

**PUBLIC MEETING**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**WEDNESDAY APRIL 16<sup>th</sup>, 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](mailto: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 April 16<sup>th</sup>, 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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located within part of the bed of Borden Avenue, under the Long Island Expressway, between 30<sup>th</sup> Street and 30<sup>th</sup> Place in Long Island City, Queens (block 291, lot 999). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$96,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

**NEW YORK CITY DEPARTMENT OF TRANSPORTATION**

**No. 2:**        **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located approximately 140 feet north of the northwest corner of 43<sup>rd</sup> Avenue and 22<sup>nd</sup> Street in Queens (block 427, part of lot 25). The agreement will provide for one 20-year

term, commencing upon written Notice to Proceed. Compensation to the City will be \$72,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

### **NEW YORK CITY DEPARTMENT OF TRANSPORTATION**

**No. 3:**        **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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located at the southeast corner of Queens Plaza South and 22<sup>nd</sup> Street in Queens (block 426, lot 10). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$360,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

### **NEW YORK CITY DEPARTMENT OF TRANSPORTATION**

**No. 4:**        **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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located Queens Plaza South between 22<sup>nd</sup> and 23<sup>rd</sup> Streets in Queens (block 426, lot 71). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$108,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

### **NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES**

**No. 5:**        **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 allow New York City Tourism + Conventions, on behalf of the NYC Department of Small Business Services, to negotiate a non-exclusive, sole source license agreement with Mattel, Inc. for the non-exclusive use of City-owned trademarks on merchandise.

**Please be advised that this item will be held over to a subsequent FCRC Public Meeting.**

## **NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION**

**No. 6:**       **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 negotiate a significant sole source concession agreement with Colonial Farmhouse Restoration Society of Bellerose, Inc., d/b/a Queens County Farm Museum, and the Historic House Trust of New York City, Inc. for the maintenance, operation, management and programming of the Queens County Farm Museum in Queens.

## **NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION**

**No. 7:**       **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval, pursuant to Section 1-05 of the Concession Rules of the City of New York, to issue a significant Request for Proposals, with a term of twenty-five years, for the development, operation and maintenance of an outdoor café and other amenities in WNYC Transmitter Park, Brooklyn.

# Rule 1-16: Different Procedure

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Silvercup Studios NY, LLC Concession ID 2024Con01

Description Sole source concession for Silvercup Studios for DOT parking lot located within part of the bed of Borden Ave, between 30th St and 30th PI in LIC, Queens **+** Agency New York City Department of Transportation (DOT)  
 Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

### Recommended Concessionaire

Name Silvercup Studios NY, LLC Telephone 718-906-2000  
Address 4060 Ince Boulevard  EIN or  SSN # 85-2551454  
Culver City, CA 90232  Not-for-Profit Organization  Certified M/WBE by SBS

### Recommended Concession Agreement Term

Initial Term Notice to Proceed to 20 years Concession Site(s)  Yes  No  
Renewal Option(s) none to \_\_\_\_\_ Address DOT parking lot located within part of the bed of  
\_\_\_\_\_ to \_\_\_\_\_ Borden Ave, between 30th St and 30th PI in LIC, Queens  
Total Potential Term 20 years Borough 4 Community Board 2  
 >20 years – FCRC unanimously approved term on \_\_\_/\_\_\_/\_\_\_ Block# 291 Lot# 999

### 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 add'l. 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 \_\_\_/\_\_\_/\_\_\_
  - 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:

Please see additional info sheet

### Award Requirements

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

Please see additional info sheet

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

### Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 04 / 14 / 2025

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 03 / 07 / 2025 (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 04 / 16 / 2025 (date of the FCRC public meeting)

Votes in favor:      Votes against:     

OR

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

Law Department approved concession agreement on:     /    /    

### Authorized Signatures

#### Agency Staff

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

#### Certificate of Procedural Requisites

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Chief Procurement Officer

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located within part of the bed of Borden Ave, between 30th St and 30th Pl in LIC, Queens **Agency** New York City Department of Transportation (DOT)



Block 291, lot 999 (4-291-999)

**Negotiation Requirements:**

Concessionaire has utilized the Licensed Premises for parking and storage purposes pursuant to a license agreement with the City of New York, acting by its Department of Citywide Administrative Services (DCAS). The license for these spaces commenced in October 2021, with a fee of \$5,000/month for each space. Upon expiration of its license with DCAS, in September 2022 Concessionaire began negotiations with City Hall for a new agreement. Between July 2022 and November 2023, City Hall had multiple virtual calls and in-person meetings with representatives from the Concessionaire to discuss their plans for operation of the concession, future growth, and fair compensation to the City of New York. In March 2024, the FCRC authorized the New York City Department of Transportation (DOT) to negotiate a sole source concession agreement with Concessionaire. From March 2024 through February 2025, DOT, City Hall, and the Law Department negotiated the terms of the concession agreement, which provides for compensation to the City in the form of an increase license fee.

**Awards Requirements:**

It is in the City's best interest to enter into a sole source agreement with this concessionaire because the total negotiated value of blocks 426, 427, and 291 combined is only \$631 per month less than the most recent appraised value, a difference that could not be closed with a competitive process that would require substantial staff resources. NYC's film and television industry generated \$60B in direct economic activity for NYC, \$3B in tax revenue, and employed 100K people. The average job in the film/television production industry pays over \$100K and many jobs are unionized. Additionally, production activity supports over 2,000 small businesses in production-adjacent sectors (i.e. florists, food services, dry cleaners). During the historic 6-month entertainment union strikes in 2023, many businesses and employees who depend on filming suffered significant financial losses and the City is trying to support film-related businesses as they recover from the dual challenges of the Covid pandemic and strikes. Silvercup, whose sound stages are adjacent to these lots, is one of the largest sound stage operators in NYC with two locations in Queens and one in the Bronx. They directly employ 49 employees, half over 50 years old (Silvercup is recognized by Columbia University as an Age Smart Employer). Silvercup currently has seven productions using their facilities, which support approximately 1,400 employees.

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located within part of the bed of Borden Ave, between 30th St and 30th Pl in LIC, Queens **Agency** New York City Department of Transportation (DOT)

Please see below fee schedule for the proposed sole source concession for the Licensed Premises. The fee schedule begins at \$96,000 per year and includes 3.5% annual escalations for years one through 10 of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

- o Annual Fee, Term Year 1:  
Block 291, Lot 999: \$96,000
- o Annual Fee, Term Year 2:  
Block 291, Lot 999: \$99,360
- o Annual Fee, Term Year 3:  
Block 291, Lot 999: \$102,838
- o Annual Fee, Term Year 4:  
Block 291, Lot 999: \$106,437
- o Annual Fee, Term Year 5:  
Block 291, Lot 999: \$110,162
- o Annual Fee, Term Year 6:  
Block 291, Lot 999: \$114,018
- o Annual Fee, Term Year 7:  
Block 291, Lot 999: \$118,009
- o Annual Fee, Term Year 8:  
Block 291, Lot 999: \$122,139
- o Annual Fee, Term Year 9:  
Block 291, Lot 999: \$126,414
- o Annual Fee, Term Year 10:  
Block 291, Lot 999: \$130,838



# NOTICE OF PUBLIC HEARING

**To:** Donovan Richards, Queens Borough President  
Debra Markell Kleinert, District Manager, Queens CB 2

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

**Subject:** Notice of Joint Public Hearing: 4/14/2025; For intent to award as a concession a Sole Source License Agreement (“License”) to Silvercup Studios NY, LLC for business accessory parking and storage activities at property under the jurisdiction of the New York City Department of Transportation located within part of the bed of Borden Avenue, under the Long Island Expressway, between 30th Street and 30th Place in Long Island City, Queens (block 291, lot 999; the “Licensed Premises”).

**Date:** 3/28/2025

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation (“DOT”) to be held on 4/14/2025, 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 Silvercup Studios NY, LLC for business accessory parking and storage activities at property under the jurisdiction of DOT located within part of the bed of Borden Avenue, under the Long Island Expressway, between 30th Street and 30th Place in Long Island City, Queens (Block 291, Lot 999; the “Licensed Premises”).

The License provides for one 20-year term, commencing upon written Notice to Proceed.

Compensation to the City will be \$96,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.



Written testimony may be submitted in advance of the hearing electronically to [fcrc@mocs.nyc.gov](mailto: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](mailto:concessions@dot.nyc.gov) from 3/28/2025 through 4/14/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10038. Written requests must be received by 4/7/2025. For mail-in requests, please include your name, return address, and Silvercup Studies NY, LLC Concession/2024Con01.

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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

**CONCESSION AGREEMENT**

**between**

**THE CITY OF NEW YORK  
DEPARTMENT TRANSPORTATION  
55 Water Street, 9<sup>th</sup> Floor  
New York, New York 10041**

**&**

**SILVERCUP STUDIOS NY, LLC  
4060 Ince Boulevard  
Culver City, CA 90232**

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**Premises:   Block 291, Lot 999, Borough of Queens  
Part of the bed of Borden Avenue, under the Long Island Expressway  
between 30<sup>th</sup> Street and 30<sup>th</sup> Place, Queens, New York 11101  
Approximately 11,080 Square Feet**

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CONCESSION AGREEMENT

<u>ARTICLE</u>	<u>CAPTION</u>	<u>PAGE</u>
ARTICLE 1	GRANT OF LICENSE .....	5
ARTICLE 2	TERM .....	9
ARTICLE 3	TERMINATION OF CONCESSION.....	10
ARTICLE 4	PERMITTED ACTIVITIES .....	14
ARTICLE 5	MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES .....	15
ARTICLE 6	LICENSE FEE AND ADDITIONAL CHARGES .....	19
ARTICLE 7	LATE CHARGES/DISHONORED CHECKS .....	19
ARTICLE 8	FINANCING .....	20
ARTICLE 9	PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES.....	22
ARTICLE 10	CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL .....	25
ARTICLE 11	PERMITS AND COMPLIANCE WITH LAWS.....	26
ARTICLE 12	INSURANCE.....	27
ARTICLE 13	RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION .....	34
ARTICLE 14	SECURITY DEPOSIT.....	37
ARTICLE 15	INVESTIGATIONS .....	38
ARTICLE 16	NO DISCRIMINATION .....	42
ARTICLE 17	NO CONFLICT OF INTEREST .....	42
ARTICLE 18	OTHER AGREEMENTS .....	43
ARTICLE 19	NOTICES .....	43
ARTICLE 20	WARRANTY .....	44
ARTICLE 21	JURY WAIVER; WAIVER OF COUNTERCLAIM.....	44
ARTICLE 22	POSSESSION.....	45
ARTICLE 23	RIGHT TO AUDIT .....	46
ARTICLE 24	ESTOPPEL CERTIFICATES.....	46
ARTICLE 25	CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE.....	47
ARTICLE 26	DEVELOPMENT PURPOSES .....	48

ARTICLE 27 ENTIRE AGREEMENT.....48  
ARTICLE 28 COUNTERPARTS .....48

EXHIBIT - “A” – DIAGRAM

EXHIBIT – “B” – CERTIFICATION BY INSURANCE BROKER OR AGENT

EXHIBIT – “C” – EARNED SAFE AND SICK TIME ACT RIDER

EXHIBIT – “D” – LICENSE FEE SCHEDULES

EXHIBIT – “E” – ESTOPPEL CERTIFICATES

THIS CONCESSION AGREEMENT (the “**Concession**” or “**Agreement**” or “**License**” or “**License Agreement**”) is made and entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2025, by and between THE CITY OF NEW YORK, acting by its Department of Transportation (“**DOT**” or the “**Licensor**”), having its office at 55 Water Street, 9<sup>th</sup> Floor, New York, New York 10041, and SILVERCUP STUDIOS NY, LLC, having an address at 4060 Ince Boulevard, Culver City, CA, 90232 (the “**Licensee**”).

WITNESSETH:

WHEREAS, the City is the owner of, and DOT manages, the property located at Block, 291, Lot 999, Borough of Queens, New York (the “**Licensed Premises**” or “**Premises**”); and,

WHEREAS, Licensee has been in use of this parcel since 1982 which is, (together with certain other parcels occupied under similar agreements) an essential part of business operations for Silvercup Studios (“**Studios**”); and

WHEREAS, Licensee desires to continue entry upon and use of the Licensed Premises in order to continue to conduct business accessory parking and storage activities for Studios’ use, as more fully appears hereinafter, all in accordance with the applicable provisions of City, state, and federal law; and

WHEREAS, Licensor shall provide Licensee with access to the Licensed Premises for the purpose of conducting such activities for which it does not receive a specific third party payment, in exchange for the fees set forth hereinbelow; and

WHEREAS, the Franchise and Concession Review Committee (“**FCRC**”) of the City of New York has specifically authorized DOT to enter into a Sole Source Concession Agreement with Licensee;

WHEREAS, Licensee shall conduct all activities permitted hereunder with reasonable care and be responsible for, and shall indemnify, and hold the City harmless from, any damage to Licensor, third parties (including Licensee's agents, employees and invitees) and the Property resulting from such activities;

NOW, THEREFORE, it is agreed by and between the parties as follows:

ARTICLE 1

GRANT OF LICENSE

(1) Definitions. As used throughout this License, the following terms shall have the meanings set forth below:

a. **“Alteration”** shall mean (excepting ordinary repair and maintenance or otherwise required by this Agreement):

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

ii. 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 Premises; or

iii. any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.

b. **“City”** shall mean the City of New York, its departments, and political subdivisions.

c. **“Commissioner”** shall mean the Commissioner of the New York City Department of Transportation or his/her designee.

d. **“Comptroller”** shall mean the Comptroller of the City of New York.

e. **“Exigent Circumstances”** shall mean circumstances which cause the City to make a reasonable determination that due to an unsafe or emergency condition, the Licensed Premises must be vacant on a permanent basis.

f. **“Fair Market Value”** shall mean the fair market value of a license fee for the Premises taking into account the encumbrances on the parcel including but not limited to (i) the physical structures currently operated by DOT, (ii) the rights of DOT to have access to the lots as provided under this license and (iii) cost of comparable parking near the Premises with similar development and use restrictions in place. If the parties cannot agree on the Fair Market Value, it shall be determined by each party selecting a licensed real estate appraiser with at least 10 years of experience, who shall meet and confer and if they do not agree, the Fair Market Value shall be the average of the two appraisals, provided that, if the parties do not agree and if the two appraisals are more than 20% apart, the parties shall jointly select a third independent appraiser, whose Fair Market Value determination shall be binding and final.

g. **“License Fee”** shall mean the guaranteed minimum annual fees as set forth in Exhibit D. At the beginning of Year 10 of the Term, the License Fee will be reset based on a Fair Market Value appraisal for Year 11 and thereafter the License fee shall increase 3.5% annually for the remainder of the Term.

