval of the Committee. Thereafter, an agency may enter into a concession agreement with the successful bidder/proposer.

§ 1-06 Responsiveness of Bids/Proposals.

(a) *Policy.* The award of concessions shall be made only to bids/proposals received that are responsive to the solicitation, as set forth below.

- (1) A bidder/proposer must submit a responsive bid/proposal in order to be considered for award.
- (2) The concession manager must make a written determination of responsiveness for every concession award.

(b) *Standards.*

- (1) A responsive bid/proposal is one which conforms to the material terms and conditions of the solicitation documents and all material requirements of the specifications.
- (2) Factors affecting the responsiveness of bids/proposals include:
 - (i) Compliance with all material requirements of the specifications;
 - (ii) Compliance with all material terms and conditions of the solicitation;
 - (iii) Submission of bids/proposals in the form specified in the solicitation;
 - (iv) Submission of bids/proposals by the time and date and at the place specified in the solicitation;
 - (v) Submission of bid/proposal deposits, if required by the solicitation;
 - (vi) Submission of samples, literature or other information, if required by the solicitation;
 - (vii) Submission of all required disclosure statements; and
 - (viii) Attendance at a pre-bid or pre-proposal conference or site inspection, if required.

Bids/proposals that fail to conform with one or more of the standards set forth above shall be rejected.

(c) *Written determination of non-responsiveness required.* If the bid(s) offering the highest revenue, or in the case of other competitive solicitations, any proposal is found non-responsive, a written determination setting forth in detail and with specificity the reasons for such finding, must be made by the concession manager. A copy of such determination shall be maintained in the Concession File and filed with the [Committee] Mayor's Office of Contract Services.

(d) *Notice.* A copy of the determination of non-responsiveness shall be immediately sent to the non-responsive bidder/proposer. Notice to the non-responsive bidder/proposer must be mailed no later than [two] 2 business days after the determination of non-responsiveness is made and must inform the bidder/proposer of the right to appeal the determination to the Agency Head or designee within [five] 5 days of receipt. The notice shall also contain the following statement: The bidder/proposer shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New

York City Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, (212) 669-2323.

(e) *Record*. The written determination of responsiveness or non-responsiveness shall be retained in the concession file.

(f) *Appeal of determination of non-responsiveness*. Appeals of the determination of non-responsiveness shall be made pursuant to the following procedure:

(1) *Time for appeal*. Any bidder/proposer whose bid/proposal is determined to be non-responsive shall be allowed [five] 5 days from receipt of the agency's notification to file a written appeal of that determination with the Agency Head. Receipt of notice by the bidder/proposer shall be deemed to be no later than [five] 5 days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(2) *Form and content of appeal by bidder/proposer*. The appeal by the bidder/proposer shall be in writing and shall briefly state all the facts or other basis upon which the bidder/proposer contests the agency finding of non-responsiveness. Supporting documentation shall be included.

(3) *Agency Head determination*. The Agency Head shall consider the appeal, and shall make a prompt written decision with respect to the merits of the appeal. The Agency Head may, in his or her sole discretion, meet with the bidder/proposer to discuss the merits of the appeal.

(4) *Notification to bidder/proposer of Agency Head decision*. A copy of the decision of the Agency Head shall be sent to the bidder/proposer.

(5) *Finality of Agency Head decision*. The Agency Head's decision of an appeal from a determination of non-responsiveness shall be final.

(6) *Stay of award of concession pending Agency Head Decision*. Award of the concession shall be stayed pending the rendering of a decision by the Agency Head unless the Agency Head makes a written determination that execution of the concession without delay is necessary to protect substantial City interests.

(7) *Delegation*. The Agency Head may designate a senior agency official, other than the concession manager or his or her subordinates, to consider this appeal.

(g) *Documentation.* Documents reflecting the concession manager's determination of non-responsiveness and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by this section, shall be maintained in the concession file. A copy of the determinations of the concession manager and the Agency Head shall be forwarded to the Committee.

§ 1-07 Concessionaire Responsibility.

(a) *Policy.* Concessions shall be awarded to responsible prospective concessionaires only.

(b) *General standards.*

(1) A responsible concessionaire is one which has the capability in all respects to perform fully the concession requirements. Factors affecting a prospective concessionaire 's responsibility may include:

(i) Financial resources;

(ii) Technical qualifications;

(iii) Experience;

(iv) Organization, material, equipment, facilities and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;

(v) A satisfactory record of performance;

(vi) A satisfactory record of business integrity;

(vii) Where the concession includes provisions for compensation to the City based on revenues, the existence of accounting and auditing procedures adequate to control property, funds or other assets, accurately delineate costs, and attribute them to their causes;

(viii) Proof of timely tax filing, certificate of insurance, and other financial documents as required by OMB or the Comptroller;

[(viii)] (ix) Compliance with requirements for the utilization of small minority-owned and women-owned businesses as [subcontractors] subconcessionaires, if any.

(2) Failure of an entity to provide relevant information specifically requested by the concession manager may be grounds for a determination of non-responsibility.

(c) *Special standards.*

(1) When it is necessary for a particular concession or class of concessions, the concession manager shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate concession performance.

(2) The special standards shall be set forth in the solicitation (and so identified) and shall apply to all prospective concessionaires.

(3) Special standards must be based on demonstrated need and must not be used to artificially limit competition.

(d) *Ability to meet standards.*

(1) The prospective concessionaire may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(i) Evidence that such prospective concessionaire possesses such necessary items, or can obtain them;

(ii) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(iii) If applicable, a copy of the latest financial audit report, including the date, period covered, findings, name of the CPA firm that conducted it, and whether the CPA firm was unable to express an opinion as to the adequacy of the prospective concessionaire's books and records.

(2) A prospective concessionaire that has performed unsatisfactorily shall be presumed to be non-responsible, unless the concession manager determines that the circumstances were beyond the prospective concessionaire's control or that the prospective concessionaire has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(e) *Making the responsibility determination.*

(1) [VENDEX] PASSPort questionnaires.

(i) In the case of concession awards where the concession has a value that, when aggregated with the value of all other City concessions, franchises, and contracts held by the same concessionaire, is valued at [one hundred thousand dollars] \$100,000 or more, questionnaires, known as "[VENDEX]

PASSPort questionnaires,” seeking background information about the prospective concessionaire and its principals, owners, officers, affiliates and [subcontractors] subconcessionaires shall be completed. The apparent high bidder or proposed concessionaire and, at the discretion of the concession manager, any other responsive prospective concessionaire, shall be required to complete the [VENDEX] PASSPort questionnaires so as to assist the concession manager in making the determination of responsibility and to permit compliance with local law concerning creation and maintenance of a computerized database concerning concessionaire background.

(ii) The questionnaire responses shall be entered into the citywide computerized [VENDEX] PASSPort database which is jointly maintained by the Mayor and the Comptroller. Questionnaires need be completed only once every [three] 3 years. Each prospective concessionaire shall certify at the time of award of each concession that all the information submitted within such [three] 3- year period is current, accurate and complete. In the event that changes have occurred within the [three] 3-year period, the prospective concessionaire shall update, prior to concession award, any previously-submitted [VENDEX] PASSPort questionnaire to supply any changed information, and shall certify that both the updated and unchanged information is current, accurate and complete.

(iii) Names on the questionnaires shall be reviewed by the Department of Investigation to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department. The Department of Investigation shall undertake the review expeditiously and provide an explanation to an agency if its review is not completed within [thirty] 30 calendar days of the request. If the Department of Investigation ascertains that there has been such an investigation, it shall provide a copy of any final report or statement of findings to the concession manager for use in making the determination of responsibility.

(iv) Subcontractors/subconcessionaires. Where appropriate, City concession agreements shall contain a clause requiring concessionaires to notify subcontractors/subconcessionaires of their obligation to complete and file [VENDEX] PASSPort questionnaires within [thirty] 30 days after the concession manager has granted preliminary approval of the identified subcontractor/subconcessionaire, if the aggregate value of City contracts, franchises, and concessions awarded to a

subcontractor/subconcessionaire during the immediately preceding twelve-month period equals or exceeds \$100,000.

(2) The concession manager should use the following sources of information to support determinations of responsibility or non-responsibility:

(i) [VENDEX] PASSPort listings of debarred, suspended and ineligible contractors and concessionaires;

(ii) [VENDEX] PASSPort and other records or evaluation of performance, if available, as well as verifiable knowledge of agency personnel;

(iii) Determinations of violations of employment-related federal, state, or local law or executive order, including but not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours, if any;

(iv) Information supplied by the prospective concessionaire, including bid/proposal information, [VENDEX] PASSPort questionnaires replies, financial data, information on production equipment and personnel information; and other sources such as publications, suppliers, [subcontractors] subconcessionaires and customers of the prospective concessionaire, financial institutions, other government agencies, and business and trade associations.

(v) Information published on news or social media websites, including press articles or customer reviews.

(3) Nothing in this section shall preclude a concession manager, prior to award, from notifying the bidder/proposer of unfavorable responsibility information and providing the bidder/proposer an opportunity to submit additional information or explain its actions before adverse action is taken.

(f) *Written determination of non-responsibility required.*

(1) If a prospective concessionaire who otherwise would have been awarded a concession is found non-responsible, a written or electronic determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the concession manager.

(2) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible prospective concessionaire. Notice to the non-responsible prospective concessionaire must be mailed no later than [two] 2 business days after the determination of non-responsibility is made and must inform the

prospective concessionaire of the right to appeal the determination to the Agency Head or designee and subsequently to the CCPO, and of the procedure for taking such appeals. The notification shall also contain the following statement: The prospective concessionaire shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, (212) 669-2323.

(3) The [written] determination of non-responsibility shall be made part of the concession file, delivered to the Mayor's Office of Contract Services and Law Department, and included in the [VENDEX] PASSPort database.

(g) *Appeal of determination of non-responsibility.* Appeals of the determination of non-responsibility shall be made pursuant to the following procedure:

(1) *Time for appeal.* Any prospective concessionaire who is determined to be non-responsible in connection with the award of a particular concession shall be allowed [five] 5 days from receipt of the agency's notification to file a written or electronic appeal of that determination with the Agency Head. Receipt of notice by the prospective concessionaire shall be deemed to be no later than [five] 5 days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(2) *Form and content of appeal.* The appeal by the prospective concessionaire shall be in writing and shall briefly state all the facts or other basis upon which the prospective concessionaire contests the agency finding of non-responsibility. Supporting documentation shall be included.