(2) Licensor hereby grants to Licensee and Licensee hereby accepts from DOT this License to enter upon and conduct the Permitted Activities (as defined in Article 4 below) upon:

Block 291 Lot 999, Borough of Queens, as shown in the diagram attached hereto as **Exhibit A**, referred to as the Licensed Premises or Premises. Licensee hereby accepts the Premises in its “as is” condition and will not at any time make any claim that the Premises or structures thereon were not delivered in suitable condition for the uses and purposes of this License. Licensor has not made, nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this License. The provision contained in this section that Licensee accepts the Premises “as is” relates to the condition of the Premises as they were when Licensee first entered into occupancy thereof, or on the commencement date of the Term (as defined below), whichever is earlier. Notwithstanding the foregoing, Licensee is not assuming liability for any condition caused heretofore by the Licensor.

(3) It is expressly understood that Licensee has no real property interest in the Premises and that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by DOT, but that during the Term of this License, Licensee shall have use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as every material term in this License is substantially complied with and provided this License is not otherwise terminated by DOT in accordance with the provisions of this License including provisions, if applicable, related to notice and cure.

(4) Licensee shall provide, on reasonable notice, full and free access to the Licensed Premises to the Commissioner of DOT (the “**Commissioner**”) or the Commissioner’s representatives and to other City, State and Federal officials or their representatives having jurisdiction for inspection purposes, and to confirm Licensee’s compliance with this License Agreement.

(5) DOT shall have access to the Licensed Premises on 5 business days' notice to conduct bridge-related work necessary to effectuate routine repairs and maintenance of the Ed Koch Queensboro Bridge and its related elements. DOT shall have access to the Licensed Premises upon reasonable notice as is practicable under the circumstances, to effectuate urgent or emergency repairs to the Ed Koch Queensboro Bridge and its related elements.

(6) The City reserves the right to perform safety, maintenance, or construction work deemed necessary by the City in the City's sole discretion at or throughout the Licensed Premises on reasonable advance notice at any time during the Term. Licensee agrees to cooperate with the City to accommodate any such work by the City and provide public and construction access through the Licensed Premises as deemed reasonably necessary by the City. The City shall use reasonable efforts to give Licensee at least 10 business days' notice of any such work and such work and access shall not unreasonably interfere with Licensee's operations or use of the Licensed Premises, except such notice shall not be required in the case of an emergency in which case the Licensee shall receive such notice as is practicable under the circumstances of the emergency. The City may (subject to the further provisions of this Agreement) temporarily close a part or all of the Licensed Premises for a reasonable City purpose as reasonably determined by the City. In the event that Licensee cannot operate in all or part of the Licensed Premises, then Licensee may propose and submit for the Commissioner's approval, which approval shall not be unreasonably delayed, a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for Licensee's property on the Licensed Premises during the Term, except the City shall be solely responsible for claims, damages, or injury caused by the City or its contractors or agents or permittees to the extent resulting from its use of or work in the Licensed Premises, except to the extent such claims,

damages and injury (including death) are caused by the negligence or intentional tortious acts or omissions of Licensee.

## ARTICLE 2

### TERM

(1) This Concession shall take effect upon DOT giving the Licensee a written notice to proceed following registration of the Concession in accordance with section 375 of the New York City Charter (the “**Notice to Proceed**”). The Term of the Concession shall commence upon the date in the Notice to Proceed (the “**Commencement Date**”) and shall terminate no later than twenty (20) years from the Commencement Date (the “**Termination Date**” or the “**Expiration Date**”). The period between the Commencement Date and Termination Date shall be the License term (the “**Term**”).

(2) At any time before the end of the Term, and, provided that the Licensee is not in default of its material obligations under this License, the Licensee may request an opportunity to negotiate with DOT regarding a new 20-year license agreement (“**Future License Agreement**”) to commence no later than the day following the last day of the Term (or such other day as the parties mutually agree to). The City shall, within thirty (30) days of receiving such request, commence discussions with Licensee, and shall negotiate in good faith to endeavor to reach agreement on a Future License Agreement, which shall be subject to all relevant mandatory City approval procedures, including, but not limited to, all FCRC requirements; notwithstanding the foregoing the City shall not be obligated to extend Licensee’s use of the premises if the parties cannot agree on the terms of a Future license Agreement. Upon the Expiration Date or any earlier revocation or termination in accordance with the provisions of this Agreement (including notice provisions), all rights of Licensee in said Premises by virtue of this Concession shall cease and terminate, and at

Licensor's request, Licensee shall remove its property and improvements from the Premises and return the Premises to its condition at the commencement of the Concession, reasonable wear and tear excepted. Any rights Licensor may have under this Concession and any laws, rules or regulations affecting the conduct of activities permitted hereunder and the restoration of the Premises shall survive the revocation or termination of this Concession.

### ARTICLE 3

#### TERMINATION OF CONCESSION

(1) Notwithstanding any language contained herein, this Concession is terminable at will by the City at any time (subject to the provisions of this Concession) for (i) cause, as described below, (ii) for Exigent Circumstances as defined herein, (iii) for convenience as provided herein provided that the City shall not terminate for convince in order to permit another commercial use within the first 10 years of the Term. Except in the case of Exigent Circumstances, such termination shall be effective after three hundred and sixty-five (365) days written notice to Licensee. In the event of a determination of Exigent Circumstances, the City may terminate this Concession with as much notice as such Exigent Circumstances reasonably allow, provided that in the event such Exigent Circumstances no longer exist, the Licensee shall have the right but not the obligation to reoccupy the Premises pursuant to this License Agreement for the remainder of the Term. If the City terminates for any reason other than cause or Exigent Circumstances, the City shall excuse Licensee from the requirement to pay the final six months of the then current Licensee Fees to the Licensor for the remainder of the Term. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee caused solely by the termination of this License provided the City simultaneously satisfies its termination obligations, if applicable.

Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have, by reason of the required notice, any real property interest in the Premises.

a. The City may terminate this Concession for cause as follows:

i. Should Licensee materially breach or fail to comply with any of the material provisions of this License or any federal, state, or local law, rule, regulation or order affecting this License or the Premises, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with receipt (as prescribed in Article 19 Section 1 of this Agreement) of such order within thirty (30) days subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order occurs within the same calendar year as the first breach or failure to comply, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

ii. The following shall constitute events of default for which this Concession may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit

of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which materially and substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

iii. Nothing contained in paragraphs (i) or (ii) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the City may terminate this License.

(2) Licensee agrees that upon the expiration or sooner termination of this Concession, it shall promptly cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take prompt possession of the Premises.

(3) In the event the City terminates this Concession for reasons related to Article 3 Section 1(a) above, any property of the Licensee (other than motor vehicles, trailers, and portable personal property) on the Premises may be held and used by the City until all indebtedness of the Licensee hereunder, at the time of termination of this Concession, is paid in full. Unless the City provides notice to the Licensee that it intends to hold such property, Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and leave the Premises in as good condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be

abandoned unless the City holds such property as set forth above. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement. The City may use the Security Deposit to recover such damages in part or in whole.

(4) If this Concession is terminated as provided in Article 3 Section 1(a) above:

a. The City may draw down on the Security Deposit to recover damages, if any;

b. Licensee shall pay to the City all fees payable under this Concession Agreement owed by Licensee to the City up to the Termination Date; and

c. The City may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Premises in such manner as the City may deem reasonably necessary or advisable without relieving Licensee of any liability under this Concession Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period.

(5) If this Concession is terminated as provided herein and, if applicable, the City has excused Licensee from its obligation to pay the License Fee payments for the final six months of the Term, (or upon the expiration of the Concession), the City may, without notice, re-enter and reoccupy the Premises using such reasonable force for that purpose as may be reasonably necessary without being liable to indictment, prosecution or damages and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

(6) No receipt of moneys by the City from Licensee after the termination of this Concession Agreement, or after the giving of any notice of the termination of this Concession

Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of the City to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of the City to recover possession of the Premises by proper remedy. After the service of written notice to terminate this Concession Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, the City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of the City, on account of Licensee's liability hereunder.

(7) Any and all obligations and/or liabilities of Licensee under this Concession accruing prior to the termination or revocation of this Concession shall survive the revocation or termination thereof.

#### ARTICLE 4

##### PERMITTED ACTIVITIES

(1) Licensee may enter upon and use the Premises only for the conduct of the following activities (hereinafter, the "**Permitted Activities**") and for no other purpose: business accessory parking and storage. Licensor makes no representation as to the legality of use of the Premises for the Licensee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction or governmental agency having jurisdiction (and, such declaration of illegality is non-appealable to any court) Licensee covenants and agrees that provided Licensor, its agents, officers, and employees, have had no knowledge of such illegality, then Licensor, its agents, officers, and employees, shall not be liable for any damages arising out of or related to

such unknown illegal use; and Licensee shall defend, indemnify, and hold harmless Licensor, including its officials and employees, against any liability or expense for such illegal use.

(2) Licensee shall not charge a specific user fee for use of the space.

(3) Licensee shall not use the Premises for the sale of tobacco or tobacco products, electronic cigarettes, non-tobacco smoking products, cannabis products, or for arcades, slot machines, gambling establishment of any kind, game rooms, billiard halls, gun sales or repair shops, pornography or physical culture establishments of any kind, or for discotheques or cabarets.

(4) Licensee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules and regulations of all federal, state and municipal bodies having jurisdiction.

(5) Notwithstanding any provision to the contrary, Licensee may include the use of the Licensed Premises in its agreements with its customers and prospective customers.

## ARTICLE 5

### MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES

(1) Licensee shall, at its sole cost and expense (or through arrangements with third parties), maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the Licensed Premises.

(2) Licensee shall be responsible, at its sole cost and expense, for clean-up and removal of all snow, waste, garbage, refuse, rubbish, weeds, and litter from the Licensed Premises. Snow and ice shall be removed from the entire Licensed Premises, including surrounding sidewalks, within a reasonable period of time. 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.

(3) Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may Licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(4) Licensee shall maintain and repair the perimeter fencing surrounding the Licensed Premises. Licensee shall not park any vehicles or devices on the sidewalks surrounding the Licensed Premises and shall use commercially reasonable efforts not to allow third parties to do the same.

(5) Licensee, at its sole cost and expense, shall maintain and make any necessary repairs to the Licensed Premises within 72 hours of Licensee's knowledge of occurrence of a necessary repair. If such repairs cannot be completed within 72 hours, as reasonably determined by DOT, Licensee shall commence such repairs or clean-up within 72 hours of occurrence and proceed with due diligence in carrying out the repairs or clean-up until they are completed.

(6) Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

(7) At request of the City, Licensee shall prepare and provide to DOT operational status reports and reports of any incidents that result in an internal written report or police report occurring at the Licensed Premises. The City may request such reports on a quarterly basis. Licensee shall promptly notify DOT, in writing, of any written claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify

DOT in writing as to said person's name, telephone number, and address within thirty (30) days of the date of the Notice to Proceed.

(8) Should DOT, in its sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises that was not caused by the City or DOT, after written notification, Licensee shall have 72 hours to correct such unsafe or emergency condition. DOT will use the list of contact information, provided and updated on a bi-annual basis by the Licensee, to call in case of an emergency. During any period where DOT determines that an unsafe or emergency condition exists on the Licensed Premises not caused by the City or DOT, DOT may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify DOT in writing and indicate the period within which such condition shall be corrected. DOT, in its sole reasonable discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

(9) Licensee may alter the Licensed Premises only in accordance with the requirements of Article 5 Section (10) below. Alterations shall become property of City, at its option, upon their attachment, installation, or affixing.

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

- a. obtain DOT's written approval (which shall not be unreasonably delayed) for contemplated purchases and/or work;
- b. ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in a good and workmanlike manner, and within a reasonable time; and

c. notify DOT of completion of any Alteration within thirty (30) days after completion and final payment.

(11) Upon installation, and absent any separate agreement, title to all Alterations made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at the conclusion of the Term. To the extent the City chooses not to exercise its option with respect to any of the Alterations made to the Licensed Premises, Licensee shall remove such Alterations and restore the Licensed Premises to DOT's satisfaction to the condition at the commencement of the Term at the sole cost and expense of Licensee.

(12) DOT may, in its discretion, make or cause to make additions, alterations, repairs, decorations or improvements to Licensed Premises at the City's expense that do not materially interfere with Licensee's use of the Premises, but nothing 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 Licensee's obligation herein in any respect. DOT will coordinate with Licensee and provide reasonable notice to Licensee of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such additions, alterations, repairs, decorations, or improvements to be made by DOT at such times as will cause the least interference with Licensee's operations.

13) Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, flammable materials, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

ARTICLE 6

LICENSE FEE AND ADDITIONAL CHARGES

(1) Licensee shall pay to the City License Fees for each Operating Year<sup>1</sup> consisting of the guaranteed minimum annual fees set forth in **Exhibit D, “License Fee Schedules.”**

(2) The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the schedule set forth in Exhibit D, “License Fee Schedules”. Each monthly payment is due and payable regardless of whether Licensee has received a bill for it from DOT.

(3) Licensee shall pay to Licensor as additional charges such other items identified in this Concession as additional charges.

ARTICLE 7

LATE CHARGES/DISHONORED CHECKS

(1) If Licensee fails to pay any Licensee Fee and/or any additional charge in full by the fifteenth (15<sup>th</sup>) day from any due date, Licensor, at its sole discretion, may impose a late payment charge equal to two percent (2%) of any fees/charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an additional charge. Licensor’s failure to immediately demand a late payment charge shall not waive Licensor’s right to collect it at a later date.

(2) In the event that any payment by check is not honored the first time it is presented for payment, Licensee shall make that payment by certified or bank check unless otherwise indicated by Licensor in writing. Nothing contained herein, however, shall be deemed to prevent Licensor from holding Licensee in default under this Concession for the dishonor of any of

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<sup>1</sup> “Operating Year” shall refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

Licensee's checks. Licensee must pay Licensor a fee of twenty (\$20.00) dollars for each dishonored check, which fee shall be collectible as an additional charge.

## ARTICLE 8

### FINANCING

(1) Provided the License is in full force and effect, Licensee shall have the right to mortgage or pledge this License and Licensee's interest therein to an "Institutional Mortgagee," as hereinafter provided. Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have any real property interest in the Premises.

(2) Notwithstanding anything to the contrary, the execution and delivery of any Mortgage shall not be deemed to constitute an assignment or transfer of this License nor shall the holder of any Mortgage, as such, be deemed an assignee or transferee of this License so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Licensee to be performed hereunder.

(3) For the purpose of this License, unless the context otherwise requires:

a. **"Mortgage"** means a mortgage covering Licensee's interest herein and /or a pledge of the direct or indirect ownership of License, including a construction or building loan, a permanent mortgage loan, a combination thereof, and any replacement, renewal, modification, consolidation and extension thereof.

b. **"Mortgagee"** means the holder of a Mortgage.

c. **"Institutional Mortgage"** means a Mortgage or other financing instrument, the holder of which is a bank, savings bank, trust company, savings and loan association (state or federal), real estate investment trust, mortgage REIT, finance company, subsidiary of a Fortune 500 company, investment bank, foundation, endowment fund, insurance

company, union, pension, retirement or debt or welfare fund, or an education, scientific or religious society regularly engaged in making loans, including a Mortgage held by a bank or trust company as trustees for the benefit of bond or debenture holders.

d. **“Institutional Mortgagee”** means the holder of an Institutional Mortgage.

(4) Provided this License is in full force and effect, Licensee shall have the right during the Term of this License at any time and from time to time, without limitation as to amount and on any terms the Licensee may deem desirable, to mortgage this License and Licensee’s interest herein under a Mortgage or Mortgages and to assign this License and existing or future sublicense agreements and fees thereunder to an Mortgagee as additional collateral security for the payment of the Mortgage indebtedness, provided that:

a. Each such mortgage shall be with an Institutional Mortgagee (or with a non-Institutional Mortgagee, with the prior written consent of the Commissioner, which consent shall not be unreasonably withheld, conditioned, or delayed), and if such consent is given any such non-Institutional Mortgage shall have all rights granted to an Institutional Mortgagee under this Section;

b. Each such Mortgage shall provide that there be no subordination of the City’s underlying real property interest in the Licensed Premises including any improvements made thereon; and

c. A true copy of each Mortgage, together with the Mortgagee’s mailing address, shall be delivered to City in the manner herein provided for the giving of notice to DOT within fourteen (14) days after receiving a copy of each such Mortgage.

(5) With respect to any Mortgage, DOT covenants that the following shall apply:

a. When giving notice of termination to Licensee under the provisions of this License the City shall work in good faith to accommodate requests from Mortgagees and use reasonable efforts to deliver a copy of each such notice upon each Mortgagee of whom it has received prior notice as provided in this Article.

b. In case Licensee defaults under any of the provisions of this License, each Mortgagee shall have the right to make good such default, whether same consists of a failure to pay fees or failure to perform any other act, matter or thing which Licensee is required to do or perform; and the City shall accept such performance on the part of such Mortgagee as though same had been done or performed by Licensee.

c. In case of any default by Licensee other than the payment of money hereunder, Mortgagee shall have the right to either:

i. to cause Licensee to cure the default; or

ii. to obtain permission from City to cure such default which is susceptible of being cured in a manner reasonably acceptable to the City.

d. A Mortgagee enforcing the provisions of its Mortgage, shall prosecute such enforcement with reasonable diligence, and upon completion of such enforcement by such Mortgagee, Mortgagee must obtain reasonable approval of the Commissioner to assign the License to a new operator.

## ARTICLE 9

### PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES

(1) Licensee may not transfer, assign, or sublicense its interest in this Agreement, except as follows:

a. Licensee may, indirectly or directly, transfer, or assign up to forty – nine percent (49%) of its stock or interest in Licensee without prior approval of Licensor, provided Silvercup Studios Feeder, LLC, the direct owner of Licensee, remains in control of Licensee.

b. In the event Licensee intends to transfer more than 49% of its stock or interest in Licensee, the Licensee may request approval from the Commissioner of a transferee prior to, or upon finalizing the terms of a proposed agreement with such proposed transferee, to assign or transfer interest in the Premises to such proposed transferee. Licensee shall seek such approval of the Commissioner by submitting a written request including the financial and performance qualifications of such proposed assignee or transferee, together with either a general description of the proposed assignment or a draft of a final agreement. In no event shall Licensee transfer more than 49% of its stock or interest in Licensee without the Commissioner’s approval. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators, and such constraints are not intended to diminish Licensee’s interest in the Licensed Premises.

(2) In the event that Licensee chooses to assign or sublicense the management of the Licensed Premises to an unaffiliated party, Licensee shall obtain the approval of the Commissioner (which shall not be unreasonably withheld) by submitting a written request including proposed assignment or sublicense documents as provided herein. All sublicensees shall be subject to the same requirements as the Licensee. All terms and conditions of sublicense agreements, including provisions with respect to operations and payments to the City, are subject to the City’s prior

written approval. The Commissioner may request any additional information the Commissioner deems reasonably necessary, and Licensee shall promptly comply with such requests.

a. No consent to or approval of any assignment or sublicense granted pursuant to this Article 9 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

b. In the event that the City authorizes Licensee to enter into a sublicense for operations at the Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of the City. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this Concession Agreement and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this Concession Agreement and that it is bound by same. All provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation and maintenance of the Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with City directives and the provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation, and maintenance of the Premises, including, but not limited to, obtaining insurance required of Licensee under this Concession Agreement and indemnifying the City as set forth in Article 13 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this Concession Agreement, the City may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of the City which may not be unreasonably

withheld. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this Concession Agreement.

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

#### ARTICLE 10

##### CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL

(1) Licensee may not change or add to the Premises without the prior written consent of Licensor, which consent may be granted or denied by Licensor in its sole discretion. All permanent structures installed by Licensee, including, without limitation, trade fixtures, shall, at the option of Licensor, become the property of Licensor when attached to the Premises.

(2) Licensee may not attach any notice or sign in, to or outside of the Premises without obtaining Licensor's prior written consent. Advertising (other than in a form identifying Licensee with approval from Licensor is strictly prohibited.

(3) Licensee shall pay the entire cost of all work, labor and material in connection with all activities undertaken by it at the Premises, including but not limited to:

- a. Construction, use, maintenance and removal;
- b. The protection of all structures, including any bridge structures, which shall in any way be disturbed by the conduct of Permitted Activities;
- c. All changes in sewers or other subsurface structures necessitated by the conduct of Permitted Activities, including the laying or relaying of pipes, conduits, sewers or other structures;
- d. The replacing or restoring of the pavement in the Premises which may be disturbed during the conduct of Permitted Activities;

e. The inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any City, state or federal department having jurisdiction.

## ARTICLE 11

### PERMITS AND COMPLIANCE WITH LAWS

(1) Before the conduct of any Permitted Activities hereunder shall begin, Licensee shall obtain all permits which may be required by any City, state or federal department having jurisdiction. Licensee shall perform all lawful duties which may be imposed by any department as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Concession. Licensee shall submit to those departments working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

(2) The sale and/or service of alcohol at the Premises is strictly prohibited without the prior written approval of Licensor and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction.

(3) Upon the completion of the work, Licensee shall furnish to any department having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction and complete dimensions of any structure erected or installed pursuant to this Concession.

(4) Licensee shall comply with all applicable laws, rules, regulations and orders of City, state and federal authorities regarding the Premises and the use, occupancy and maintenance thereof, and with such other rules, regulations, orders, terms and conditions as may be set or required by Licensor.

(5) Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a concessionaire of the City of New York as set forth in the Earned Safe and Sick Leave Law Concession Agreement Rider annexed hereto as **Exhibit C**.

## ARTICLE 12

### INSURANCE

(1) Licensee's Obligation to Insure

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

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

(2) Commercial General Liability Insurance

a. The Licensee shall maintain Commercial General Liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least two million dollars (\$2,000,000.00). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Concession. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

b. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

(3) Workers' Compensation, Employers Liability, and Disability Benefits Insurance

a. The Licensee shall maintain workers' compensation insurance, employers liability insurance, and disability benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this Concession, and such insurance shall comply with the laws of the State of New York.

(4) Commercial Automobile Liability Insurance

a. With regard to all operations under this Concession, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles in connection with this agreement. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

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

(5) General Requirements for Insurance Coverage and Policies

a. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," or a Standard and Poor's rating of at least A, or a Moody's Investors Service rating of at least A3, or a Fitch Ratings 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 City Corporation Counsel.

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

c. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

e. All required policies, except for Workers' Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date,

except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

(6) Proof of Insurance

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

b. For Workers' Compensation, Employers Liability Insurance and Disability Benefits, insurance policies, the Licensee shall submit one of the following options:

i. Form C-105.2, Certificate of Workers' Compensation Insurance;

ii. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

iii. Form SI-12, Certificate of Workers' Compensation Self-Insurance;

iv. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

v. Form DB-120.1, Certificate of Disability Benefits Insurance;

vi. Form DB-155, Certificate of Disability Benefits Self-Insurance;

vii. Form CE-200 – Affidavit of Exemption;

viii. Other forms approved by the New York State Workers' Compensation Board.

c. For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits insurance, the Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include: (a) certificates of insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (b) the additional insured endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein; and (c) a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, attached hereto as **Exhibit C**.

d. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner as soon as practicable, but in no event more than 30 (thirty) days after the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

f. Licensee shall provide the City with a copy of any policy required under this Article only in the event of a claim against the City or its officials or employees that the City believes should be covered under such policy for which both the insurer has not provided the City or its officials or employees with a defense thereunder and Licensee

has failed to provide a defense and failed to indemnify the City or its officials or employees. Licensee may redact any information pertaining to Licensee's other insured properties that are unrelated to this License Agreement.

(7) Miscellaneous

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

b. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which it is are subject, whether or not the City is an insured under the policy.

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

Church Street, New York, New York 10007. If the Licensee fails to comply with the requirements of this paragraph, the Licensee shall indemnify the City, together with its officials and employees 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.

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

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

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

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

applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors. Such waiver shall apply except for damages or losses arising from the City's own intentional tortious acts or omissions.

h. In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Concession and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

i. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

### ARTICLE 13

#### RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE,

#### AND INDEMNIFICATION

(1) Licensee Responsibilities

a. The Licensee shall be responsible in relation to Licensor for the safety and protection of Licensee's employees, agents, servants, contractors, and subcontractors, and

for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

b. The Licensee shall be responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations undertaken by Licensee at the Premises pursuant to this Concession.

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

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

(2) Indemnification and Related Obligations

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

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

ARTICLE 14  
SECURITY DEPOSIT

(1) Upon execution hereof, Licensee shall deposit with the City of New York a sum equal to one month's License Fee [\$8,000] as its security deposit ("**Security Deposit**"), which sum shall be security for (a) the full, faithful, and prompt performance of and compliance with all obligations imposed upon Licensee hereunder and (b) the payment of all the sums of money (including taxes) which may be due the City pursuant to this agreement.

(2) The Security Deposit shall remain with the City throughout the Term of this License. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts. In the event that Licensee fully and completely performs all such obligations and timely makes all such payments, the City shall cause said sum to be returned to Licensee, with interest earned (if applicable), promptly thereafter.

(3) In the event that Licensee shall default in the performance of any such obligation or the making of any such payment, Licensor may apply the sum so deposited to the cost of performing such obligation or making of such payment on Licensee's behalf. Licensee's liability for such default shall in no event be limited to the amount of such security deposit and Licensee shall be and remain liable for any deficiency.

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

ARTICLE 15  
INVESTIGATIONS

(1) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or concession that is the subject of the investigation, audit or inquiry.

(2) If any person<sup>2</sup> who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(3) If any person<sup>3</sup> 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

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<sup>2</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

<sup>3</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

of, or performance under, any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision thereof or any local development corporation within the City, then:

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

b. If any nongovernmental party<sup>4</sup> 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 concession pending the final determination pursuant to Section 15.5 below without the City incurring any penalty or damages for delay or otherwise.

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

a. 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 concession with or from the City; and/or

b. The cancellation or termination of any and all such existing City contracts, leases, permits or concessions that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an

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<sup>4</sup> Officer or employee or Silvercup Studios, Feeder LLC or its subsidiaries

unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(5) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

a. 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.

b. 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.

c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or concessions with the City.

d. 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 Section 15.4 above, provided that the party or entity has given actual notice to the commissioner or

agency head upon the acquisition of the interest, or at the hearing called for in Section 15.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

e. The term “concession” or “permit” as used herein shall be defined as a concession, permit, franchise or concession not granted as a matter of right.

(6) 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.

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

(8) 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.

a. In addition to and notwithstanding any other provision of this Concession, the commissioner or agency head may in his or her sole discretion terminate this Concession upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Concession by the Licensee, or affecting the performance of this Concession.

## ARTICLE 16

### NO DISCRIMINATION

(1) Licensee shall not unlawfully discriminate against any person because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, state, or federal laws, rules or regulations. Licensee shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities. All advertising for employment by Licensee shall indicate that Licensee is an Equal Opportunity Employer.

(2) 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. (the “ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Licensee 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, Licensee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## ARTICLE 17

### NO CONFLICT OF INTEREST

(1) Licensee warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Concession and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Concession or the proceeds thereof.

ARTICLE 18

OTHER AGREEMENTS

(1) It is understood that all other agreements between the parties with respect to this Concession shall be superseded by this Concession and any obligations between the parties shall be determined solely by this Concession until such time as this Concession is superseded by another agreement.

ARTICLE 19

NOTICES

(1) Except as otherwise provided in this Concession, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Licensor:

Office of Cityscape & Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

To Licensee:

c/o Hackman Capital Partners, LLC  
4060 Ince Blvd.  
Culver City, CA 90232  
Attn: Legal Department

Greenberg Traurig  
Attn: Edward C. Wallace  
1 Vanderbilt Avenue  
New York, NY 10017

ARTICLE 20

WARRANTY

(1) Licensee warrants and represents that the undersigned signatory has full power and authority to enter into this agreement on behalf of Licensee and to bind Licensee to its terms. Licensor warrants and represents that Licensee has fulfilled all previous obligations in connection with these parcels including but not limited to the payment of fees.

ARTICLE 21

JURY WAIVER; WAIVER OF COUNTERCLAIM

(1) To the fullest extent permitted by law, the Licensee waives its right to a jury trial in any action, proceeding, or counterclaim brought by the City or by Licensor in any matter related to this License. In the event of any action or proceeding brought by the Licensor to recover possession of the Premises, Licensee waives its right to counterclaim or set off therein, which waiver shall survive the revocation or termination of this Concession.