(3) *Agency Head determination.* The Agency Head shall consider the appeal, and shall make a prompt written decision with respect to the merits of the appeal. The Agency Head may, in his or her sole discretion, meet with the prospective concessionaire to discuss the appeal.

(4) *Notification to prospective concessionaire of Agency Head decision.* A copy of the decision of the Agency Head shall be sent to the prospective concessionaire. If the Agency Head upholds the concession manager's finding of non-responsibility, the Agency Head shall inform the prospective concessionaire of the right to appeal the decision to the CCPO, and of the procedure for taking such an appeal.

(5) *Finality.* The Agency Head's decision of an appeal from a determination of non-responsibility shall be final unless further appealed to the CCPO.

(6) *Delegation.* The Agency Head may designate a senior agency official, other than the concession manager or his or her subordinates, to consider this appeal.

(h) *Stay of award of concession pending Agency Head or CCPO decision.* Award of the concession shall be stayed pending the rendering of a decision by the Agency Head or CCPO unless the concession manager makes a written determination that execution of the concession without delay is necessary [to protect substantial City interests], or the CCPO, in the CCPO's discretion, determines that it is in the best interests of the City to go forward with the award of the contract.

(i) *Appeal to the CCPO.* Appeals to the CCPO of the Agency Head decision upholding a determination of non-responsibility shall be made pursuant to the following procedure:

(1) *Time for Appeal.* Any prospective concessionaire who wishes to appeal the decision of the Agency Head shall be allowed [ten] 10 calendar days from receipt of the Agency Head's notification to file a written or electronic appeal of that determination with the CCPO. Receipt of notification by the prospective concessionaire shall be deemed to be no later than [five] 5 days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the CCPO.

(2) *Form and Content of Appeal by Prospective Concessionaire.* The appeal by the prospective concessionaire shall be in writing and shall briefly state all the facts or other basis upon which the prospective concessionaire contests the agency finding of non-responsibility. Supporting documentation shall be included.

(3) *CCPO Determination.* The CCPO shall consider the prospective concessionaire's appeal, and shall make a prompt written decision with respect to the merits of the prospective concessionaire's appeal. The CCPO, in the CCPO's sole discretion, may meet with the prospective concessionaire to discuss the appeal.

(4) *Notification to Prospective Concessionaire of CCPO Decision.* A copy of the decision of the CCPO shall be sent to the prospective concessionaire.

(5) *Finality*. The decision by the CCPO of a prospective concessionaire's appeal from an Agency Head decision concerning non-responsibility shall be final.

[(j) *Stay of Award of Concession Pending Decision By CCPO*. Award of the concession shall be stayed pending the rendering of a decision by the CCPO, unless the concession manager has made a determination pursuant to these Rules that the execution of the contract without delay is necessary, or the CCPO, in the CCPO's discretion, determines that it is in the best interests of the City to go forward with the award of the contract.]

[(k)] (j) *Documentation*. Documents reflecting the concession manager's determination of non-responsibility and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by this section, shall be maintained in the concession file. Copies of these documents shall be sent to the Mayor's Office of Contract Services for inclusion in the [VENDEX] PASSPort database. A copy of the determinations of the concession manager, Agency Head, and CCPO shall be forwarded to the Committee.

§ 1-08 Protest of Solicitations and Awards of Concessions.

(a) *Protests*. Any actual or prospective [bidder or proposer] concessionaire may protest any determination regarding a concession, unless another appeal or protest provision is provided in these Rules. The protestor shall send a copy of its protest to the New York City Comptroller, for informational purposes, at the Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, (212) 669-2323.

(1) *Time for protest*. A protest shall be submitted in writing to the Agency Head within [ten] 10 days after the protesting party knows or should have known of the facts that prompted the protest but no later than [ten] 10 days after the publication of the notice of award of a concession.

(2) *Form and content of protest*. The protest shall be in writing and shall briefly state all the facts or other basis upon which the agency decision is contested. Supporting documentation shall be included. If the protest is made by a potential bidder or proposer who has not submitted a bid or proposal, the protest shall be limited to a challenge of the notice procedures followed by the concession manager.

(3) *Agency Head*. The Agency Head shall consider the protest, and shall make a prompt written decision with respect to its merits. The Agency Head may in his/her exclusive discretion invite written

comment from the selected concessionaire (if any) or other interested party, convene an informal conference with the protestor, the selected concessionaire, any other interested party and/or any appropriate agency personnel to resolve the issue by mutual consent prior to reaching a determination.

(4) *Notification to protestor of Agency Head decision.* Upon the making of a decision concerning the merits of the protest the Agency Head shall promptly notify the protestor in writing of that determination. The notification shall state the reasons upon which the determination is based.

(5) *Finality of Agency Head decision.* The Agency Head's decision concerning the merits of a protest pursuant to this section shall be final.

(6) *Status of award.* In any case in which a court proceeding is commenced, no solicitation or concession award shall be delayed except as determined by the Agency Head.

(7) *Documentation.* Documents reflecting the agency decision of a protest and evidence of having supplied written notification, as required by this section, shall be maintained in the concession file. Copies of these documents shall be sent to the Mayor's Office of Contract Services and to the Comptroller.

§ 1-09 Publication Requirements for the Award of a Concession.

(a) Notice of the award of a concession shall be published in the *City Record* within [15] 30 calendar days after registration of the concession, shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within [five] 5 days of its publication.

(b) Such notice shall include:

- (1) Agency name;
- (2) Location of the awarded concession;
- (3) Summary of the terms and conditions of the proposed concession agreement, including the revenue anticipated to be received by the City;
- (4) Name and address of concessionaire; and
- (5) Method by which concession was solicited.

§ 1-10 Annual Report, Concession Plan and Opportunity for Public Comment.

(a) The CCPO shall submit an annual report to the Committee no later than each September 1st summarizing the currently effective concessions awarded pursuant to this Chapter. The summary shall

include the date each concession was submitted to the Comptroller for registration, a brief description of each concession awarded, whether the concessionaire identifies as an M/WBE, the method by which each concession was awarded and the approximate gross revenues received by the City for each concession during the prior fiscal year. The CCPO shall have final approval over the form and content of the annual report.

(b) (1) Annually, the concession manager of each agency awarding concessions shall review its entire portfolio of significant concession agreements, including all existing significant concessions and anticipated new significant concessions that may occur over the course of the upcoming fiscal year, and shall produce a plan ("Plan") detailing the actions anticipated with respect to each such concession agreement set to expire and/or planned for continuation, and each new significant concession agreement planned for solicitation or initiation during the upcoming year. In addition, the concession manager may include in the Plan the actions anticipated with respect to each non-significant concession agreement set to expire and/or planned for continuation, and each new non-significant concession agreement planned for solicitation or initiation during the upcoming year.

(2) The form and content of the Plans shall be prescribed by the CCPO. The Plans shall include, but not be limited to: the borough, address locations(s) (including name of parks, if applicable) and community district(s) of the planned concessions, descriptions of the planned concessions, anticipated term and revenue (including a range, if appropriate) of the planned concessions, the name and address of the current concessionaires (if any), the business name of the current concession (if any), an indication of whether each concession is a major concession, the month and year (if available) of the next planned solicitation or initiation for such concession, the selection method to be employed for any concession, the justification for the method to be employed if not a bid or [an RFP] a Request for Proposals, and a brief summary of the terms and conditions of such solicitation.

(3) Each agency shall submit its Plan to the Committee no later than May 1st, provide copies of the Plan to each affected community board and Borough President and consult, on request, with each affected community board and Borough President on developing the scope of any solicitations for significant concessions relevant to each that are included in the Plan, at least [thirty(30)] 30 days in advance of such solicitations.

(4) The Committee shall hold a public hearing on the Plans no later than June 15th, and shall at the same hearing further solicit comment about the provisions of this chapter from the vendor community, civic groups and the public at large. Notice of such public hearing shall appear [in at least ten (10) successive issues] in 1 issue of the *City Record*, in appropriate newspapers and trade publications, shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within [five] 5 days of its publication. Consideration shall also be given to posting notices in public places, to free radio or television coverage and to such other means as may be appropriate. Such notice shall include:

- (i) Name of each agency that submitted a Plan;
- (ii) A brief description of the portfolio of concessions covered by the Plans;
- (iii) How interested parties may obtain a copy of the Plans;
- (iv) A description of any additional issues on which the Committee wishes to solicit public comment; and
- (v) The date, time, and place of public hearing.

(5) The Committee shall consider the issues raised at the public hearing in accordance with the procedures set forth in the Charter under the City Administrative Procedure Act.

§ 1-11 Ratification of Minor Rules Violations.

(a) *Prior to Registration.* If, prior to registration, it is determined by the concession manager that a violation of these Rules has occurred and the violation has been deemed to have had no significant, adverse impact on the competitive process, then as soon as practicable after discovery, the concession manager shall either:

- (i) Revise the concession to comply with these Rules, or
- (ii) If the minor Rules violation(s) cannot be corrected to comply with these Rules, make a written application to the CCPO, who may ratify the concession provided it is in the best interest of the City to do so, and provided such ratification will not violate any law applicable to the concession process. Such application and ratification shall include the justification(s) therefor. The CCPO shall provide a copy of the application to each member of the Committee, and may not ratify the concession prior to the expiration of [ten (10)] 10 business days from the date such copies are received. If an application is made prior to

public hearing and/or FCRC meeting regarding the concession, if any, the Committee shall be informed of such application before such hearing or meeting.

(b) *After Registration.* If, after registration, it is determined that a concession is in violation of these Rules:

(i) If the selected concessionaire has not acted fraudulently or in bad faith:

(A) The minor Rules violation may be ratified and the concession affirmed, provided it is determined by the concession manager and approved by the CCPO that doing so is in the best interests of the City and provided such ratification will not violate any law applicable to the concession process; such determination and approval shall include the justification(s) therefor; and provided further that the CCPO shall provide a copy of the determination to each member of the Committee, and may not affirm the concession prior to the expiration of [ten (10)] 10 business days from the date that such copies are received, or

(B) The concession may be terminated by the concession manager in accordance with applicable law or contract terms.