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

(3) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within one (1) year of the termination or conclusion of this License, or within one (1) year after the accrual of the cause of action, whichever first occurs.

(4) In the event any claim is made, or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all reasonable assistance which the City of New York may reasonably require of Licensee. Notwithstanding the foregoing, the City shall be responsible for travel expenses if it requires the attendance of any employee or representative of the Licensee in person at a hearing, settlement meeting or similar event.

(5) No claim whatsoever shall be made by the Licensee against any officer, agent, or employee of the City for, or on account of, anything done or omitted in connection with this License, except with respect to criminal or intentional tortious conduct.

## ARTICLE 22

### POSSESSION

(1) In the event Licensor acknowledges that it is unable to give possession of the Premises on the date set forth in Article 2 herein, the License Fee shall not commence until possession has been given or is available, as determined by Licensor. Under such circumstances, Licensor shall not be subject to any liability for failure to give possession on such date and the validity of this Concession shall not be impaired and the Term shall not commence until a new Notice to Proceed is issued with a revised Commencement Date.

ARTICLE 23

RIGHT TO AUDIT

(1) Licensee shall make available to the office of the Comptroller of the City of New York and Licensor's auditor, on demand, all books, records, documents, and correspondence pertaining to the Concession, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or Licensor.

ARTICLE 24

ESTOPPEL CERTIFICATES

(1) At the request of Licensee made from time to time (but not more than twice a calendar year), the City shall, acting by DOT, furnish to Licensee within fifteen (15) business days after the date of the giving of such request, written confirmation from DOT that (i) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and setting forth the modifications), (ii) the dates through which payments under the Agreement have been made by Licensee, (iii) the City acknowledges that is aware that the certificate may be relied upon by Licensee, a purchaser of, or investor in, the Studios and/or its mortgagee, or lender, and (iv) that to the knowledge of DOT, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by Licensee under this Agreement (or, if there are such facts, excepting the same and briefly describing the default). In the event Licensor makes a request pursuant to this Article 24, Licensee shall use the template attached in Exhibit E.

ARTICLE 25

CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

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

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

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

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

(3) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might

otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

#### ARTICLE 26

#### DEVELOPMENT PURPOSES

(1) In the event that the Licensed Premises or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, Licensee is entitled to the termination fee and protections in Article 3(f).

#### ARTICLE 27

#### ENTIRE AGREEMENT

(1) 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.

#### ARTICLE 28

#### COUNTERPARTS

(1) This License may be executed in one or more counterparts which, when taken together shall constitute the entire agreement.

[Signatures on Following Page]

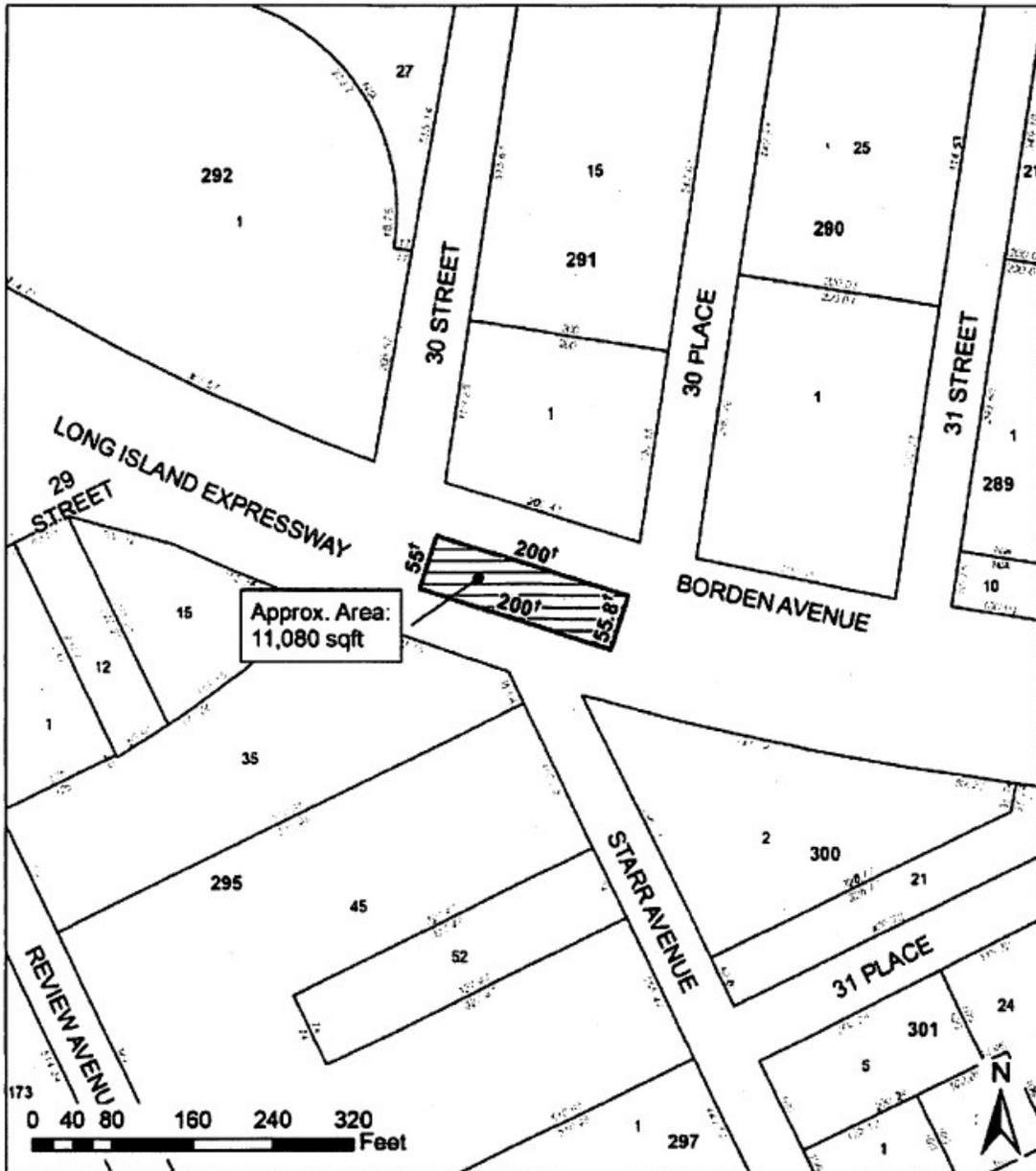




Exhibit "A"

PREMISES

QUEENS, BLOCK 291, LOT999



ALL MEASUREMENTS ARE APPROXIMATE AND NOT DRAWN TO SCALE

**EXHIBIT “B”**

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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



**EXHIBIT “C”**  
**NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER**

A. *Introduction and General Provisions.*

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

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

3. The Licensee must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto: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 Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

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

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.<sup>5</sup> 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

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<sup>5</sup> 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.

the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

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

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

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

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

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

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

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

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

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

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

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

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

6. to enroll children in a new school; or

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

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

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

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

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

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

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

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

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

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and

sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT D: LICENSE FEE SCHEDULES**

<b>TERM YEAR</b>	<b>ANNUAL LICENSE FEE</b>
Year 1	\$96,000
Year 2	\$99,360
Year 3	\$102,838
Year 4	\$106,437
Year 5	\$110,162
Year 6	\$114,018
Year 7	\$118,009
Year 8	\$122,139
Year 9	\$126,414
Year 10	\$130,838
Years 11-20	Fair Market Value in accordance with Article 1(1)(f) and (g)

**EXHIBIT E: ESTOPPEL CERTIFICATE TEMPLATE**

\_\_\_\_\_, 20\_\_

To: [ ] (the “Licensee”) and [ ] (together with its successors and assigns, [“Lender”]/[“Buyer”])

Re: That certain Concession Agreement (the “Agreement”) dated [ ] between the City of New York (“City”), acting by its Department of Transportation (“Licensor” or “DOT”) and Licensee with respect to certain real property designated as Block [ ], Lot [ ] on the Tax Map of the Borough of Queens.

Pursuant to Article 24 of the Agreement, the City, acting by DOT, in its proprietary capacity as fee owner of the Premises Block [ ] Lot [ ], Borough of Queens, hereby acknowledges and certifies the following:

- (i) The Agreement is unmodified and in full force and effect and constitutes the entire agreement between Licensee and DOT with respect to the subject matter contained therein.
- (ii) Licensee has made payments under the Agreement through the following date: [ ].
- (iii) DOT is not holding any security deposit or guaranty under the Agreement except as set forth Article 14 of the Agreement.
- (iv) DOT has neither sent, nor received, a notice of any default under this Agreement.
- (v) To the knowledge of the undersigned, DOT, after reasonable review of its records, states with respect to the material obligations and covenants under the Agreement to be performed or observed: (a) no default exists under the Agreement, nor has any act or omission occurred that, solely with the passage of time or giving of notice or both, would constitute a default; and (b) no act or omission has occurred that, solely with the passage of time or giving of notice or both, would constitute grounds for termination by Licensor of the Agreement without payment of the Termination Fee (as defined in the Agreement).
- (vi) Licensor acknowledges that it is aware that this certificate will be relied upon by Licensee, a purchaser of, or investor in, the Licensee and/or its mortgagee, or lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The undersigned is duly authorized to execute this Estoppel Certificate.

THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
NAME  
TITLE

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) 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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located within part of the bed of Borden Avenue, under the Long Island Expressway, between 30th Street and 30th Place in Long Island City, Queens (block 291, lot 999). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$96,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal of year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

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

4/16/2025

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

Title: City Chief Procurement Officer

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

# Rule 1-16: Different Procedure

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Silvercup Studios NY, LLC Concession ID 2024Con01

Description Sole source concession for Silvercup Studios for DOT parking lot located approx 140 ft north of the NW corner of 43rd Ave and 22nd Street in Queens  Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Agency New York City Department of Transportation (DOT)

### Recommended Concessionaire

Name Silvercup Studios NY, LLC Telephone 718-906-2000  
Address 4060 Ince Boulevard  EIN or  SSN # 85-2551454  
Culver City, CA 90232  Not-for-Profit Organization  Certified M/WBE by SBS

### Recommended Concession Agreement Term

Initial Term Notice to Proceed to 20 years Concession Site(s)  Yes  No  
Renewal Option(s) none to \_\_\_\_\_ Address DOT parking lot located approx 140 ft north of the  
\_\_\_\_\_ to \_\_\_\_\_ NW corner of 43rd Ave and 22nd Street in Queens  
Total Potential Term 20 years Borough 4 Community Board 2  
 >20 years – FCRC unanimously approved term on \_\_\_/\_\_\_/\_\_\_ Block# 427 Lot# Part of 25

**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 add'l. 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 \_\_\_/\_\_\_/\_\_\_  
 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:  
Please see additional info sheet

### Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:  
Please see additional info sheet

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

### Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 04 / 14 / 2025

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 03 / 07 / 2025 (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 04 / 16 / 2025 (date of the FCRC public meeting)

Votes in favor:      Votes against:     

OR

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

Law Department approved concession agreement on:      /      /     

### Authorized Signatures

#### Agency Staff

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

#### Certificate of Procedural Requisites

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Chief Procurement Officer

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

<b>Description</b>	Sole source concession for Silvercup Studios for DOT parking lot located approx 140 ft north of the NW corner of 43rd Ave and 22nd Street in Queens	<b>Agency</b>	New York City Department of Transportation (DOT)
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Block 427, Part of Lot 25 (4-427-25)

**Negotiation Requirements:**

Concessionaire has utilized the Licensed Premises for parking and storage purposes pursuant to a license agreement with the City of New York, acting by its Department of Citywide Administrative Services (DCAS). The license for these spaces commenced in October 2021, with a fee of \$5,000/month for each space. Upon expiration of its license with DCAS, in September 2022 Concessionaire continued negotiations with City Hall for a new agreement. Between July 2022 and November 2023, City Hall had multiple virtual calls and in-person meetings with representatives from the Concessionaire to discuss their plans for operation of the concession, future growth, and fair compensation to the City of New York. In March 2024, the FCRC authorized the New York City Department of Transportation (DOT) to negotiate a sole source concession agreement with Concessionaire. From March 2024 through February 2025, DOT, City Hall, and the Law Department negotiated the terms of the concession agreement, which provides for compensation to the City in the form of an increase license fee.

**Awards Requirements:**

It is in the City's best interest to enter into a sole source agreement with this concessionaire because the total negotiated value of blocks 426, 427, and 291 combined is only \$631 per month less than the most recent appraised value, a difference that could not be closed with a competitive process that would require substantial staff resources. NYC's film and television industry generated \$60B in direct economic activity for NYC, \$3B in tax revenue, and employed 100K people. The average job in the film/television production industry pays over \$100K and many jobs are unionized. Additionally, production activity supports over 2,000 small businesses in production-adjacent sectors (i.e. florists, food services, dry cleaners). During the historic 6-month entertainment union strikes in 2023, many businesses and employees who depend on filming suffered significant financial losses and the City is trying to support film-related businesses as they recover from the dual challenges of the Covid pandemic and strikes. Silvercup, whose sound stages are adjacent to these lots, is one of the largest sound stage operators in NYC with two locations in Queens and one in the Bronx. They directly employ 49 employees, half over 50 years old (Silvercup is recognized by Columbia University as an Age Smart Employer). Silvercup currently has seven productions using their facilities, which support approximately 1,400 employees.

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located approx 140 ft north of the NW corner of 43rd Ave and 22nd Street in Queens **Agency** New York City Department of Transportation (DOT)



Please see below fee schedule for the proposed sole source concession for the Licensed Premises. The fee schedule begins at \$72,000 per year and includes 3.5% annual escalations for years one through 10 of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term

- o Annual Fee, Term Year 1:  
Block 427, Lot 25 (partial): \$72,000
- o Annual Fee, Term Year 2:  
Block 427, Lot 25 (partial): \$74,520
- o Annual Fee, Term Year 3:  
Block 427, Lot 25 (partial): \$77,128
- o Annual Fee, Term Year 4:  
Block 427, Lot 25 (partial): \$79,827
- o Annual Fee, Term Year 5:  
Block 427, Lot 25 (partial): \$82,621
- o Annual Fee, Term Year 6:  
Block 427, Lot 25 (partial): \$85,513
- o Annual Fee, Term Year 7:  
Block 427, Lot 25 (partial): \$88,506
- o Annual Fee, Term Year 8:  
Block 427, Lot 25 (partial): \$91,604
- o Annual Fee, Term Year 9:  
Block 427, Lot 25 (partial): \$94,810
- o Annual Fee, Term Year 10:  
Block 427, Lot 25 (partial): \$98,128



## NOTICE OF PUBLIC HEARING

**To:** Donovan Richards, Queens Borough President  
Debra Markell Kleinert, District Manager, Queens CB 2

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

**Subject:** Notice of Joint Public Hearing: 4/14/2025; For intent to award as a concession a Sole Source License Agreement (“License”) to Silvercup Studios NY, LLC for business accessory parking and storage activities at property under the jurisdiction of the New York City Department of Transportation that is located approximately 140 feet north of the north west corner of 43<sup>rd</sup> Avenue and 22nd Street in Queens (block 427, part of lot 25; the “Licensed Premises”).