(ii) If the selected concessionaire has acted fraudulently or in bad faith:

(A) The concession may be declared null and void by the concession manager; in such event the concessionaire's name shall be entered as a caution in the [VENDEX] PASSPort database, or

(B) The minor Rules violation may be ratified and the concession affirmed, provided it is determined by the concession manager and approved by the CCPO that doing so is in the best interests of the City, including the reasons therefor and provided such ratification will not violate any law applicable to the concession process. The CCPO shall provide a copy of the determination to each member of the Committee, and may not affirm the concession prior to the expiration of [ten (10)] 5 business days from the date such copies are received. Such ratification shall not prejudice the City's rights to damages as may be appropriate.

(c) *Public Notice.* Notice of the ratification of a minor Rules violation shall be submitted to the Committee and published at least once in the City Record within [ten] 15 days after the CCPO's ratification determination and posted on the City's website in a location that is accessible by the public simultaneously with its publication. Such notice shall include the name of the concessionaire (when

applicable); a brief description of the concession; the dollar amount; the duration of the concession; and the nature of and justification for the ratification of the rules violation.

(d) *Standard.* In no event shall the failure to (1) have a required public hearing, (2) receive required Committee approval, [or] (3) conduct special outreach to M/WBEs, or (4) advertise a public hearing or Committee meeting required for the concession for which the Concession Manager is seeking such ratification or affirmation be considered a minor Rules violation that may be ratified or affirmed.

§ 1-12 Competitive Sealed Bids.

(a) *General.*

(1) Concessions shall be awarded in accordance with competitive sealed bidding procedures whenever practicable and advantageous to the City. Concessions may be awarded through a competitive sealed proposal process if the agency makes a written determination that the use of competitive sealed bidding is not practicable or not advantageous to the City for one of the reasons set forth in 12 RCNY § 1-13(a). Such determination must be approved in writing by the agency head and must be included in the concession file. A copy thereof shall be forwarded to the Committee.

(2) [Prior] At least 40 days prior to soliciting bids, or less at the discretion of CCPO, the agency shall make a written determination as to whether a concession is a major concession. Such determination shall be approved in writing by the agency head and shall be included in the concession file. If a concession is determined to be a major concession, it shall be subject to review and approval pursuant to Sections 197-c and 197-d of the Charter following the agency selection of the successful bidder. Once this determination has been made, [If a concession is not determined to be a major concession] an agency may proceed with the sealed bid process but shall provide written notification of its determination [that the concession is not a major concession] to each affected community board and Borough President [at least forty (40) days prior to issuance of a solicitation,] and shall post such notification on the City's website in a location that is accessible by the public simultaneously with its distribution. [provide a] A copy of such notification shall be provided to the members of the Committee within [five] 5 days of provision to the community board(s) and Borough President and publication on the City's website, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute notice to the affected community board and Borough President and posting on the City's website for purposes of this

requirement, and no copy need be provided to the members of the Committee in such circumstance. The written notification shall include a summary of the terms and conditions of the proposed solicitation and whether the concession is significant.

(i) If an agency provides the aforementioned notice to the affected community board and Borough President and there are no material changes to the terms described in the notice, the agency shall not be required to issue a second notice when issuing or reissuing the Invitation for Bids within a 12-month period.

(3) At least [thirty] 40 days prior to soliciting bids for a significant concession, or less, at the discretion of CCPO, the agency shall consult with each affected community board and Borough President on developing the scope of the Invitation for Bid, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute consultations with the affected community board and Borough President for purposes of this requirement.

(i) If an agency provides the aforementioned notice to the affected community board(s) and Borough President(s) and there are no material changes to the terms described in the notice, the agency shall not be required to issue a second notice when issuing or reissuing the Invitation for Bids within a 12-month period.

(b) *Preparation of invitation to bid.*

(1) At least [three] 6 months prior to the expiration date of a concession and/or prior to the anticipated start date of a new concession, the agency shall initiate action for the selection of a concessionaire. The agency action(s) taken shall include the preparation of an Invitation for Bid containing a detailed description of the concession under consideration for resolicitation or initial award. The Invitation should describe the requirements of the agency clearly, accurately, and completely. It should include all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding. The following information, together with any other appropriate information, should be included in the Invitation for Bid, as applicable:

(i) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; time, date, and location of any pre-bid conferences (and a statement whether such conferences are

mandatory), and an invitation to inspect the premises, as applicable; and the address where bids are to be delivered;

(ii) Location and a brief description of the proposed concession, its size, its prior use and/or other possible usage of the premises, any fixtures, or equipment, on the premises and its surrounding area, including any special instructions or information necessary, and appropriate materials such as maps, plans or photographs;

(iii) The term of the concession and any terms and conditions upon its award, including warranty and bonding or other security requirements, and a description of any legal restrictions on the use of the location;

(iv) A statement that award shall be made to the highest responsive and responsible bidder;

(v) If not included in the bid documents, a notice of where bidders may obtain a copy of all terms and conditions or other material relating to the proposed concession;

(vi) A provision that bidders should give specific attention to the identification of those portions of their bids that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the bid;

(vii) A notice of the bidder's rights to appeal certain decisions as specified in these rules;

(viii) A statement that bidders should contact the agency prior to submission of bids to verify that all amendments issued have been received, and a requirement for acknowledgment of amendments;

(ix) A notice that the concession award is subject to applicable provisions of federal, [State] state, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(x) Where applicable, a notice that concession award is subject to completion of a [VENDEX] PASSPort questionnaires and review of that information by the Department of Investigation;

(xi) The name, address, [and] telephone number, and email address of a contact person to whom questions and correspondence relating to the bid solicitation can be addressed;

(xii) Instructions for submission of bids, including a requirement that the bidder include the solicitation number, the name and address of the bidder and the time specified for receipt of bids on the outside wrapper; and

(xiii) The following statement:

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007; telephone number (212) 669-2323.

(xiv) Where applicable, for concessions that entail construction, the following information shall be additionally included:

(A) A statement establishing minimum insurance requirements which the City will require of the bidder if successful; and

(B) A statement that the bidder will be required to meet all licensing or permit requirements required to perform the construction.

(2) *Publicizing the invitation for bids.*

(i) Bids for concessions shall be solicited by public advertisement in at least [10 successive issues] one issue of the *City Record*, and a notice of the availability of such solicitation of bids shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. A copy of such notice shall be provided to the members of the Committee and each affected Community Board within [five] 5 days of its first publication. Consideration shall also be given to soliciting bids by public advertisement in appropriate newspapers and trade publications, posting notices in public places, contacting other City agencies that have concessions, free radio or television coverage, website postings, and such other means as may be appropriate. The steps taken to solicit bids shall be documented by the concession manager and included in the concession file. [Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Section 1304 of the Charter.] Current lists of bidders shall be maintained in accordance with 12 RCNY § 1-12(c).

(ii) The advertisement shall include:

(A) The place the Invitation for Bids may be obtained, and the required fee or deposit amount, if any, for obtaining the Invitation for Bids;

(B) The time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;

(C) The place where and the day and hour when the bids will be publicly opened;

(D) A brief description of the concession under consideration for resolicitation or initial award;

and

(E) The name [and phone] telephone number, and email address of the agency contact person.

(iii) A bidding time of at least [10 business] 30 days between the advertisement's [last] first appearance in the *City Record* and the opening of bids shall be provided, unless the concession manager makes a written determination that a shorter period is reasonable. A copy of such determination must be included in the concession file.

(iv) Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Section 1304 of the Charter. Special outreach can include but is not limited to: providing notice in newspapers, trade publications, websites or social media that are dedicated to minority and/or women owner business enterprises or trade groups. Agencies may additionally employ any outreach technique sanctioned by DSBS that is not otherwise in violation of these Rules.

(c) *Soliciting mailing lists.*

(1) *Establishment of lists.*

(i) Solicitation mailing lists may be established by concession managers, and shall be established for any type of concession for which the agency reasonably anticipates soliciting multiple concessions of a similar nature during a given year. Their use can assure the agency that a greater number of potential bidders will be aware of the solicitation. A solicitation mailing list may include any entity in a designated field.

(ii) Lists may be established through any appropriate method, including the following:

(A) Inclusion of names of entities that have submitted unsolicited letters and/or made unsolicited telephone calls;

(B) Inclusion of names of entities that responded to similar solicitations in the past; and

(C) Inclusion of names of other entities that an agency considers capable of filling the requirements of a solicitation. Agencies may refer to appropriate printed directories when compiling the names of entities.

[(iii) For each type of concession for which an agency has established a solicitation mailing list, the agency shall publish in The City Record at least once annually for [five] 5 consecutive editions and shall post on the City's website in a location that is accessible by the public simultaneously with its publication, a notice soliciting the names of entities interested in being included on the solicitation mailing list. A copy of such notice shall be furnished to each affected Borough President, each affected Community Board, and the members of the Committee within [five] 5 days of its publication. Applications for inclusion on such solicitation mailing list shall be continuously available.]

[iv] (iii) Prospective bidders shall be notified that they have been included on solicitation mailing lists.

(2) *Maintenance of lists.*

(i) For each type of concession for which an agency has established a solicitation mailing list, the agency will maintain the mailing lists annually. The agency shall publish in the *City Record* at least once annually for 5 consecutive editions and shall post on the City's website in a location that is accessible by the public simultaneously with its publication, a notice soliciting the names of entities interested in being included on the solicitation mailing list. A copy of such notice shall be furnished to each affected Borough President, each affected Community Board, and the members of the Committee within 5 days of its publication. Applications for inclusion on such solicitation mailing list shall be continuously available.

[(i)] (ii) Agencies may add names to a solicitation mailing list at any time.

[(ii)] (iii) Agencies may remove a name from a list if an entity fails to respond to [three] 3 solicitation notices. If an agency removes a name from the list for any other reason the agency must notify the entity in writing of the reason(s) for its removal.

[(iii)] (iv) An agency must remove an entity from the list upon the entity's written request.

(3) *Reinstatement on solicitation mailing list.* An entity that has been removed from a solicitation mailing list may be reinstated upon written request or by response to a solicitation.

(4) *Utilization.* When a concession is to be granted in a category for which a solicitation mailing list has been developed, all entities on the list shall be [mailed] sent a solicitation letter. This letter must include the same information contained in the advertisement announcing the solicitation and should be distributed [five] 5 days prior to the advertisement's first appearance in the *City Record*. Once a solicitation letter has been [mailed] sent, it is presumed to have been received by all entities. Agencies have no obligation beyond assuring that the solicitation letter has been [mailed] sent.

(d) *Pre-Bid Conferences.* Pre-bid conferences may be conducted by the concession manager to explain the agency's requirements. Written notice of any conference shall be provided to all prospective bidders. A pre-bid conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by amendment as provided in this section. A summary of the conference shall be prepared and if a transcript is made, it shall be a public record. A record of attendance shall be kept of all conferences.

(e) *Amendments and addenda to the invitation for bid.*

(1) *Authority.* The concession manager shall authorize the issuance of any amendment, including addenda.

(2) *Form.* Each amendment or addendum to an Invitation for Bids shall be identified as such, shall be set forth in writing, and shall require that the bidder acknowledge receipt of all amendments and addenda issued as a condition for consideration of its bid. An amendment shall reference the portion of the Invitation for Bids it amends.

(3) *Distribution.* Amendments and addenda shall be sent to all prospective concessionaires known to have received an Invitation for Bids. Agencies must maintain a list of all entities that were issued a solicitation. Amendments and addenda must be distributed to all potential bidders who were issued the initial Invitation for Bid and to potential bidders who attended a mandatory pre-bid conference or site visit, if applicable.

(4) *Timeliness.* Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit

such preparation, such time shall be increased to the extent necessary, and stated in the amendment or, if necessary, by electronic mail, if consented to by the bidder, facsimile, or telephone and confirmed in the written amendment. Once an addendum has been sent, it is presumed to have been received by potential bidders. Agencies have no obligation beyond assuring that the correspondence has been sent. Agencies may wish to distribute addenda to potential bidders using either "return receipt requested" or express mail courier services.

(5) If a change to an Invitation for Bid is so extensive that it warrants complete revision of a solicitation, the concession manager shall cancel the Invitation for Bid and issue a new one. In making the determination whether to cancel an Invitation for Bid based on a change, the concession manager shall consider whether the change is such that new bidders, as a result of those revisions, might now be interested in satisfying the requirements of the changed Invitation for Bid.

(6) Agencies must require that bidders acknowledge the receipt of all the amendments as part of their bids. Failure to acknowledge the receipt of all amendments in a bid for a significant concession may be waived if the concession manager, upon written approval of the Agency Head, determines that it is in the best interests of the City to do so. Failure to acknowledge the receipt of all amendments in a bid for a concession, other than a significant concession, may be waived if the concession manager makes a written determination that it is in the best interests of the City to do so. Such determination must be included in the concession file.

(f) *Bid deposits.* The concession manager may establish a reasonable bid deposit requirement. Where a deposit amount is specified in the Invitation for Bid, no bid shall be valid unless accompanied by such deposit. Every Invitation for Bid shall contain a provision that in the event of the failure of a successful bidder to execute a concession agreement in accordance with the terms of its bid, any such deposit shall be retained by the City unless the bid has been permitted to be withdrawn.

(g) *Submission of bids.* The Invitation for Bids shall provide a form on which the bidder shall insert the bid price (i.e., proposed revenue) and shall sign and submit along with all other necessary submissions. Bids shall be [typewritten or written legibly] submitted in [ink.] the form required by the Request for Bids and signed by the bidder. Erasures or alterations shall be initialed by the signer [in ink. All bids shall be signed in ink.] If so provided in the solicitation, sealed bids may be submitted [and signed] electronically.

Bidders must submit sealed bids to be opened at the time and place stated in the Invitation for the public opening of bids. Each bid shall show the time specified for receipt, the solicitation number and the name and address of the bidder on the outside wrapper.

(h) *Receipt and safeguarding of bids.* All bids received before the time set for the opening of bids shall be placed unopened in a safe or a secured cabinet in the custody of the concession manager. Bids shall be time and date stamped upon receipt. Before bid opening the agency may not disclose the identity of any bidder.

(i) *Bid opening.* The official responsible for conducting the bid opening shall decide when the time set for opening bids has arrived and shall inform those present of that decision. The official shall then:

- (1) Personally and publicly open all bids received before that time;
- (2) If practical, read the bids aloud to the persons present;
- (3) Have the bids recorded; and

(4) Have all persons present sign an attendance form with the name of the entity they represent and official title. The record of bids, the attendance form and opened bids shall be included in the concession file, and shall be available for public inspection at a reasonable time after business opening, but in any case before concessionaire selection, except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. The concession manager shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by Agency Counsel, and does not restrict disclosure of such materials to the members of the Committee who, nonetheless, shall remain under a duty of confidentiality except if required by law to disclose such materials. Any decision not to honor a request for confidentiality shall be communicated in writing to the bidder making the submission.

(j) *Late bids and modifications.*

(1) It is the responsibility of a bidder to submit its bid prior to the time set for bid opening to the designated agency location. Bids and modifications received after that exact time are defined as "late".

Late bids and modifications must be acknowledged, and time stamped upon receipt and, except under the specific circumstances described below, may not be considered.

(2) A late bid or modification, received before the grant of a concession,

(i) may be considered when the late bid or modification is received within 48 hours after the opening of bids and is the only bid received. (See 12 RCNY § 1-12(m))

(ii) must be considered when a modification of a successful bid makes its terms more favorable to the City. If, based on the above, a late bid or modification is considered, the concession manager must document the circumstances in writing and maintain such documentation as part of the concession file. If a late bid or modification is not considered, such bid or modification shall be promptly returned to the bidder unopened, and the bidder shall be notified of the reason for such action.

(k) *Withdrawal of bids.*

____(1) Bids may be withdrawn by written notice received at the designated agency location before the time set for bid opening. [A]

____(i) If a bid is withdrawn in accordance with 1-12(k)(1), the bid security, if any, shall be returned to the bidder.

____(2) After bid opening, a bidder may not withdraw its bid before the expiration of [forty-five (45)] 45 calendar days after the date of the opening of bids or such longer period as determined by the concession manager and set forth in the solicitation; thereafter, a bidder may withdraw its bid] and only in writing and in advance of an actual grant of a concession. [If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.]

____(3) The concession manager shall document each request for withdrawal and prepare a written determination, with supporting facts, as to whether or not the bid was permitted to be withdrawn. Such determinations shall be included in the concession file with a copy thereof forwarded to the bidder.

(l) *Mistake in bid.* Allegations of mistakes in bids shall be processed by the concession manager according to 9 RCNY § 3-02(m) of the Rules of the Procurement Policy Board ("PPB Rules"). A written determination shall be made and shall be included in the concession file.

(m) *Single bids.* When a single bid has been received in response to an Invitation for Bid, an award may be recommended only after it has been documented by the concession manager that a sufficient

number of other entities had a reasonable opportunity to bid; why, as a result of inquiries made by the agency, representative firms chose not to submit bids; that the bid submitted meets minimum requirements for award; and that a resolicitation would not be in the City's best interest. If the above specified circumstances cannot be documented, the single bid must be rejected and the concession may either be pursued, subject to the approval of the concession manager, by the solicitation of new bids or the concession cancelled. Notwithstanding the foregoing, when a single bid has been received in response to an Invitation for Bid for a concession, other than a significant concession, the agency shall not be required to make inquiries as to why representative firms chose not to submit bids.

(n) *Award and processing.*

(1) The apparent high bidder must submit [VENDEX] PASSPort Questionnaires prior to award when and as directed by the Agency.

(2) The agency granting the concession may reject all bids if it shall deem it for the interest of the City so to do; if not, it shall, without other consent or approval, grant the concession to the highest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. A determination to reject all bids for a concession, other than a significant concession, shall be made by the concession manager in writing, and shall be included in the concession file. A determination to reject all bids for a significant concession shall be made by the concession manager in writing, approved by the Agency Head, and shall be included in the concession file. All bidders shall be notified of the reason for such action.

(3) *Tie bids.*

(i) Tie bids are to be decided by the agency granting the concession and the award made. When two or more bids are equal in all respects, concessions shall be awarded in the following order of priority:

(A) Award to minority- and women-owned business enterprises as such entities are defined in Section 1304 of the Charter.

(B) Award to a New York City bidder.

(ii) If two or more bidders still remain equally eligible after application of subparagraph (3)(i) above, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least [three] 3

appropriate agency staff personnel, and the concession file shall contain the names and addresses of the witnesses and the person supervising the drawing.

(iii) When an award is to be made by using the priorities under this subparagraph, the concession agreement shall include a provision whereby the concessionaire agrees to perform, or cause to be performed, the concession in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

(iv) The concession manager shall include a statement in the concession file describing how the tie was broken.

(4) If the highest bidder is determined by the agency not to be a responsible bidder pursuant to 12 RCNY § 1-07 or the highest bid is determined by the agency to not meet the requirements and criteria set forth in the Invitation for Bids pursuant to 12 RCNY § 1-06, the agency making such determination may award the concession to the next highest responsive and responsible bidder.

(5) If less than [three] 3 bids have been received, the concession manager shall examine the situation to ascertain the reason for the small number of responses and shall initiate corrective action, if appropriate, to increase competition in future solicitations. A written statement of any corrective action taken shall be included in the concession file. Concessions may be granted notwithstanding the limited number of bids.

(6) It is not permissible to engage in any type of negotiation with any bidder. Notwithstanding the foregoing, prior to award it is permissible for the concession manager to request the successful bidder to increase its bid. The concession manager must document any discussions of this nature and maintain such documentation as part of the concession file. If a bid increase is obtained, written verification thereof shall be furnished by the successful bidder to the concession manager and shall be included in the concession file.

(o) *Bid retention.* The agency must retain all submitted bids and modifications in the permanent concession file. Although the Agency may consider only the latest version of a bid, the retention of these documents will serve as a reference for responses to future inquiries. When bids are rejected or a solicitation canceled after bids are received, the bids shall be retained and the bid security, if any, shall be promptly returned, and the file so documented.

(p) Accessibility

(1) Agencies must provide prospective concessionaires with an opportunity to request and receive reasonable accommodations on the basis of disability to participate in the concession solicitation process described by these rules.

§ 1-13 Competitive Sealed Proposals.

(a) General.

(1) Proposals may be solicited through Requests for Proposals ("RFP's") only if the agency makes a written determination that competitive sealed bidding is not practicable or not advantageous to the City for one of the following reasons:

(i) Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone; or

(ii) Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors. Such determination must be approved in writing by the agency head and must be included in the concession file. A copy thereof shall be forwarded to the Committee.