**Date:** 3/28/2025

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation (“DOT”) to be held on 4/14/2025, at 22 Reade Street, Spector Hall, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a License Agreement (“License”) to Silvercup Studios NY, LLC for business accessory parking and storage activities at the at property under the jurisdiction of DOT located approximately 140 feet north of the north west corner of 43<sup>rd</sup> Avenue and 22nd Street in Queens (block 427, part of lot 25; the “Licensed Premises”).

The License provides for one 20-year term, commencing upon written Notice to Proceed.

Compensation to the City will be \$72,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.



Written testimony may be submitted in advance of the hearing electronically to [fcrc@mocs.nyc.gov](mailto: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](mailto:concessions@dot.nyc.gov) from 3/28/2025 through 4/14/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10038. Written requests must be received by 4/7/2025. For mail-in requests, please include your name, return address, and Silvercup Studies NY, LLC Concession/2024Con01.

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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

**CONCESSION AGREEMENT**

**between**

**THE CITY OF NEW YORK  
DEPARTMENT TRANSPORTATION  
55 Water Street, 9<sup>th</sup> Floor  
New York, New York 10041**

**&**

**SILVERCUP STUDIOS NY, LLC  
4060 Ince Boulevard  
Culver City, CA 90232**

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**Premises:   Block 427, Part of Lot 25, Borough of Queens  
Approximately 140 feet north of the north west corner of 43<sup>rd</sup> Avenue and  
22<sup>nd</sup> Street, Queens, NY 11101  
Approximately 3,701 Square Feet**

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CONCESSION AGREEMENT

<u>ARTICLE</u>	<u>CAPTION</u>	<u>PAGE</u>
ARTICLE 1	GRANT OF LICENSE .....	5
ARTICLE 2	TERM .....	9
ARTICLE 3	TERMINATION OF CONCESSION.....	10
ARTICLE 4	PERMITTED ACTIVITIES .....	14
ARTICLE 5	MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES .....	15
ARTICLE 6	LICENSE FEE AND ADDITIONAL CHARGES .....	19
ARTICLE 7	LATE CHARGES/DISHONORED CHECKS .....	19
ARTICLE 8	FINANCING .....	20
ARTICLE 9	PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES.....	22
ARTICLE 10	CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL .....	25
ARTICLE 11	PERMITS AND COMPLIANCE WITH LAWS.....	26
ARTICLE 12	INSURANCE.....	27
ARTICLE 13	RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION .....	34
ARTICLE 14	SECURITY DEPOSIT.....	37
ARTICLE 15	INVESTIGATIONS .....	38
ARTICLE 16	NO DISCRIMINATION .....	42
ARTICLE 17	NO CONFLICT OF INTEREST .....	42
ARTICLE 18	OTHER AGREEMENTS .....	43
ARTICLE 19	NOTICES .....	43
ARTICLE 20	WARRANTY .....	44
ARTICLE 21	JURY WAIVER; WAIVER OF COUNTERCLAIM.....	44
ARTICLE 22	POSSESSION.....	45
ARTICLE 23	RIGHT TO AUDIT .....	46
ARTICLE 24	ESTOPPEL CERTIFICATES.....	46
ARTICLE 25	CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE.....	47
ARTICLE 26	DEVELOPMENT PURPOSES .....	48

ARTICLE 27 ENTIRE AGREEMENT.....48  
ARTICLE 28 COUNTERPARTS .....48

EXHIBIT - “A” – DIAGRAM

EXHIBIT – “B” – CERTIFICATION BY INSURANCE BROKER OR AGENT

EXHIBIT – “C” – EARNED SAFE AND SICK TIME ACT RIDER

EXHIBIT – “D” – LICENSE FEE SCHEDULES

EXHIBIT – “E” – ESTOPPEL CERTIFICATES

THIS CONCESSION AGREEMENT (the “**Concession**” or “**Agreement**” or “**License**” or “**License Agreement**”) is made and entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2025, by and between THE CITY OF NEW YORK, acting by its Department of Transportation (“**DOT**” or the “**Licensor**”), having its office at 55 Water Street, 9<sup>th</sup> Floor, New York, New York 10041, and SILVERCUP STUDIOS NY, LLC, having an address at 4060 Ince Boulevard, Culver City, CA, 90232 (the “**Licensee**”).

WITNESSETH:

WHEREAS, the City is the owner of, and DOT manages, the property located at Block, 427, Part of Lot 25, Borough of Queens, New York (the “**Licensed Premises**” or “**Premises**”); and,

WHEREAS, Licensee has been in use of this parcel since 1982 which is, (together with certain other parcels occupied under similar agreements) an essential part of business operations for Silvercup Studios (“**Studios**”); and

WHEREAS, Licensee desires to continue entry upon and use of the Licensed Premises in order to continue to conduct business accessory parking and storage activities for Studios’ use, as more fully appears hereinafter, all in accordance with the applicable provisions of City, state, and federal law; and

WHEREAS, Licensor shall provide Licensee with access to the Licensed Premises for the purpose of conducting such activities for which it does not receive a specific third party payment, in exchange for the fees set forth hereinbelow; and

WHEREAS, the Franchise and Concession Review Committee (“**FCRC**”) of the City of New York has specifically authorized DOT to enter into a Sole Source Concession Agreement with Licensee;

WHEREAS, Licensee shall conduct all activities permitted hereunder with reasonable care and be responsible for, and shall indemnify, and hold the City harmless from, any damage to Licensor, third parties (including Licensee's agents, employees and invitees) and the Property resulting from such activities;

NOW, THEREFORE, it is agreed by and between the parties as follows:

ARTICLE 1

GRANT OF LICENSE

(1) Definitions. As used throughout this License, the following terms shall have the meanings set forth below:

a. **“Alteration”** shall mean (excepting ordinary repair and maintenance or otherwise required by this Agreement):

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

ii. 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 Premises; or

iii. any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.

b. **“City”** shall mean the City of New York, its departments, and political subdivisions.

c. **“Commissioner”** shall mean the Commissioner of the New York City Department of Transportation or his/her designee.

d. **“Comptroller”** shall mean the Comptroller of the City of New York.

e. **“Exigent Circumstances”** shall mean circumstances which cause the City to make a reasonable determination that due to an unsafe or emergency condition, the Licensed Premises must be vacant on a permanent basis.

f. **“Fair Market Value”** shall mean the fair market value of a license fee for the Premises taking into account the encumbrances on the parcel including but not limited to (i) the physical structures currently operated by DOT, (ii) the rights of DOT to have access to the lots as provided under this license and (iii) cost of comparable parking near the Premises with similar development and use restrictions in place. If the parties cannot agree on the Fair Market Value, it shall be determined by each party selecting a licensed real estate appraiser with at least 10 years of experience, who shall meet and confer and if they do not agree, the Fair Market Value shall be the average of the two appraisals, provided that, if the parties do not agree and if the two appraisals are more than 20% apart, the parties shall jointly select a third independent appraiser, whose Fair Market Value determination shall be binding and final.

g. **“License Fee”** shall mean the guaranteed minimum annual fees as set forth in Exhibit D. At the beginning of Year 10 of the Term, the License Fee will be reset based on a Fair Market Value appraisal for Year 11 and thereafter the License fee shall increase 3.5% annually for the remainder of the Term.

(2) Licensor hereby grants to Licensee and Licensee hereby accepts from DOT this License to enter upon and conduct the Permitted Activities (as defined in Article 4 below) upon:

Block 427 Part of Lot 25, Borough of Queens, as shown in the diagram attached hereto as **Exhibit A**, referred to as the Licensed Premises or Premises. Licensee hereby accepts the Premises in its “as is” condition and will not at any time make any claim that the Premises or structures thereon were not delivered in suitable condition for the uses and purposes of this License. Licensor has not made, nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this License. The provision contained in this section that Licensee accepts the Premises “as is” relates to the condition of the Premises as they were when Licensee first entered into occupancy thereof, or on the commencement date of the Term (as defined below), whichever is earlier. Notwithstanding the foregoing, Licensee is not assuming liability for any condition caused heretofore by the Licensor.

(3) It is expressly understood that Licensee has no real property interest in the Premises and that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by DOT, but that during the Term of this License, Licensee shall have use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as every material term in this License is substantially complied with and provided this License is not otherwise terminated by DOT in accordance with the provisions of this License including provisions, if applicable, related to notice and cure.

(4) Licensee shall provide, on reasonable notice, full and free access to the Licensed Premises to the Commissioner of DOT (the “**Commissioner**”) or the Commissioner’s representatives and to other City, State and Federal officials or their representatives having jurisdiction for inspection purposes, and to confirm Licensee’s compliance with this License Agreement.

(5) DOT shall have access to the Licensed Premises on 5 business days' notice to conduct bridge-related work necessary to effectuate routine repairs and maintenance of the Ed Koch Queensboro Bridge and its related elements. DOT shall have access to the Licensed Premises upon reasonable notice as is practicable under the circumstances, to effectuate urgent or emergency repairs to the Ed Koch Queensboro Bridge and its related elements.

(6) The City reserves the right to perform safety, maintenance, or construction work deemed necessary by the City in the City's sole discretion at or throughout the Licensed Premises on reasonable advance notice at any time during the Term. Licensee agrees to cooperate with the City to accommodate any such work by the City and provide public and construction access through the Licensed Premises as deemed reasonably necessary by the City. The City shall use reasonable efforts to give Licensee at least 10 business days' notice of any such work and such work and access shall not unreasonably interfere with Licensee's operations or use of the Licensed Premises, except such notice shall not be required in the case of an emergency in which case the Licensee shall receive such notice as is practicable under the circumstances of the emergency. The City may (subject to the further provisions of this Agreement) temporarily close a part or all of the Licensed Premises for a reasonable City purpose as reasonably determined by the City. In the event that Licensee cannot operate in all or part of the Licensed Premises, then Licensee may propose and submit for the Commissioner's approval, which approval shall not be unreasonably delayed, a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for Licensee's property on the Licensed Premises during the Term, except the City shall be solely responsible for claims, damages, or injury caused by the City or its contractors or agents or permittees to the extent resulting from its use of or work in the Licensed Premises, except to the extent such claims,

damages and injury (including death) are caused by the negligence or intentional tortious acts or omissions of Licensee.

## ARTICLE 2

### TERM

(1) This Concession shall take effect upon DOT giving the Licensee a written notice to proceed following registration of the Concession in accordance with section 375 of the New York City Charter (the “**Notice to Proceed**”). The Term of the Concession shall commence upon the date in the Notice to Proceed (the “**Commencement Date**”) and shall terminate no later than twenty (20) years from the Commencement Date (the “**Termination Date**” or the “**Expiration Date**”). The period between the Commencement Date and Termination Date shall be the License term (the “**Term**”).

(2) At any time before the end of the Term, and, provided that the Licensee is not in default of its material obligations under this License, the Licensee may request an opportunity to negotiate with DOT regarding a new 20-year license agreement (“Future License Agreement”) to commence no later than the day following the last day of the Term (or such other day as the parties mutually agree to). The City shall, within thirty (30) days of receiving such request, commence discussions with Licensee, and shall negotiate in good faith to endeavor to reach agreement on a Future License Agreement, which shall be subject to all relevant mandatory City approval procedures, including, but not limited to, all FCRC requirements; notwithstanding the foregoing the City shall not be obligated to extend Licensee’s use of the premises if the parties cannot agree on the terms of a Future license Agreement. Upon the Expiration Date or any earlier revocation or termination in accordance with the provisions of this Agreement (including notice provisions), all rights of Licensee in said Premises by virtue of this Concession shall cease and terminate, and at

Licensor's request, Licensee shall remove its property and improvements from the Premises and return the Premises to its condition at the commencement of the Concession, reasonable wear and tear excepted. Any rights Licensor may have under this Concession and any laws, rules or regulations affecting the conduct of activities permitted hereunder and the restoration of the Premises shall survive the revocation or termination of this Concession.

### ARTICLE 3

#### TERMINATION OF CONCESSION

(1) Notwithstanding any language contained herein, this Concession is terminable at will by the City at any time (subject to the provisions of this Concession) for (i) cause, as described below, (ii) for Exigent Circumstances as defined herein, (iii) for convenience as provided herein provided that the City shall not terminate for convince in order to permit another commercial use within the first 10 years of the Term. Except in the case of Exigent Circumstances, such termination shall be effective after three hundred and sixty-five (365) days written notice to Licensee. In the event of a determination of Exigent Circumstances, the City may terminate this Concession with as much notice as such Exigent Circumstances reasonably allow, provided that in the event such Exigent Circumstances no longer exist, the Licensee shall have the right but not the obligation to reoccupy the Premises pursuant to this License Agreement for the remainder of the Term. If the City terminates for any reason other than cause or Exigent Circumstances, the City shall excuse Licensee from the requirement to pay the final six months of the then current Licensee Fees to the Licensor for the remainder of the Term. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee caused solely by the termination of this License provided the City simultaneously satisfies its termination obligations, if applicable.

Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have, by reason of the required notice, any real property interest in the Premises.

a. The City may terminate this Concession for cause as follows:

i. Should Licensee materially breach or fail to comply with any of the material provisions of this License or any federal, state, or local law, rule, regulation or order affecting this License or the Premises, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with receipt (as prescribed in Article 19 Section 1 of this Agreement) of such order within thirty (30) days subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order occurs within the same calendar year as the first breach or failure to comply, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

ii. The following shall constitute events of default for which this Concession may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit

of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which materially and substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

iii. Nothing contained in paragraphs (i) or (ii) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the City may terminate this License.

(2) Licensee agrees that upon the expiration or sooner termination of this Concession, it shall promptly cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take prompt possession of the Premises.

(3) In the event the City terminates this Concession for reasons related to Article 3 Section 1(a) above, any property of the Licensee (other than motor vehicles, trailers, and portable personal property) on the Premises may be held and used by the City until all indebtedness of the Licensee hereunder, at the time of termination of this Concession, is paid in full. Unless the City provides notice to the Licensee that it intends to hold such property, Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and leave the Premises in as good condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be

abandoned unless the City holds such property as set forth above. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement. The City may use the Security Deposit to recover such damages in part or in whole.

(4) If this Concession is terminated as provided in Article 3 Section 1(a) above:

a. The City may draw down on the Security Deposit to recover damages, if any;

b. Licensee shall pay to the City all fees payable under this Concession Agreement owed by Licensee to the City up to the Termination Date; and

c. The City may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Premises in such manner as the City may deem reasonably necessary or advisable without relieving Licensee of any liability under this Concession Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period.

(5) If this Concession is terminated as provided herein and, if applicable, the City has excused Licensee from its obligation to pay the License Fee payments for the final six months of the Term, (or upon the expiration of the Concession), the City may, without notice, re-enter and reoccupy the Premises using such reasonable force for that purpose as may be reasonably necessary without being liable to indictment, prosecution or damages and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

(6) No receipt of moneys by the City from Licensee after the termination of this Concession Agreement, or after the giving of any notice of the termination of this Concession

Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of the City to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of the City to recover possession of the Premises by proper remedy. After the service of written notice to terminate this Concession Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, the City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of the City, on account of Licensee's liability hereunder.

(7) Any and all obligations and/or liabilities of Licensee under this Concession accruing prior to the termination or revocation of this Concession shall survive the revocation or termination thereof.

#### ARTICLE 4

##### PERMITTED ACTIVITIES

(1) Licensee may enter upon and use the Premises only for the conduct of the following activities (hereinafter, the "**Permitted Activities**") and for no other purpose: business accessory parking and storage. Licensor makes no representation as to the legality of use of the Premises for the Licensee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction or governmental agency having jurisdiction (and, such declaration of illegality is non-appealable to any court) Licensee covenants and agrees that provided Licensor, its agents, officers, and employees, have had no knowledge of such illegality, then Licensor, its agents, officers, and employees, shall not be liable for any damages arising out of or related to

such unknown illegal use; and Licensee shall defend, indemnify, and hold harmless Licensor, including its officials and employees, against any liability or expense for such illegal use.

(2) Licensee shall not charge a specific user fee for use of the space.

(3) Licensee shall not use the Premises for the sale of tobacco or tobacco products, electronic cigarettes, non-tobacco smoking products, cannabis products, or for arcades, slot machines, gambling establishment of any kind, game rooms, billiard halls, gun sales or repair shops, pornography or physical culture establishments of any kind, or for discotheques or cabarets.

(4) Licensee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules and regulations of all federal, state and municipal bodies having jurisdiction.

(5) Notwithstanding any provision to the contrary, Licensee may include the use of the Licensed Premises in its agreements with its customers and prospective customers.

## ARTICLE 5

### MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES

(1) Licensee shall, at its sole cost and expense (or through arrangements with third parties), maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the Licensed Premises.

(2) Licensee shall be responsible, at its sole cost and expense, for clean-up and removal of all snow, waste, garbage, refuse, rubbish, weeds, and litter from the Licensed Premises. Snow and ice shall be removed from the entire Licensed Premises, including surrounding sidewalks, within a reasonable period of time. 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.

(3) Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may Licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(4) Licensee shall maintain and repair the perimeter fencing surrounding the Licensed Premises. Licensee shall not park any vehicles or devices on the sidewalks surrounding the Licensed Premises and shall use commercially reasonable efforts not to allow third parties to do the same.

(5) Licensee, at its sole cost and expense, shall maintain and make any necessary repairs to the Licensed Premises within 72 hours of Licensee's knowledge of occurrence of a necessary repair. If such repairs cannot be completed within 72 hours, as reasonably determined by DOT, Licensee shall commence such repairs or clean-up within 72 hours of occurrence and proceed with due diligence in carrying out the repairs or clean-up until they are completed.

(6) Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

(7) At request of the City, Licensee shall prepare and provide to DOT operational status reports and reports of any incidents that result in an internal written report or police report occurring at the Licensed Premises. The City may request such reports on a quarterly basis. Licensee shall promptly notify DOT, in writing, of any written claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify

DOT in writing as to said person's name, telephone number, and address within thirty (30) days of the date of the Notice to Proceed.

(8) Should DOT, in its sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises that was not caused by the City or DOT, after written notification, Licensee shall have 72 hours to correct such unsafe or emergency condition. DOT will use the list of contact information, provided and updated on a bi-annual basis by the Licensee, to call in case of an emergency. During any period where DOT determines that an unsafe or emergency condition exists on the Licensed Premises not caused by the City or DOT, DOT may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify DOT in writing and indicate the period within which such condition shall be corrected. DOT, in its sole reasonable discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

(9) Licensee may alter the Licensed Premises only in accordance with the requirements of Article 5 Section (10) below. Alterations shall become property of City, at its option, upon their attachment, installation, or affixing.

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

- a. obtain DOT's written approval (which shall not be unreasonably delayed) for contemplated purchases and/or work;
- b. ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in a good and workmanlike manner, and within a reasonable time; and

c. notify DOT of completion of any Alteration within thirty (30) days after completion and final payment.

(11) Upon installation, and absent any separate agreement, title to all Alterations made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at the conclusion of the Term. To the extent the City chooses not to exercise its option with respect to any of the Alterations made to the Licensed Premises, Licensee shall remove such Alterations and restore the Licensed Premises to DOT's satisfaction to the condition at the commencement of the Term at the sole cost and expense of Licensee.

(12) DOT may, in its discretion, make or cause to make additions, alterations, repairs, decorations or improvements to Licensed Premises at the City's expense that do not materially interfere with Licensee's use of the Premises, but nothing 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 Licensee's obligation herein in any respect. DOT will coordinate with Licensee and provide reasonable notice to Licensee of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such additions, alterations, repairs, decorations, or improvements to be made by DOT at such times as will cause the least interference with Licensee's operations.

13) Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, flammable materials, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

ARTICLE 6

LICENSE FEE AND ADDITIONAL CHARGES

(1) Licensee shall pay to the City License Fees for each Operating Year<sup>1</sup> consisting of the guaranteed minimum annual fees set forth in **Exhibit D, “License Fee Schedules.”**

(2) The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the schedule set forth in Exhibit D, “License Fee Schedules”. Each monthly payment is due and payable regardless of whether Licensee has received a bill for it from DOT.

(3) Licensee shall pay to Licensor as additional charges such other items identified in this Concession as additional charges.

ARTICLE 7

LATE CHARGES/DISHONORED CHECKS

(1) If Licensee fails to pay any Licensee Fee and/or any additional charge in full by the fifteenth (15<sup>th</sup>) day from any due date, Licensor, at its sole discretion, may impose a late payment charge equal to two percent (2%) of any fees/charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an additional charge. Licensor’s failure to immediately demand a late payment charge shall not waive Licensor’s right to collect it at a later date.

(2) In the event that any payment by check is not honored the first time it is presented for payment, Licensee shall make that payment by certified or bank check unless otherwise indicated by Licensor in writing. Nothing contained herein, however, shall be deemed to prevent Licensor from holding Licensee in default under this Concession for the dishonor of any of

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<sup>1</sup> “Operating Year” shall refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

Licensee's checks. Licensee must pay Licensor a fee of twenty (\$20.00) dollars for each dishonored check, which fee shall be collectible as an additional charge.

## ARTICLE 8

### FINANCING

(1) Provided the License is in full force and effect, Licensee shall have the right to mortgage or pledge this License and Licensee's interest therein to an "Institutional Mortgagee," as hereinafter provided. Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have any real property interest in the Premises.

(2) Notwithstanding anything to the contrary, the execution and delivery of any Mortgage shall not be deemed to constitute an assignment or transfer of this License nor shall the holder of any Mortgage, as such, be deemed an assignee or transferee of this License so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Licensee to be performed hereunder.

(3) For the purpose of this License, unless the context otherwise requires:

a. **"Mortgage"** means a mortgage covering Licensee's interest herein and /or a pledge of the direct or indirect ownership of License, including a construction or building loan, a permanent mortgage loan, a combination thereof, and any replacement, renewal, modification, consolidation and extension thereof.

b. **"Mortgagee"** means the holder of a Mortgage.

c. **"Institutional Mortgage"** means a Mortgage or other financing instrument, the holder of which is a bank, savings bank, trust company, savings and loan association (state or federal), real estate investment trust, mortgage REIT, finance company, subsidiary of a Fortune 500 company, investment bank, foundation, endowment fund, insurance

company, union, pension, retirement or debt or welfare fund, or an education, scientific or religious society regularly engaged in making loans, including a Mortgage held by a bank or trust company as trustees for the benefit of bond or debenture holders.

d. **“Institutional Mortgagee”** means the holder of an Institutional Mortgage.

(4) Provided this License is in full force and effect, Licensee shall have the right during the Term of this License at any time and from time to time, without limitation as to amount and on any terms the Licensee may deem desirable, to mortgage this License and Licensee’s interest herein under a Mortgage or Mortgages and to assign this License and existing or future sublicense agreements and fees thereunder to an Mortgagee as additional collateral security for the payment of the Mortgage indebtedness, provided that:

a. Each such mortgage shall be with an Institutional Mortgagee (or with a non-Institutional Mortgagee, with the prior written consent of the Commissioner, which consent shall not be unreasonably withheld, conditioned, or delayed), and if such consent is given any such non-Institutional Mortgage shall have all rights granted to an Institutional Mortgagee under this Section;

b. Each such Mortgage shall provide that there be no subordination of the City’s underlying real property interest in the Licensed Premises including any improvements made thereon; and

c. A true copy of each Mortgage, together with the Mortgagee’s mailing address, shall be delivered to City in the manner herein provided for the giving of notice to DOT within fourteen (14) days after receiving a copy of each such Mortgage.

(5) With respect to any Mortgage, DOT covenants that the following shall apply:

a. When giving notice of termination to Licensee under the provisions of this License the City shall work in good faith to accommodate requests from Mortgagees and use reasonable efforts to deliver a copy of each such notice upon each Mortgagee of whom it has received prior notice as provided in this Article.

b. In case Licensee defaults under any of the provisions of this License, each Mortgagee shall have the right to make good such default, whether same consists of a failure to pay fees or failure to perform any other act, matter or thing which Licensee is required to do or perform; and the City shall accept such performance on the part of such Mortgagee as though same had been done or performed by Licensee.

c. In case of any default by Licensee other than the payment of money hereunder, Mortgagee shall have the right to either:

i. to cause Licensee to cure the default; or

ii. to obtain permission from City to cure such default which is susceptible of being cured in a manner reasonably acceptable to the City.

d. A Mortgagee enforcing the provisions of its Mortgage, shall prosecute such enforcement with reasonable diligence, and upon completion of such enforcement by such Mortgagee, Mortgagee must obtain reasonable approval of the Commissioner to assign the License to a new operator.

## ARTICLE 9

### PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES

(1) Licensee may not transfer, assign, or sublicense its interest in this Agreement, except as follows:

a. Licensee may, indirectly or directly, transfer, or assign up to forty – nine percent (49%) of its stock or interest in Licensee without prior approval of Licensor, provided Silvercup Studios Feeder, LLC, the direct owner of Licensee, remains in control of Licensee.

b. In the event Licensee intends to transfer more than 49% of its stock or interest in Licensee, the Licensee may request approval from the Commissioner of a transferee prior to, or upon finalizing the terms of a proposed agreement with such proposed transferee, to assign or transfer interest in the Premises to such proposed transferee. Licensee shall seek such approval of the Commissioner by submitting a written request including the financial and performance qualifications of such proposed assignee or transferee, together with either a general description of the proposed assignment or a draft of a final agreement. In no event shall Licensee transfer more than 49% of its stock or interest in Licensee without the Commissioner’s approval. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators, and such constraints are not intended to diminish Licensee’s interest in the Licensed Premises.

(2) In the event that Licensee chooses to assign or sublicense the management of the Licensed Premises to an unaffiliated party, Licensee shall obtain the approval of the Commissioner (which shall not be unreasonably withheld) by submitting a written request including proposed assignment or sublicense documents as provided herein. All sublicensees shall be subject to the same requirements as the Licensee. All terms and conditions of sublicense agreements, including provisions with respect to operations and payments to the City, are subject to the City’s prior

written approval. The Commissioner may request any additional information the Commissioner deems reasonably necessary, and Licensee shall promptly comply with such requests.

a. No consent to or approval of any assignment or sublicense granted pursuant to this Article 9 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

b. In the event that the City authorizes Licensee to enter into a sublicense for operations at the Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of the City. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this Concession Agreement and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this Concession Agreement and that it is bound by same. All provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation and maintenance of the Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with City directives and the provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation, and maintenance of the Premises, including, but not limited to, obtaining insurance required of Licensee under this Concession Agreement and indemnifying the City as set forth in Article 13 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this Concession Agreement, the City may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of the City which may not be unreasonably

withheld. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this Concession Agreement.

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

#### ARTICLE 10

##### CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL

(1) Licensee may not change or add to the Premises without the prior written consent of Licensor, which consent may be granted or denied by Licensor in its sole discretion. All permanent structures installed by Licensee, including, without limitation, trade fixtures, shall, at the option of Licensor, become the property of Licensor when attached to the Premises.

(2) Licensee may not attach any notice or sign in, to or outside of the Premises without obtaining Licensor's prior written consent. Advertising (other than in a form identifying Licensee with approval from Licensor is strictly prohibited.

(3) Licensee shall pay the entire cost of all work, labor and material in connection with all activities undertaken by it at the Premises, including but not limited to:

- a. Construction, use, maintenance and removal;
- b. The protection of all structures, including any bridge structures, which shall in any way be disturbed by the conduct of Permitted Activities;
- c. All changes in sewers or other subsurface structures necessitated by the conduct of Permitted Activities, including the laying or relaying of pipes, conduits, sewers or other structures;
- d. The replacing or restoring of the pavement in the Premises which may be disturbed during the conduct of Permitted Activities;

e. The inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any City, state or federal department having jurisdiction.

## ARTICLE 11

### PERMITS AND COMPLIANCE WITH LAWS

(1) Before the conduct of any Permitted Activities hereunder shall begin, Licensee shall obtain all permits which may be required by any City, state or federal department having jurisdiction. Licensee shall perform all lawful duties which may be imposed by any department as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Concession. Licensee shall submit to those departments working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

(2) The sale and/or service of alcohol at the Premises is strictly prohibited without the prior written approval of Licensor and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction.