(2) [Prior] At least 40 days prior to soliciting proposals, or less, at the discretion of CCPO, the agency shall make a written determination as to whether a concession is a major concession. Such determination shall be approved in writing by the agency head and shall be included in the concession file. If a concession is determined to be a major concession, it shall be subject to review and approval pursuant to Sections 197-c and 197-d of the Charter following the agency selection of the successful proposer. [If a concession is not determined to be a major concession a] Once this determination has been made, an agency may proceed with the request for proposal process but shall provide written notification of its determination [that the concession is not a major concession] to each affected community board and Borough President [at least forty days prior to issuance of a solicitation,] and shall post such notification on the City's website in a location that is accessible by the public simultaneously with its distribution. [and shall provide a] A copy of such notification shall be provided to the members of the Committee within [five] 5 days of notification of the community board(s) and Borough President and publication on the City's

website, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute notice to the affected community board and Borough President and posting on the City's website for purposes of this requirement, and no copy need be provided to the members of the Committee in such circumstance. The written notification shall include a summary of the terms and conditions of the proposed solicitation, and whether or not the concession is significant.

(i) If an agency provides the aforementioned notice to the affected community board and Borough President and there are no material changes to the terms described in the notice, the agency shall not be required to issue a second notice when issuing or reissuing the Request for Proposals within a 12-month period.

(3) At least [30] 40 days prior to soliciting proposals for a significant concession, or less, at the discretion of CCPO, the agency shall consult with each affected Community Board and Borough President on developing the scope of the RFP, provided however, that inclusion of the concession in the agency's Plan and consultations pursuant to 12 RCNY § 1-10 shall constitute consultations with the affected community board and Borough President for purposes of this requirement.

(i) If an agency provides the aforementioned notice to the affected community board and Borough President and there are no material changes to the terms described in the notice, the agency shall not be required to issue a second notice when issuing or reissuing the Request for Proposals within a 12-month period.

(b) *Preparation of the request for proposals.* At least [three] 6 months prior to the expiration date of any concession and/or prior to the anticipated start date of a new concession, the agency shall initiate action for the selection of a concessionaire. The agency action(s) taken shall include the preparation of a Request for Proposals containing a detailed description of the concession under consideration for resolicitation or initial award. The RFP should describe as explicitly as possible the requirements of the agency. The RFP should include all documents (whether attached or incorporated by reference) furnished prospective proposers for the purpose of submitting a proposal. The following information, together with any other appropriate information, should be included in the Request for Proposals, as applicable:

(1) Instructions and information to proposers concerning the proposal submission requirements, including the time and date set for receipt of the proposals; requirements for the electronic submission of

proposals, if any; time, date, and location of any pre-proposal conferences (and a statement whether such conferences are mandatory), and an invitation to inspect the premises, as applicable; and the address where proposals are to be delivered;

(2) Location, and a brief description of the proposed concession, its size, its prior use and/or other possible usage of the premises, any fixtures, or equipment, on the premises and its surrounding area, including any special instructions or information necessary, and appropriate materials such as maps, plans or photographs;

(3) The term of the concession and any terms and conditions upon its award, including warranty and bonding or other security requirements, amount of proposed capital investment and a description of any legal restrictions on the use of the location;

(4) The evaluation criteria that will be applied to the evaluation of all proposals, their relative importance and/or assigned weight (as applicable) and descriptions of minimum qualification requirements and of the Selection Committee (See 12 RCNY § 1-13(o)(6));

(5) A provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal;

(6) A notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(7) A notice of the proposer's rights to appeal certain decisions as specified in these rules;

(8) A statement that proposers should contact the agency prior to submission of proposals to verify that all amendments issued have been received, and a requirement for acknowledgment of amendments;

(9) A notice that the concession award is subject to applicable provisions of federal, [State] state, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(10) Where applicable, a notice that concession award is subject to completion of [VENDEX] PASSPort questionnaires and review of that information by the Department of Investigation;

(11) The name, address, [and] telephone number, and email address of a contact person to whom questions and correspondence relating to the RFP can be addressed;

(12) Instructions for submission of proposals, including a requirement that the proposer include the solicitation number, the name and address of the proposer and the time for receipt of proposals on the outside wrapper; and

(13) The following statement:

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

(14) Where applicable, for concessions that entail construction, the following information shall be additionally included:

(A) A statement establishing minimum insurance requirements which the City will require of the proposer if successful; and

(B) A statement that the proposer will be required to meet all licensing or permit requirements required to perform the construction.

(c) *Publicizing the request for proposals.*

(1) Requests for proposals for concessions shall be solicited by public advertisement in at least [10 successive issues] 1 issue of the *City Record*. The text of such RFP shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. A copy of such RFP shall be sent to the members of the Committee and each affected Community Board within [five] 5 days of the first publication of the RFP. Consideration shall also be given to soliciting proposals by public advertisement in appropriate newspapers and trade publications, posting notices in public places, contacting other City agencies that have concessions, free radio or television coverage, website or social media postings, and such other means as may be appropriate. The steps taken to solicit proposals shall be documented by the concession manager and included in the concession file. [Agencies shall provide for special outreach to minority and women owned enterprises as such entities are defined in Section 1304 of the Charter.]

(2) Advertisements to solicit proposals shall include the following information:

(i) The place a paper copy of the RFP may be obtained and the amount of any required fee or deposit,

(ii) The anticipated proposer submission deadline, time and location for proposal submission;

(iii) A brief description of the concession under consideration for renewal or initial award;

(iv) The time, date and location of any pre-proposal conference or site visit, if any, and if attendance is mandatory; and

(v) The name, address [and phone], telephone number, and email address of the agency contact person.

(3) A response time of at least [twenty (20)] 30 days between the advertisement's [last] first appearance in the *City Record* and the proposal submission deadline shall be provided, unless the concession manager makes a written determination that a shorter period is reasonable. A copy of such determination must be included in the concession file.

(4) Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Section 1304 of the Charter. Special outreach can include but is not limited to: providing notice in newspapers, trade publications, websites or social media that are dedicated to minority and/or women owner business enterprises or trade groups. Agencies may additionally employ any outreach technique sanctioned by DSBS that is not otherwise in violation of these Rules.

(d) *Solicitation mailing lists.* Concession managers shall establish, maintain, and use lists of potential sources in accordance with 12 RCNY § 1-12(c).

(e) Pre-proposal conferences may be held in accordance with the procedures set forth in 12 RCNY § 1-12(d).

(f) Amendments and addenda to the RFP may be made in accordance with the procedures set forth in 12 RCNY § 1-12(e).

(g) *Proposal deposits.* Proposal deposits may be required in accordance with the procedures set forth in 12 RCNY § 1-12(f).

(h) *Receipt of proposals.*

(1) Concession managers shall establish procedures for receipt and safeguarding of proposals in accordance with those specified for bids in 12 RCNY § 1-12(h) and (i). Proposals shall be time and date stamped upon receipt.

(2) Proposers are responsible for submitting proposals so as to reach the agency office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m. local time for the designated agency office on the date that proposals are due. Each proposal shall show the time for receipt, the solicitation number and the name and address of the proposer on the outside wrapper.

(i) *Opening of proposals.* Proposals may only be opened after the proposal submission deadline. All proposals received by the submission deadline, including letters of declination, are to be opened under the supervision of the responsible official and in the presence of at least one appropriate agency witness. The responsible official must then complete a Proposal Receipt Register. Once opened, proposals should be made available only to those City personnel or consultants acting on behalf of the City who have a direct role in the award of the RFP, including members of the Committee. Members of the Committee may request clarification from members of the Selection Committee on their process of evaluation and selection of proposals. The Proposal Receipt Register shall be available for public inspection after the concession has been granted and shall be included in the concession file.

(j) *Late proposals and modifications.*

(1) It is the responsibility of a proposer to submit its proposal prior to the submission deadline to the designated agency location. Proposals and modifications received after that exact time are defined as "late". Late proposals and modifications must be acknowledged, and time stamped upon receipt and, except under the specific circumstances described below, may not be evaluated.

(2)

(i) A late proposal, received before proposals have been opened, may only be accepted and evaluated when the concession manager determines that it is in the best interests of the City to do so. In such event, the concession manager may hold open the receipt of proposals by no more than [three] 3 hours during which time no other competing proposal may be opened. Where a concession manager has

determined that it is in the best interests of the City to accept a late proposal, any other late proposal received during the period of extension shall be similarly accepted.

(ii) If, based on the above, a late proposal or modification is accepted and evaluated, the concession manager must document the circumstances in writing and maintain such documentation as part of the concession file. If a late proposal or modification is not evaluated, such proposal or modification shall be promptly returned to the proposer unopened, and the proposer shall be notified of the reason for such action.

(k) *Withdrawal of proposals.*

____(1) Proposals may be withdrawn by written notice received at the designated agency location before the time set for proposal [submission deadline.] opening.

____(i) If a proposal is withdrawn in accordance with 1-13(k)(1), the proposal security, if any, shall be returned to the proposer.

____(2) After proposal opening, a proposer may not withdraw its proposal before the expiration of [forty-five (45)] 45 calendar days after the date of the opening of proposals or such longer period as determined by the concession manager and set forth in the solicitation[; thereafter, a proposer may withdraw its proposal] and only in writing and in advance of an actual grant of a concession. [If a proposal is withdrawn in accordance with this section, the proposal deposit, if any, shall be returned to the proposer.]

____(3) The concession manager shall document each request for withdrawal and prepare a written determination, with supporting facts, as to whether or not the proposal was permitted to be withdrawn. Such determinations shall be included in the concession file with a copy thereof forwarded to the proposer.

(l) *Mistake in proposal.* Allegations of mistakes in proposals shall be processed by the concession manager according to 9 RCNY § 3-03(i) of the PPB Rules. A written determination shall be made and shall be included in the concession file.

(m) *Single responses to the RFP.* When a single proposal has been received in response to an RFP, an award may be recommended only after it has been documented by the concession manager, that a sufficient number of other entities had a reasonable opportunity to respond; why, as a result of inquiries made by the agency, representative firms chose not to submit proposals; that the proposal submitted

meets minimum requirements for award; and that a resolicitation would not be in the City's best interest. If the above specified circumstances cannot be documented, the single proposal must be rejected and the concession may either be pursued, subject to the approval of the concession manager, by the solicitation of new proposals or the concession canceled. Notwithstanding the foregoing, when a single proposal has been received in response to an RFP for a concession, other than a significant concession, the agency shall not be required to make inquiries as to why representative firms chose not to submit proposals.

(n) *Proposal retention.* The agency must retain all submitted proposals and modifications in the permanent concession file. Although the Selection Committee may consider only the latest version of a proposal, the retention of these documents will serve as a reference for responses to future inquiries. When a proposal [are] is rejected or a solicitation canceled after proposals are received, the proposals shall be retained and the proposal deposit, if any, shall be promptly returned, and the file so documented.

(o) *Evaluation process.*

(1) The RFP must set forth the factors or criteria the agency will use in evaluating proposals. No other factors or criteria shall be used in the evaluation and award of the concession except those specified in the RFP.

(2) Prior to the release of the RFP, the Agency awarding the concession shall determine the evaluation criteria that will be applied to the evaluation of all proposals, their relative importance or assigned weight, the minimum qualification requirements, and the composition of the Selection Committee (See 12 RCNY § 1-13(b)(4) and (o)(6)). Compensation to the City shall be considered in every concession selection. Evaluation criteria that may apply to particular concessions include, but are not limited to, revenue, other (non-cash) compensation to the City, technical excellence, experience, and qualifications.

(3) *Minimum qualification requirements.* The Agency may establish, as minimum qualification requirements, objective standards that all proposers must meet in order to be considered for award. Minimum qualification requirements may neither be waived nor supplemented after proposals have been opened. A proposer's failure to satisfy a minimum qualification requirement shall render the proposal non-responsive, in accordance with 12 RCNY § 1-06.

(4) The concession manager shall document the evaluation criteria, their relative importance and/or assigned weight (as applicable) and all other determinations concerning the evaluation process in the concession file.

(5) *Rating sheet.* Rating sheets or other written evaluation forms shall be used to evaluate proposals and shall be signed and dated by all members of the evaluation committee. Initial ratings may be amended and the amended ratings recorded on either the original or amended ratings sheets so long as all original ratings are clear and any changes in rating are clearly memorialized and explained. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(6) *Selection Committee.*

(i) The Selection Committee is responsible for evaluating proposals based on the established criteria and recommending a proposal based on the best combination of quality, compensation to the City and the other criteria enumerated in the RFP. The Selection Committee should include appropriately experienced personnel to ensure that all components of the RFP will be evaluated. Selection Committees must be comprised of a minimum of [three] 3 members, at least one of whom must neither supervise, nor directly report to any other member of the Selection Committee in the normal course of agency business. Personnel who were involved in developing the RFP specifications may be part of the Selection Committee. Members of the Selection Committee must be free from bias or a potential or actual conflict of interest and each member will be required to sign the following affidavit to this effect when completing the rating sheet:

Evaluator Affidavit (Check one and sign)

To the best of my knowledge, information and belief, neither I nor any member of my immediate family is, has ever been, or has current plans to be a sole proprietor, director, officer, stockholder, partner or employee of or has, ever had, or has current plans to have a fiduciary relationship with any of the proposers responding to this RFP, nor have I ever discussed employment upon conclusion of my City service with any such proposers, nor has my evaluation been in any way impacted by interaction or relationships with a concessionaire, current or prospective, operating the concession which is being evaluated.

– I attest that the above statement is true.

– I cannot attest to the above statement, for the reasons set forth in the attached statement.

(ii) All proposals received prior to the submission deadline must be evaluated by the Selection Committee. Only in the case when an agency prescribed minimum qualification requirements may the Selection Committee designate the concession manager to screen proposals to ensure that each has met all such requirements. The concession manager shall document the process used to screen proposals against minimum qualification requirements in the concession file. The documentation shall list all proposals that failed to meet the minimum qualification requirements with reasons to justify this determination. The concession manager shall make such determination in accordance with 12 RCNY § 1-06.

(iii) Members of the Selection Committee shall independently read and evaluate each proposal and record their evaluations in the form of ratings on the individual rating sheet prepared with the RFP. The only criteria that may be used by the Selection Committee members in their evaluation are those specified in the RFP. All Selection Committee members must sign and date their initial individual rating sheets. The concession manager shall compile the individual ratings of the members of the Selection Committee, in accordance with the criteria specified in the RFP. Upon completion of the initial independent evaluations the Selection Committee may meet to review and discuss the ratings. After such discussions, Selection Committee members may wish to change a rating to reflect new or previously misunderstood information or a change of opinion. Rating sheets may be amended as a result of such Selection Committee discussions. All Selection Committee members must sign and date their individual rating sheets each time they are amended. When such changes are made, however, all original rating sheets or electronic copies must be retained intact and attached to the revised version or an electronic copy thereof, along with an explanation, in writing, for [the] each change that was made.

(iv) (A) Following the Selection Committee's initial discussions, if any, of the individual ratings and any amended ratings that may result therefrom, the Selection Committee may: determine that award should be made on the basis of initial proposals; determine that it is not in the best interests of the City to award solely on the basis of initial proposals, and that best and final offers should be solicited and/or discussions or negotiations should be initiated with all responsive proposers or with a selected group of proposers; or may determine that it is in the best interest of the City to not make an award and to either

cancel or resolicit the RFP. In the latter case, such determination must be in writing, approved by the Agency Head and included in the concession file. All proposers should be notified of such action.

(B) If the Selection Committee decides that best and final offers should be solicited and/or discussions or negotiations should be initiated, it may limit such process to those proposers whose proposals are acceptable or are reasonably likely to be made acceptable for the purpose of promoting understanding of the City's requirements and the proposals and/or the proposers' capabilities; obtaining the best compensation proposal for the City; and arriving at a concession that will be most advantageous to the City taking into consideration the evaluation factors set forth in the RFP.

((a)) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals. Proposers not selected for best and final offers, discussions or negotiations should be notified.

((b)) The Selection Committee shall establish an agenda and schedule for conducting discussions, if any. Any oral clarification of a proposal shall be confirmed in writing by the proposer.

((c)) The Selection Committee may also request best and final offers from proposers prior to, following or in lieu of discussions with individual proposers. The concession manager shall establish a common date and time or timeframe for the submission of best and final offers. The Selection Committee may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., revenue, technical qualifications, approach, and/or capability). The request shall be the same for all proposers included in the best and final offer process. Best and final offers shall be submitted only once unless the concession manager makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers, which may be limited to those proposers deemed by the Selection Committee to have a reasonable chance of obtaining the concession award. Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

((d)) Once discussions are commenced with any proposer or after best and final offers are requested, such proposer may correct any mistake in its proposal by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

((e)) Following discussions and/or best and final offers, if any, the Selection Committee may elect to enter into negotiations for a concession award with one or more of the highest rated proposers. Auction techniques (revealing one proposer's revenue proposal to another) and disclosure of any information derived from competing proposals are prohibited. The concession manager shall document the process of best and final offers, discussions, and negotiations in the concession file.

((f)) With respect to competitive sealed proposal awards where the concession has a value that when aggregated with the value of all other City concessions, franchises and contracts held by the same concessionaire is valued at [one hundred thousand dollars] \$100,000 or more, at any point during the process of best and final offers, discussions or negotiations, the concession manager may require those proposers deemed by the Selection Committee to have a reasonable chance of obtaining the concession award to complete [VENDEX] PASSPort questionnaires.

((g)) Decisions to solicit, limit, or not solicit best and final offers or negotiate further with any proposers or any selected group of proposers should be documented, signed and dated by the members of the Selection Committee, and maintained in the concession file.

(C) When an agency determines that there is a need for minor modifications in its requirements during the process of conducting best and final offers, discussions or negotiations, those modifications must be communicated in writing to all of the proposers included in such process. If changes in the requirements are so extensive that they warrant complete revision of a solicitation, the concession manager shall cancel the RFP and issue a new one. In making the determination whether to cancel an RFP based on changes in requirements, the concession manager shall consider whether the changes are such that new proposers, as a result of those revisions, might now be interested in satisfying the requirements of the changed RFP.

(p) *The final recommendation.*

(1) The Selection Committee's final recommendation must be consistent with the RFP specifications and the evaluation criteria. If any Selection Committee member feels that there are procedural or substantive issues which prevent support of the recommendation, this person must be given an opportunity to document that disagreement and include it with the evaluation rating sheets.

(2) Once the Selection Committee has made its recommendation, the chairperson must document the recommendation in a report to be submitted to the concession manager. This report must identify the RFP being considered, the number of proposals received, whether the planned evaluation process and schedule for award was followed and the reasons for deviations, if any, and the proposal recommended. It must include all best and final proposals, the basis for the recommendation, all original rating sheets, all amended rating sheets, any other relevant evaluation material used by the Selection Committee, the recommendation of each of the members, their names and titles, and the signature of the chairperson. If any Selection Committee member prepared a document outlining a disagreement with the recommendation, it must be attached to the report. The concession manager shall file the report in the concession file folder.

(3) Once the concession manager receives the final recommendation from the Selection Committee, together with any documentation from any individual member of the Selection Committee who disagrees with such final recommendation, the concession manager shall proceed to determine responsibility of the prospective concessionaire, in accordance with the procedures set forth in 12 RCNY § 1-07.

(4) If [VENDEX] PASSPort questionnaires have not previously been requested from proposers, the concession manager shall require the highest rated proposer to complete such questionnaires. The Department of Investigation shall review the names on the questionnaires to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department, in accordance with 12 RCNY § 1-07(e)(1)(iii).

(5) Once the concession manager receives the final recommendation from the Selection Committee, and the recommendation has been determined responsible, they must provide written or electronic notice of non-selection, to any proposers asked to provide best and final offers or otherwise selected for final negotiations, within 5 days.

(q) *Public hearings on significant concession awards.*

(1) Prior to an Agency granting any significant concession to be awarded by competitive sealed proposals, the Committee and the Agency shall jointly hold a public hearing on the terms and conditions of each proposed significant concession agreement. Any such public hearing shall be held within 30 days of the filing with the Committee by the Agency of a proposed concession agreement containing the terms

and conditions of the proposed concession agreement. A record of comments received at the hearing shall be maintained in the concession file. A notice of each such public hearing, containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing, instructions on how the public may submit written testimony prior to the hearing, shall be published once in the *City Record* not less than 15 days prior to the hearing date or a shorter period approved by the CCPO, and shall be given to each affected Community Board, each affected Borough President, and the members of the Committee not less than 15 days prior to the date of the public hearing.