(3) Upon the completion of the work, Licensee shall furnish to any department having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction and complete dimensions of any structure erected or installed pursuant to this Concession.

(4) Licensee shall comply with all applicable laws, rules, regulations and orders of City, state and federal authorities regarding the Premises and the use, occupancy and maintenance thereof, and with such other rules, regulations, orders, terms and conditions as may be set or required by Licensor.

(5) Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a concessionaire of the City of New York as set forth in the Earned Safe and Sick Leave Law Concession Agreement Rider annexed hereto as **Exhibit C**.

## ARTICLE 12

### INSURANCE

(1) Licensee's Obligation to Insure

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

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

(2) Commercial General Liability Insurance

a. The Licensee shall maintain Commercial General Liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least two million dollars (\$2,000,000.00). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Concession. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

b. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

(3) Workers' Compensation, Employers Liability, and Disability Benefits Insurance

a. The Licensee shall maintain workers' compensation insurance, employers liability insurance, and disability benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this Concession, and such insurance shall comply with the laws of the State of New York.

(4) Commercial Automobile Liability Insurance

a. With regard to all operations under this Concession, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles in connection with this agreement. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

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

(5) General Requirements for Insurance Coverage and Policies

a. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," or a Standard and Poor's rating of at least A, or a Moody's Investors Service rating of at least A3, or a Fitch Ratings 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 City Corporation Counsel.

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

c. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

e. All required policies, except for Workers' Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date,

except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

(6) Proof of Insurance

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

b. For Workers' Compensation, Employers Liability Insurance and Disability Benefits, insurance policies, the Licensee shall submit one of the following options:

i. Form C-105.2, Certificate of Workers' Compensation Insurance;

ii. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

iii. Form SI-12, Certificate of Workers' Compensation Self-Insurance;

iv. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

v. Form DB-120.1, Certificate of Disability Benefits Insurance;

vi. Form DB-155, Certificate of Disability Benefits Self-Insurance;

vii. Form CE-200 – Affidavit of Exemption;

viii. Other forms approved by the New York State Workers' Compensation Board.

c. For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits insurance, the Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include: (a) certificates of insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (b) the additional insured endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein; and (c) a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, attached hereto as **Exhibit C**.

d. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner as soon as practicable, but in no event more than 30 (thirty) days after the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

f. Licensee shall provide the City with a copy of any policy required under this Article only in the event of a claim against the City or its officials or employees that the City believes should be covered under such policy for which both the insurer has not provided the City or its officials or employees with a defense thereunder and Licensee

has failed to provide a defense and failed to indemnify the City or its officials or employees. Licensee may redact any information pertaining to Licensee's other insured properties that are unrelated to this License Agreement.

(7) Miscellaneous

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

b. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which it is are subject, whether or not the City is an insured under the policy.

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

Church Street, New York, New York 10007. If the Licensee fails to comply with the requirements of this paragraph, the Licensee shall indemnify the City, together with its officials and employees 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.

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

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

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

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

applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors. Such waiver shall apply except for damages or losses arising from the City's own intentional tortious acts or omissions.

h. In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Concession and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

i. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

### ARTICLE 13

#### RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE,

#### AND INDEMNIFICATION

(1) Licensee Responsibilities

a. The Licensee shall be responsible in relation to Licensor for the safety and protection of Licensee's employees, agents, servants, contractors, and subcontractors, and

for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

b. The Licensee shall be responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations undertaken by Licensee at the Premises pursuant to this Concession.

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

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

(2) Indemnification and Related Obligations

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

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

ARTICLE 14  
SECURITY DEPOSIT

(1) Upon execution hereof, Licensee shall deposit with the City of New York a sum equal to one month's License Fee [\$6,000] as its security deposit ("**Security Deposit**"), which sum shall be security for (a) the full, faithful, and prompt performance of and compliance with all obligations imposed upon Licensee hereunder and (b) the payment of all the sums of money (including taxes) which may be due the City pursuant to this agreement.

(2) The Security Deposit shall remain with the City throughout the Term of this License. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts. In the event that Licensee fully and completely performs all such obligations and timely makes all such payments, the City shall cause said sum to be returned to Licensee, with interest earned (if applicable), promptly thereafter.

(3) In the event that Licensee shall default in the performance of any such obligation or the making of any such payment, Licensor may apply the sum so deposited to the cost of performing such obligation or making of such payment on Licensee's behalf. Licensee's liability for such default shall in no event be limited to the amount of such security deposit and Licensee shall be and remain liable for any deficiency.

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

ARTICLE 15  
INVESTIGATIONS

(1) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or concession that is the subject of the investigation, audit or inquiry.

(2) If any person<sup>2</sup> who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(3) If any person<sup>3</sup> 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

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<sup>2</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

<sup>3</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

of, or performance under, any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision thereof or any local development corporation within the City, then:

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

b. If any nongovernmental party<sup>4</sup> 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 concession pending the final determination pursuant to Section 15.5 below without the City incurring any penalty or damages for delay or otherwise.

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

a. 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 concession with or from the City; and/or

b. The cancellation or termination of any and all such existing City contracts, leases, permits or concessions that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an

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<sup>4</sup> Officer or employee or Silvercup Studios, Feeder LLC or its subsidiaries

unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(5) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

a. 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.

b. 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.

c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or concessions with the City.

d. 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 Section 15.4 above, provided that the party or entity has given actual notice to the commissioner or

agency head upon the acquisition of the interest, or at the hearing called for in Section 15.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

e. The term “concession” or “permit” as used herein shall be defined as a concession, permit, franchise or concession not granted as a matter of right.

(6) 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.

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

(8) 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.

a. In addition to and notwithstanding any other provision of this Concession, the commissioner or agency head may in his or her sole discretion terminate this Concession upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Concession by the Licensee, or affecting the performance of this Concession.

## ARTICLE 16

### NO DISCRIMINATION

(1) Licensee shall not unlawfully discriminate against any person because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, state, or federal laws, rules or regulations. Licensee shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities. All advertising for employment by Licensee shall indicate that Licensee is an Equal Opportunity Employer.

(2) 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. (the “ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Licensee 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, Licensee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## ARTICLE 17

### NO CONFLICT OF INTEREST

(1) Licensee warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Concession and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Concession or the proceeds thereof.

ARTICLE 18

OTHER AGREEMENTS

(1) It is understood that all other agreements between the parties with respect to this Concession shall be superseded by this Concession and any obligations between the parties shall be determined solely by this Concession until such time as this Concession is superseded by another agreement.

ARTICLE 19

NOTICES

(1) Except as otherwise provided in this Concession, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Licensor:

Office of Cityscape & Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

To Licensee:

c/o Hackman Capital Partners, LLC  
4060 Ince Blvd.  
Culver City, CA 90232  
Attn: Legal Department

Greenberg Traurig  
Attn: Edward C. Wallace  
1 Vanderbilt Avenue  
New York, NY 10017

ARTICLE 20

WARRANTY

(1) Licensee warrants and represents that the undersigned signatory has full power and authority to enter into this agreement on behalf of Licensee and to bind Licensee to its terms. Licensor warrants and represents that Licensee has fulfilled all previous obligations in connection with these parcels including but not limited to the payment of fees.

ARTICLE 21

JURY WAIVER; WAIVER OF COUNTERCLAIM

(1) To the fullest extent permitted by law, the Licensee waives its right to a jury trial in any action, proceeding, or counterclaim brought by the City or by Licensor in any matter related to this License. In the event of any action or proceeding brought by the Licensor to recover possession of the Premises, Licensee waives its right to counterclaim or set off therein, which waiver shall survive the revocation or termination of this Concession.

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

(3) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within one (1) year of the termination or conclusion of this License, or within one (1) year after the accrual of the cause of action, whichever first occurs.

(4) In the event any claim is made, or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all reasonable assistance which the City of New York may reasonably require of Licensee. Notwithstanding the foregoing, the City shall be responsible for travel expenses if it requires the attendance of any employee or representative of the Licensee in person at a hearing, settlement meeting or similar event.

(5) No claim whatsoever shall be made by the Licensee against any officer, agent, or employee of the City for, or on account of, anything done or omitted in connection with this License, except with respect to criminal or intentional tortious conduct.

## ARTICLE 22

### POSSESSION

(1) In the event Licensor acknowledges that it is unable to give possession of the Premises on the date set forth in Article 2 herein, the License Fee shall not commence until possession has been given or is available, as determined by Licensor. Under such circumstances, Licensor shall not be subject to any liability for failure to give possession on such date and the validity of this Concession shall not be impaired and the Term shall not commence until a new Notice to Proceed is issued with a revised Commencement Date.

ARTICLE 23

RIGHT TO AUDIT

(1) Licensee shall make available to the office of the Comptroller of the City of New York and Licensor's auditor, on demand, all books, records, documents, and correspondence pertaining to the Concession, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or Licensor.

ARTICLE 24

ESTOPPEL CERTIFICATES

(1) At the request of Licensee made from time to time (but not more than twice a calendar year), the City shall, acting by DOT, furnish to Licensee within fifteen (15) business days after the date of the giving of such request, written confirmation from DOT that (i) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and setting forth the modifications), (ii) the dates through which payments under the Agreement have been made by Licensee, (iii) the City acknowledges that is aware that the certificate may be relied upon by Licensee, a purchaser of, or investor in, the Studios and/or its mortgagee, or lender, and (iv) that to the knowledge of DOT, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by Licensee under this Agreement (or, if there are such facts, excepting the same and briefly describing the default). In the event Licensor makes a request pursuant to this Article 24, Licensee shall use the template attached in Exhibit E.

ARTICLE 25

CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

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

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

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

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

(3) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might

otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

#### ARTICLE 26

#### DEVELOPMENT PURPOSES

(1) In the event that the Licensed Premises or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, Licensee is entitled to the termination fee and protections in Article 3(f).

#### ARTICLE 27

#### ENTIRE AGREEMENT

(1) 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.

#### ARTICLE 28

#### COUNTERPARTS

(1) This License may be executed in one or more counterparts which, when taken together shall constitute the entire agreement.

[Signatures on Following Page]

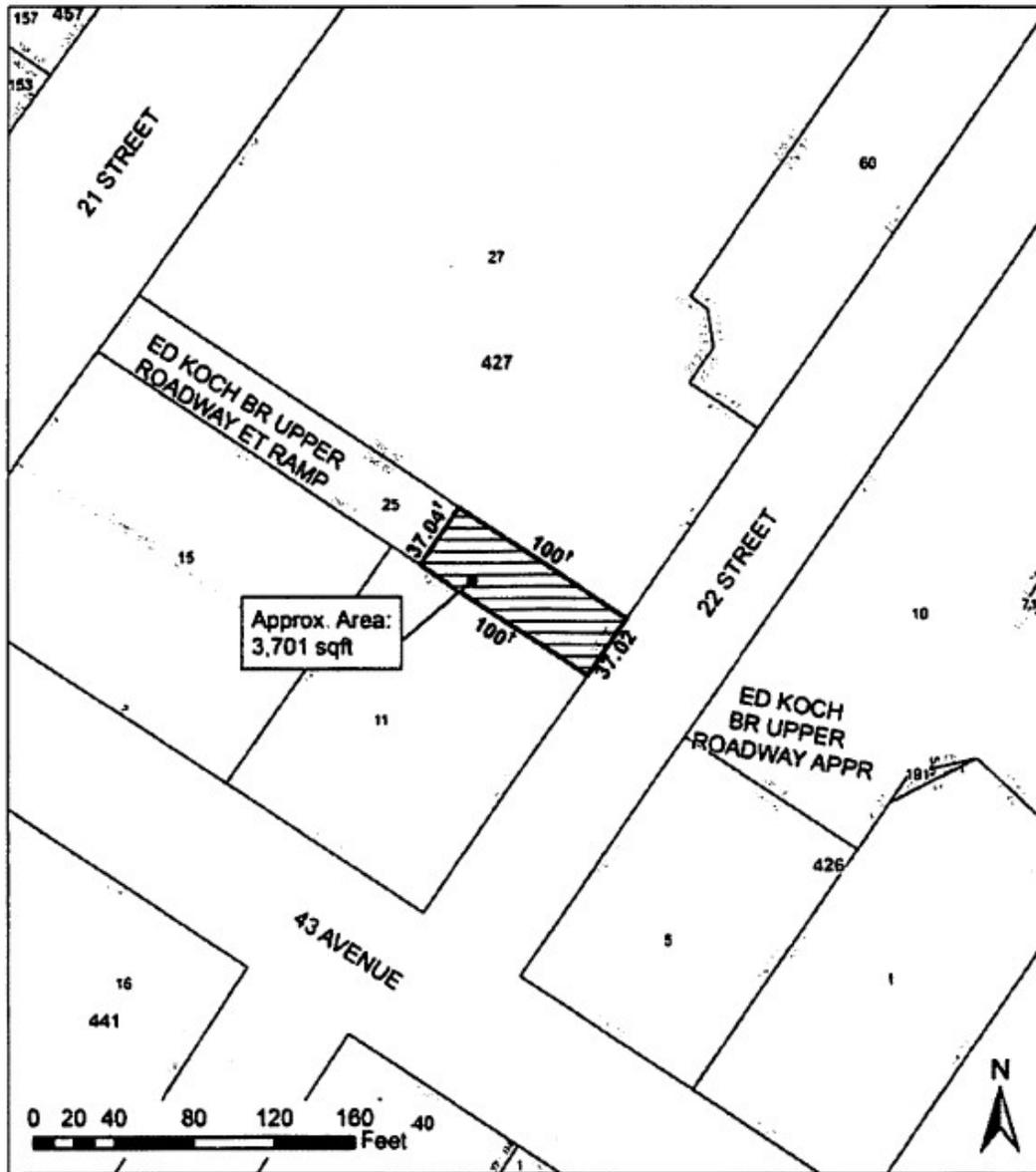




Exhibit "A"

PREMISES

QUEENS, BLOCK 427, PART OF LOT 25



**ALL MEASUREMENTS ARE APPROXIMATE AND NOT DRAWN TO SCALE**

**EXHIBIT “B”**

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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



**EXHIBIT “C”**  
**NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER**

A. *Introduction and General Provisions.*

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

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

3. The Licensee must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto: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 Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

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

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.<sup>5</sup> 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

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<sup>5</sup> 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.

the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

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

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

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

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

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

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

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

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

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

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

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

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

6. to enroll children in a new school; or

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

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

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

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

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

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

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

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

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

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and

sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT D: LICENSE FEE SCHEDULES**

<b>TERM YEAR</b>	<b>ANNUAL LICENSE FEE</b>
Year 1	\$72,000
Year 2	\$74,520
Year 3	\$77,128
Year 4	\$79,827
Year 5	\$82,621
Year 6	\$85,513
Year 7	\$88,506
Year 8	\$91,604
Year 9	\$94,810
Year 10	\$98,128
Years 11-20	Fair Market Value in accordance with Article 1(1)(f) and (g)

**EXHIBIT E: ESTOPPEL CERTIFICATE TEMPLATE**

\_\_\_\_\_, 20\_\_

To: [ ] (the “Licensee”) and [ ] (together with its successors and assigns, [“Lender”]/[“Buyer”])

Re: That certain Concession Agreement (the “Agreement”) dated [ ] between the City of New York (“City”), acting by its Department of Transportation (“Licensor” or “DOT”) and Licensee with respect to certain real property designated as Block [ ], Lot [ ] on the Tax Map of the Borough of Queens.