(2) For concessions where the total value of the compensation to the City will not exceed one million dollars, such notice may include a provision that if the agency does not receive, within 10 days after publication of such notice, from any individual a written request to speak at such hearing or a request from a member of the Committee for the agency to appear at such hearing, then such hearing need not be conducted. Should the decision be made not to hold such hearing, the agency shall publish a notice in the *City Record* canceling such hearing, and shall send a copy of such notice to all members of the Committee.

(r) *Award and processing.*

(1) The concession manager must ensure that the recommended proposal does not vary substantially from the RFP and that the resulting concession agreement will be consistent with the winning proposal. Upon approval by Agency Head, the concession manager may proceed to process the concession agreement.

(2) An agency must obtain the prior approval of the Committee if the Agency Head wishes to deviate from the final recommendation of the Selection Committee. Requests for such approval shall be forwarded to the Committee and shall include a detailed statement, signed by the Agency Head, setting forth the reasons for the request together with all other relevant information. If the Committee approves the request the Agency Head may award the concession as authorized by the Committee.

(s) Accessibility

(1) Agencies must provide prospective concessionaires with an opportunity to request and receive reasonable accommodations on the basis of disability to participate in the concession solicitation process described by these rules.

§ 1-14 Negotiated Concessions.

(a) *Policy.* Agencies may award negotiated concessions under the circumstances and subject to the conditions set forth in this section.

(b) *Procedures.*

(1) *Preliminary Discussions.* An agency may engage in preliminary discussions with a potential concessionaire to explore the feasibility of a proposed concession. Discussions are not negotiations for the selection of a concessionaire.

(2) The concession manager shall justify the award of a negotiated concession by making a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

____(i) an agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals, provided, however, that revenue shall not be considered "substantially diminished" where the diminishment is only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals;

____(ii) or an existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable;

____(iii) or an agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and the agency requires a substitute or successor concessionaire.

(3) The CCPO shall approve the use of the negotiated concession method for a particular concession or for a particular type of concession prior to the agency's conduct of negotiations with potential concessionaires. The CCPO shall state the reasons that permitting the use of such method

serves the best interests of the City and shall provide a copy of this determination and of the request by the concession manager to the members of the Committee within [five] 5 days of its issuance.

(4) The agency shall negotiate with all qualified potential concessionaires that have expressed interest unless the concession manager determines for a particular concession or for a particular type of concession that it is in the City's best interest to negotiate with fewer potential concessionaires, and the CCPO approves such determination.

(5) The concession manager shall maintain a written record of the conduct of negotiations and the basis for every determination to continue or suspend negotiations with each potential concessionaire.

(6) The concession manager shall make a determination that award of the concession is in the best interest of the City and the basis thereof. This determination must be made in writing, separate from the CCPO approval memo.

(c) *Public Notice of Intent to Enter into Negotiations.*

(1) *Frequency.* Notice of intent to enter into negotiations shall be published in the *City Record* [for five consecutive editions], shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within [five] 5 days of its publication. The last date of publications of such notice shall appear no fewer than [ten] 10 days before negotiations are expected to begin.

(2) *Content.* Such notice of intent shall include:

- (i) Agency name;
- (ii) Brief description of the proposed concession, its size and its location;
- (iii) Projected concession revenue, if any;
- (iv) Summary of the basis of the determination to award the concession as a negotiated concession;
- (v) Projected concession term start and expiration dates;
- (vi) Instructions and information to potential concessionaires concerning how they may express interest in the proposed concession, and how they may obtain additional information concerning the proposed concession, including but not limited to, its prior use and/or other possible usage of the premises, any fixtures or equipment on the premises and its surrounding area, appropriate materials such

as maps, plans or photographs; and any terms and conditions upon its award, including warranty and bonding or other security requirements, amount of proposed capital investment and a description of any legal restrictions on the use of the location;

(vii) The evaluation criteria that will be applied to the evaluation of all proposals;

(viii) A notice that the concession award is subject to applicable provisions of federal, [State] state, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(ix) Where applicable, a notice that concession award is subject to completion of a [VENDEX] PASSPort questionnaires and review of that information by the Department of Investigation;

(x) The name, address, and telephone number of a contact person to whom questions and correspondence relating to the potential concession award can be addressed; and

(xi) The following statement:

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

(3) *Major concession.* Prior to publishing a notice of intent to enter into negotiations, the agency shall make a written determination as to whether a concession is a major and/or significant concession. Such determination shall be approved in writing by the agency head and shall be included in the concession file. If a concession is determined to be a major concession it shall be subject to review and approval pursuant to Sections 197-c and 197-d of the Charter following the agency selection of the successful concessionaire. If a concession is not determined to be a major concession an agency may proceed with negotiations pursuant to paragraph (1) of this subdivision[,but]. Agency shall provide written notification of its determination [that] whether the concession is [not] a major and/or significant concession to each affected community board and Borough President at the time that notice of intent to enter into negotiations is published, and shall provide a copy of such notification to the members of the Committee within [five] 5 days of notification of the community board(s) and Borough President. The written notification shall include a summary of the terms and conditions of the proposed concession.

(d) *Recommendation of award.*

(1) Once the agency has concluded negotiations and has selected a prospective concessionaire, the concession manager shall proceed to determine responsibility of such prospective concessionaire, in accordance with the procedures set forth in 12 RCNY § 1-07. The concession manager shall document the negotiations in a report, which shall include whether potential concessionaires responded to the notice of intent to enter into negotiations, the number of potential concessionaires the agency negotiated with, and the basis for the selection, including all relevant materials submitted by the potential concessionaires. The concession manager shall file the report in the concession file folder.

(2) The concession manager shall require the prospective concessionaire to complete [VENDEX] PASSPort questionnaires, as applicable.

(3) The Department of Investigation shall review the names on the questionnaires to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department, in accordance with 12 RCNY § 1-07(e)(iii).

(e) *Award and processing.* Once the agency has identified a proposed concessionaire pursuant to the procedures set forth in this Section, the agency may proceed to award the concession, provided, however, that the agency shall submit the concession agreement it proposes to enter into with respect to any negotiated concession for prior approval by the Committee, together with the completed [VENDEX] PASSPort questionnaires when the concession has a value that when aggregated with the value of all other City concessions, franchises and contracts held by the same concessionaire is valued at [one hundred thousand dollars] \$100,000 or more. Significant concession agreements shall be subject to the public hearing requirements set forth in 12 RCNY § 1-13(q). [Notwithstanding the foregoing, the Committee need not review awards of negotiated concessions that are not subject to renewal and have a term of less than 30 days.]

(f) *Certain DCAS concessions.* Notwithstanding the provisions of subdivision (b) of this Section, the Department of Citywide Administrative Services ("DCAS") may award certain concessions, as set forth below, pursuant to this Section, upon compliance with subdivisions (c), (d), and (e) of this Section. A concession subject to this subdivision (f) is a concession to be awarded by DCAS to an owner of property that is adjacent to the concession property, or to a business located on such adjacent property, where DCAS has made a determination that it is not in the best interest of the City to award the concession

pursuant to a competitive process because of the layout or some other characteristic of the property, or because of some unique service that can be performed only by the proposed concessionaire.

(g) Accessibility

(1) Agencies must provide prospective concessionaires with an opportunity to request and receive reasonable accommodations on the basis of disability to participate in the concession solicitation process described by these rules.

§ 1-15 Small Concessions.

(a) *Definition.* Small concessions are those concessions[, otherwise deemed by the concession manager to be appropriate for competitive sealed bid,] for which the agency anticipates compensation to the City of not more than [\$10,000 per year] \$249,999 over the course of the concession term, which may not exceed [five] 1 year, or a maximum of 2 years with renewal. This shall be known as the small concession limit. Small concessions may be awarded only by the method set forth in this section. [Section or by competitive sealed bids as set forth in 12 RCNY § 1-12. The only compensation that may be accepted under the solicitation method set forth in this Section is monetary compensation].

(b) *Application.* A concession shall not be artificially divided in order to meet the requirements of this section. Changes to and/or renewals of small concessions shall not bring the total value of the concession to an amount or term greater than the small concession limit. [limits. If a concession is solicited pursuant to this rule and results in one or more bids in excess of the small concession limit, the concession may not be awarded pursuant to this rule.

(c) *Scope.*

(1) *Competition Objective.*

(i) Except as specifically set forth in this section, the requirements of these rules shall not be applicable to small concessions awarded pursuant to this section.

(ii) For small concessions awarded pursuant to this section, at least five potential concessionaires shall be solicited at random from the appropriate solicitation mailing list for the type of concession being sought, pursuant to 12 RCNY § 1-12(c), except where such list consists of fewer than five potential concessionaires, in which case all potential concessionaires on the list shall be solicited. The agency may

additionally solicit concessionaires who have responded to prior solicitations or whose names have been obtained through referrals from other City agencies, commercial buyers, or general market research. Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Section 1304 of the Charter, and may additionally employ any outreach technique sanctioned by DSBS that is not otherwise in violation of these Rules. Responsive bids shall be obtained from at least two potential concessionaires. For purposes of this section, a response of "no bid" is not a responsive bid. If only one responsive bid is received in response to a solicitation, an award may be made to that bidder if the concession manager determines that the award of the concession is in the best interests of the City, that the proposed revenue to the City is appropriate and that other potential concessionaires had a reasonable opportunity to respond.

(2) *Solicitation.*

(i) The agency shall comply with 12 RCNY § 1-12(a)(2) of these rules; provided however, that if] If a concession is determined to be a major concession, the concession may not be awarded pursuant to this [rule] section.

[(ii) Agencies shall use a written request for bids for each small concession awarded pursuant to this section, which shall contain, at a minimum:

- (A) A description of the type of concession requested;
- (B) Time, date, place, and form of requested response;
- (C) Basis for award; and
- (D) Name and telephone number of the concession manager to whom inquiries may be directed.

(d) *Award.* Small concessions shall be awarded to the highest responsive and responsible bidder.]

(c) *Award.* Small concessions shall be awarded to a responsive and responsible concessionaire, in accordance with these rules.

(d) *Registration* Small concessions are not subject to the requirements of 12 RCNY § 1-17 of these rules, but the agency must provide a copy of their final executed small concession agreement to the Committee within 5 days of execution by all parties.

(e) *Record.* The concession file for a small concession awarded pursuant to this section shall include, at a minimum:

(1) Name of the responsible concession manager;

(2) Date of concession award;

(3) Name and address of successful concessionaire;

(4) Brief description of the small concession;

(5) [Name] Details of the [solicitation mailing list used] outreach made in the solicitation of the small concession;

(6) Names of solicited potential concessionaires and [bid amounts] their responses, if any;

(7) Documentation showing [compliance with the requirements of 12 RCNY § 1-12(a)(2);]

determination of non-major concession status;

(8) [Written bids;

(9)] All correspondence;

[(10) Bid tabulations; and]

(9) any evaluations or tabulations of solicited potential concessionaire responses; and

[(11)] (10) Written basis of award, including responsiveness and responsibility findings.

(f) *Renewal* Small Concessions may not be renewed more than once and for a renewal period of no more than one year, with a maximum total term of two years, subject to the small concession limit.

(g) *CCPO Determination*

(1) At CCPO's discretion, it may be determined that an Agency is not complying with the requirements of the Small Concession method outlined in these rules. In which case, the CCPO may bar an agency from using this method until such a time that they are satisfied that the agency has implemented sufficient corrective steps.

(2) Any such CCPO determination shall be provided in writing to the agency and to the Committee within 5 days of issuance. Likewise, any reversal of this determination shall be provided in writing to the agency and to the Committee within 5 days of issuance.

(h) *Accessibility*

(1) Agencies must provide prospective concessionaires with an opportunity to request and receive reasonable accommodations on the basis of disability to participate in the concession solicitation process described by these rules.

§ 1-16 Committee Approval of Different Procedures.

(a) No agency shall enter into a concession agreement other than through the processes set forth in 12 RCNY §§ 1-12, 1-13, 1-14, and 1-15 of this Chapter unless the Committee reviews and approves a different procedure. Agencies that wish to enter into Agreements such as [Not-for-profit] Sole Source Concession Agreements [and Sole Source] or Program-based Concession Agreements must therefore obtain prior Committee approval of different procedures.

(b) Requests for approval of a different procedure shall be forwarded to the Committee and shall include:

- (1) A statement of the procedure for which approval is requested;
- (2) A summary of the terms and conditions of each concession involved;
- (3) An explanation of the reasons for not soliciting bids or proposals as set forth in 12 RCNY §§ 1-12 and 1-13, or for not entering into negotiations as set forth in 12 RCNY § 1-14;
- (4) A statement that each affected community board and Borough President has received written notice at least 40 days or less, at the discretion of CCPO, in advance of the Committee meeting that the Agency is seeking Committee approval of a different procedure, together with a listing of each community board and the date of such notification. Such [statement] notification shall also be posted on the City's website in a location accessible that is accessible by the public simultaneously with its distribution. Such notification may be waived with the unanimous approval of the Committee upon a written statement from the Agency of the exigent circumstances;
- (5) A determination as to whether a concession is a significant and/or major concession, and a statement that each affected community board and Borough President has received written notice of this determination at least 40 days, or less, at the discretion of CCPO, in advance of the Committee meeting that the Agency is seeking Committee approval of a Different Procedure. Such notification shall also be posted to the City's website in a location that is accessible by the public simultaneously with its distribution. If a concession is determined to be a major concession it shall be subject to review and approval pursuant to Sections 197-c and 197-d of the Charter following the agency selection of the successful concessionaire; and

(6) All other relevant information.

(c) If the Committee approves a different procedure, the agency shall submit the concession agreement it proposes to enter into as a result of that procedure for prior approval by the Committee together with a completed [VENDEX] PASSPort questionnaires when the concession has a value that when aggregated with the value of all other City concessions, franchises and contracts held by the same concessionaire is valued at [one hundred thousand dollars] \$100,000 or more. Significant concession agreements shall be subject to the public hearing requirements set forth in 12 RCNY § 1-13(q). No concession agreement to be awarded by a different procedure shall go into effect until the Committee has approved it.

(d) _Notwithstanding the foregoing, the Committee need not review awards of concessions that are not subject to renewal and have a term of less than 30 days.

(e) *Program-based Concessions.*

(1) For program-based concessions, the Committee need not approve the use of a different procedure, so long as the underlying program used to select the concessionaire has been approved by the FCRC per the requirements of 12 RCNY § 1-16(a)-(c).

(f) *Accessibility*

(1) Agencies must provide prospective concessionaires with an opportunity to request and receive reasonable accommodations on the basis of disability to participate in the concession solicitation process described by these rules.

§ 1-17 Registration With the Comptroller.

(a) *Definition.* Registration of concession agreements is the process through which the Comptroller:

- (1) Maintains a registry of City concession agreements;
- (2) Presents objections if, in the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the concession or that the proposed concessionaire is involved in corrupt activity; and
- (3) Tracks City revenues and expenditures associated with the concession agreements.

(b) No concession agreement executed pursuant to the New York City Charter or other law shall be effective until:

(1) A copy of the executed concession agreement and other documentation as described in (c) below have been filed with the Comptroller; and

(2) The Comptroller has registered the concession agreement or [thirty] 30 days have elapsed from the date of filing, during which the Comptroller has neither raised an objection pursuant to subdivision (f) below nor refused to register the concession agreement pursuant to subdivision (e) below.

(c) The following documentation shall be submitted for every concession agreement:

[(1) The original executed concession agreement;]

(1) A copy of the original executed concession agreement;

(2) An advice of award for revenue agreements containing:

(i) The name, address, telephone number and federal taxpayer's identification number of the concessionaire and the location of the concession site;

(ii) The term, annual minimum fees and percentages of the gross receipts stated in the concession agreement;

(iii) The name and/or code of the agency that awarded the concession and the concession agreement number;

(iv) The manner in which the concessionaire was selected, including whether the concessionaire was selected through public letting and if so, whether the concessionaire was the highest responsible bidder; whether the concessionaire was selected through a request for proposal procedure, and if so, whether the concessionaire was the highest responsible bidder; whether the concessionaire was selected through a request for proposal procedure, and if so, whether the concessionaire response to the request offered the highest price option; or whether the concessionaire was selected without competition or as a sole source;

(v) The number of responses to an invitation to bid or request for proposals (excluding a response to an invitation to bid or request for proposals (excluding a response of "no bid" or "no proposal"));

(vi) An indication whether the concessionaire is a not-for-profit organization;

(vii) An indication whether the concessionaire has been certified [by the Office of Economic and Financial Opportunity ("OEFO")] as a woman-owned or minority-owned business enterprise[. This subparagraph (vii) shall not take effect until a certification procedure, if any, has been implemented by OEFO] as such entities are defined in Section 1304 of the Charter;

(viii) Any other information for accounting purposes requested by the Comptroller; and

(ix) Any other information for other than accounting purposes requested by the Comptroller and approved by the Committee, or required by law.

(3) Copies of any related written statements, determinations and reports required by the rules of the Committee specific to the concession agreement being registered;

(4) Copies of any approvals of major concessions by the City Council and City Planning Commission;

(5) Copies of any approvals of concessions by the Committee including the date of approval and agenda number;

(6) Copies of all required [VENDEX] PASSPort Questionnaires (See 12 RCNY § 1-11(m)(5)). This requirement will remain in effect until such time as such information is available on line by computer to the Comptroller prior to registration;

(7) Certificates by Corporation Counsel pursuant to § 327(b) and § 394(b) of the Chapter;

(8) Documentation of notification to each affected Community Board(s) and Borough President(s), if applicable (see 12 RCNY §§ 1-11(a)(2) and 1-12(a)(2)); and

(9) For bids, the number of responses and the prices received for each bid that was opened; for convenience, the agency may supply a copy of its bid tabulation sheets. For proposals, the number of proposals received, overall technical rating of each proposal, and the proposed price for each proposal that was opened.

(d) The date of filing pursuant to Section 328 of the Charter shall be the date by which all materials required in subdivision (c) above have been delivered to the Comptroller. Following such date of filing, any question by the Comptroller regarding any such materials shall be responded to by the agency forthwith.

(e) *Refusal of the Comptroller to register the concession agreement.*

(1) The Comptroller may refuse to register a concession agreement if:

(i) The Comptroller has not received a copy of the concession agreement and related materials required by these rules; or

(ii) The Concessionaire has been suspended or debarred from doing business with the City.

(2) *Procedure.* Upon making a determination that there is a basis for refusing to register the concession agreement, the Comptroller shall promptly notify the agency Concession Manager in writing of the determination and return the concession agreement to the Concession Manager.

(f) *Comptroller objections to concession agreement registration.*

(1) The Comptroller may object in writing to the registration of a concession agreement if:

(i) In the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the concession;

(ii) In the Comptroller's judgment, there is sufficient reason to believe that the proposed Concessionaire is involved in corrupt activity.

(2) *Procedure.* The Comptroller's objection shall be delivered to the Mayor and shall set forth in detail the basis for the Comptroller's determination.

(3) *Mayor's response.* The Mayor shall respond in writing to the Comptroller's objection and shall describe:

(i) The corrective action(s), [(if any)], that have been taken or will be taken in response to the Comptroller's objections; or

(ii) The reasons why the Mayor disagrees with the Comptroller's objections.

(4) After the Mayor has responded to the Comptroller's objections, the Mayor may require registration of the concession agreement despite the Comptroller's objections. Such response by the Mayor shall not serve as the basis for future objection by the Comptroller, who shall register the concession agreement within 10 days of the receipt of the Mayor's response.

(g) *Registration is not approval.* Registration of a concession agreement by the Comptroller shall not constitute an approval of the concession as awarded, nor shall it preclude future audits of or objections to the concession agreement.

(h) *Applicability.* Unless otherwise provided by the Charter or these Rules, all concession agreements, amendments, modifications, time extensions, and permits, shall be presented to the Comptroller for registration. Registration of a concession agreement by the Comptroller shall not constitute an approval of the concession agreement nor an approval of the process by which the concession agreement was awarded, nor shall it preclude future audits of the concession agreement. Concession agreements shall not be registered for less than their full value unless specific written authorization to do so is made by the Agency Head or the Concession Manager and such written authorization to do so is provided to the Comptroller at the time of registration.

§ 1-18 Concession Extension.

(a) Agency Head or Concession Manager may extend the term of a concession agreement for good and sufficient cause for a cumulative period of no less than 30 days and not to exceed one year from the date of expiration of the current concession agreement. This determination must be made in writing and approved by the CCPO. No concession agreement term may be so extended more than once.

(1) A copy of this determination shall be maintained in the concession file and shall be provided to the members of the Committee within 5 days of CCPO approval.