Pursuant to Article 24 of the Agreement, the City, acting by DOT, in its proprietary capacity as fee owner of the Premises Block [ ] Lot [ ], Borough of Queens, hereby acknowledges and certifies the following:

- (i) The Agreement is unmodified and in full force and effect and constitutes the entire agreement between Licensee and DOT with respect to the subject matter contained therein.
- (ii) Licensee has made payments under the Agreement through the following date: [ ].
- (iii) DOT is not holding any security deposit or guaranty under the Agreement except as set forth Article 14 of the Agreement.
- (iv) DOT has neither sent, nor received, a notice of any default under this Agreement.
- (v) To the knowledge of the undersigned, DOT, after reasonable review of its records, states with respect to the material obligations and covenants under the Agreement to be performed or observed: (a) no default exists under the Agreement, nor has any act or omission occurred that, solely with the passage of time or giving of notice or both, would constitute a default; and (b) no act or omission has occurred that, solely with the passage of time or giving of notice or both, would constitute grounds for termination by Licensor of the Agreement without payment of the Termination Fee (as defined in the Agreement).
- (vi) Licensor acknowledges that it is aware that this certificate will be relied upon by Licensee, a purchaser of, or investor in, the Licensee and/or its mortgagee, or lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The undersigned is duly authorized to execute this Estoppel Certificate.

THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
NAME  
TITLE

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) 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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located approximately 140 feet north of the north west corner of 43<sup>rd</sup> Avenue and 22nd Street in Queens (block 427, part of lot 25). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$72,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

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

4/16/2025

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

Title: City Chief Procurement Officer

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

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Silvercup Studios NY, LLC Concession ID 2024Con01

Description Sole source concession for Silvercup Studios for DOT parking lot located at the SE corner of Queens Plaza South and 22nd Street in Queens  Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Agency New York City Department of Transportation (DOT)

### Recommended Concessionaire

Name Silvercup Studios NY, LLC Telephone 718-906-2000  
Address 4060 Ince Boulevard  EIN or  SSN # 85-2551454  
Culver City, CA 90232  Not-for-Profit Organization  Certified M/WBE by SBS

### Recommended Concession Agreement Term

Initial Term Notice to Proceed to 20 years Concession Site(s)  Yes  No  
Renewal Option(s) none to \_\_\_\_\_ Address SE corner of Queens Plaza South  
\_\_\_\_\_ to \_\_\_\_\_ and 22nd Street in Queens  
Total Potential Term 20 years Borough 4 Community Board 2  
 >20 years – FCRC unanimously approved term on \_\_\_/\_\_\_/\_\_\_ Block# 426 Lot# 10

**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 add'l. 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 \_\_\_/\_\_\_/\_\_\_  
 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:  
Please see additional info sheet

### Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:  
Please see additional info sheet

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

### Public Hearing Requirements

(Only applicable for significant concessions)

**[IF REQUIRED] a public hearing was conducted on:** 04 / 14 / 2025

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 03 / 07 / 2025 (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 04 / 16 / 2025 (date of the FCRC public meeting)

Votes in favor:      Votes against:     

OR

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

Law Department approved concession agreement on:     /    /    

### Authorized Signatures

#### Agency Staff

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

#### Certificate of Procedural Requisites

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Chief Procurement Officer

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located at the SE corner of Queens Plaza South and 22nd Street in Queens **Agency** New York City Department of Transportation (DOT)

Block 426, lot 10 (4-426-10)

**Negotiation Requirements:**

Concessionaire has utilized the Licensed Premises for parking and storage purposes pursuant to a license agreement with the City of New York, acting by its Department of Citywide Administrative Services (DCAS). The license for these spaces commenced in October 2021, with a fee of \$5,000/month for each space. Upon expiration of its license with DCAS, in September 2022 Concessionaire continued negotiations with City Hall for a new agreement. Between July 2022 and November 2023, City Hall had multiple virtual calls and in-person meetings with representatives from the Concessionaire to discuss their plans for operation of the concession, future growth, and fair compensation to the City of New York. In March 2024, the FCRC authorized the New York City Department of Transportation (DOT) to negotiate a sole source concession agreement with Concessionaire. From March 2024 through February 2025, DOT, City Hall, and the Law Department negotiated the terms of the concession agreement, which provides for compensation to the City in the form of an increase license fee.

**Awards Requirements:**

It is in the City's best interest to enter into a sole source agreement with this concessionaire because the total negotiated value of blocks 426, 427, and 291 combined is only \$631 per month less than the most recent appraised value, a difference that could not be closed with a competitive process that would require substantial staff resources. NYC's film and television industry generated \$60B in direct economic activity for NYC, \$3B in tax revenue, and employed 100K people. The average job in the film/television production industry pays over \$100K and many jobs are unionized. Additionally, production activity supports over 2,000 small businesses in production-adjacent sectors (i.e. florists, food services, dry cleaners). During the historic 6-month entertainment union strikes in 2023, many businesses and employees who depend on filming suffered significant financial losses and the City is trying to support film-related businesses as they recover from the dual challenges of the Covid pandemic and strikes. Silvercup, whose sound stages are adjacent to these lots, is one of the largest sound stage operators in NYC with two locations in Queens and one in the Bronx. They directly employ 49 employees, half over 50 years old (Silvercup is recognized by Columbia University as an Age Smart Employer). Silvercup currently has seven productions using their facilities, which support approximately 1,400 employees.

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located at the SE corner of Queens Plaza South and 22nd Street in Queens **Agency** New York City Department of Transportation (DOT)

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Please see below fee schedule for the proposed sole source concession for the Licensed Premises. The fee schedule begins at \$360,000 per year and includes 3.5% annual escalations for years one through 10 of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

- o Annual Fee, Term Year 1:  
Block 426, Lot 10: \$360,000
- o Annual Fee, Term Year 2:  
Block 426, Lot 10: \$372,600
- o Annual Fee, Term Year 3:  
Block 426, Lot 10: \$385,641
- o Annual Fee, Term Year 4:  
Block 426, Lot 10: \$399,138
- o Annual Fee, Term Year 5:  
Block 426, Lot 10: \$413,108
- o Annual Fee, Term Year 6:  
Block 426, Lot 10: \$427,567
- o Annual Fee, Term Year 7:  
Block 426, Lot 10: \$442,532
- o Annual Fee, Term Year 8:  
Block 426, Lot 10: \$458,021
- o Annual Fee, Term Year 9:  
Block 426, Lot 10: \$474,052
- o Annual Fee, Term Year 10:  
Block 426, Lot 10: \$490,644



# NOTICE OF PUBLIC HEARING

**To:** Donovan Richards, Queens Borough President  
Debra Markell Kleinert, District Manager, Queens CB 2

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

**Subject:** Notice of Joint Public Hearing: 4/14/2025; For intent to award as a concession a Sole Source License Agreement (“License”) to Silvercup Studios NY, LLC for business accessory parking and storage activities at property under the jurisdiction of the New York City Department of Transportation that is located at SE corner of Queens Plaza South and 22nd Street in Queens (block 426, lot 10; the “Licensed Premises”).

**Date:** **3/28/2025**

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation (“DOT”) to be held on 4/14/2025, at 22 Reade Street, Spector Hall, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a License Agreement (“License”) to Silvercup Studios NY, Inc. for business accessory parking and storage activities at property under the jurisdiction of DOT located at SE corner of Queens Plaza South and 22nd Street in Queens (block 426, lot 10; the “Licensed Premises”).

The License provides for one 20-year term, commencing upon written Notice to Proceed.

Compensation to the City will be \$360,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

Written testimony may be submitted in advance of the hearing electronically to [fcrc@mocs.nyc.gov](mailto: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](mailto:concessions@dot.nyc.gov) from 3/28/2025 through 4/14/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10038. Written requests must be received by 4/7/2025. For mail-in requests, please include your name, return address, and Silvercup Studies NY, LLC Concession/2024Con01.

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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

**CONCESSION AGREEMENT**

**between**

**THE CITY OF NEW YORK  
DEPARTMENT TRANSPORTATION  
55 Water Street, 9<sup>th</sup> Floor  
New York, New York 10041**

**&**

**SILVERCUP STUDIOS NY, LLC  
4060 Ince Boulevard  
Culver City, CA 90232**

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**Premises:   Block 426, Lot 10, Borough of Queens  
Southeast Corner of Queens Plaza and 22<sup>nd</sup> Street, Queens, NY 11101  
Approximately 56,186 Square Feet**

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CONCESSION AGREEMENT

<u>ARTICLE</u>	<u>CAPTION</u>	<u>PAGE</u>
ARTICLE 1	GRANT OF LICENSE .....	5
ARTICLE 2	TERM .....	9
ARTICLE 3	TERMINATION OF CONCESSION.....	10
ARTICLE 4	PERMITTED ACTIVITIES .....	14
ARTICLE 5	MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES .....	15
ARTICLE 6	LICENSE FEE AND ADDITIONAL CHARGES .....	19
ARTICLE 7	LATE CHARGES/DISHONORED CHECKS .....	19
ARTICLE 8	FINANCING .....	20
ARTICLE 9	PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES.....	22
ARTICLE 10	CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL .....	25
ARTICLE 11	PERMITS AND COMPLIANCE WITH LAWS.....	26
ARTICLE 12	INSURANCE.....	27
ARTICLE 13	RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION .....	34
ARTICLE 14	SECURITY DEPOSIT.....	37
ARTICLE 15	INVESTIGATIONS .....	38
ARTICLE 16	NO DISCRIMINATION .....	42
ARTICLE 17	NO CONFLICT OF INTEREST .....	42
ARTICLE 18	OTHER AGREEMENTS .....	43
ARTICLE 19	NOTICES .....	43
ARTICLE 20	WARRANTY .....	44
ARTICLE 21	JURY WAIVER; WAIVER OF COUNTERCLAIM.....	44
ARTICLE 22	POSSESSION.....	45
ARTICLE 23	RIGHT TO AUDIT .....	46
ARTICLE 24	ESTOPPEL CERTIFICATES.....	46
ARTICLE 25	CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE.....	47
ARTICLE 26	DEVELOPMENT PURPOSES .....	48

ARTICLE 27 ENTIRE AGREEMENT.....48  
ARTICLE 28 COUNTERPARTS .....48

EXHIBIT - “A” – DIAGRAM

EXHIBIT – “B” – CERTIFICATION BY INSURANCE BROKER OR AGENT

EXHIBIT – “C” – EARNED SAFE AND SICK TIME ACT RIDER

EXHIBIT – “D” – LICENSE FEE SCHEDULES

EXHIBIT – “E” – ESTOPPEL CERTIFICATES

THIS CONCESSION AGREEMENT (the “**Concession**” or “**Agreement**” or “**License**” or “**License Agreement**”) is made and entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2025, by and between THE CITY OF NEW YORK, acting by its Department of Transportation (“**DOT**” or the “**Licensor**”), having its office at 55 Water Street, 9<sup>th</sup> Floor, New York, New York 10041, and SILVERCUP STUDIOS NY, LLC, having an address at 4060 Ince Boulevard, Culver City, CA, 90232 (the “**Licensee**”).

WITNESSETH:

WHEREAS, the City is the owner of, and DOT manages, the property located at Block, 426, Lot 10, Borough of Queens, New York (the “**Licensed Premises**” or “**Premises**”); and,

WHEREAS, Licensee has been in use of this parcel since 1982 which is, (together with certain other parcels occupied under similar agreements) an essential part of business operations for Silvercup Studios (“**Studios**”); and

WHEREAS, Licensee desires to continue entry upon and use of the Licensed Premises in order to continue to conduct business accessory parking and storage activities for Studios’ use, as more fully appears hereinafter, all in accordance with the applicable provisions of City, state, and federal law; and

WHEREAS, Licensor shall provide Licensee with access to the Licensed Premises for the purpose of conducting such activities for which it does not receive a specific third party payment, in exchange for the fees set forth hereinbelow; and

WHEREAS, the Franchise and Concession Review Committee (“**FCRC**”) of the City of New York has specifically authorized DOT to enter into a Sole Source Concession Agreement with Licensee;

WHEREAS, Licensee shall conduct all activities permitted hereunder with reasonable care and be responsible for, and shall indemnify, and hold the City harmless from, any damage to Licensor, third parties (including Licensee's agents, employees and invitees) and the Property resulting from such activities;

NOW, THEREFORE, it is agreed by and between the parties as follows:

ARTICLE 1

GRANT OF LICENSE

(1) Definitions. As used throughout this License, the following terms shall have the meanings set forth below:

a. **“Alteration”** shall mean (excepting ordinary repair and maintenance or otherwise required by this Agreement):

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

ii. 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 Premises; or

iii. any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.

b. **“City”** shall mean the City of New York, its departments, and political subdivisions.

c. **“Commissioner”** shall mean the Commissioner of the New York City Department of Transportation or his/her designee.

d. **“Comptroller”** shall mean the Comptroller of the City of New York.

e. **“Exigent Circumstances”** shall mean circumstances which cause the City to make a reasonable determination that due to an unsafe or emergency condition, the Licensed Premises must be vacant on a permanent basis.

f. **“Fair Market Value”** shall mean the fair market value of a license fee for the Premises taking into account the encumbrances on the parcel including but not limited to (i) the physical structures currently operated by DOT, (ii) the rights of DOT to have access to the lots as provided under this license and (iii) cost of comparable parking near the Premises with similar development and use restrictions in place. If the parties cannot agree on the Fair Market Value, it shall be determined by each party selecting a licensed real estate appraiser with at least 10 years of experience, who shall meet and confer and if they do not agree, the Fair Market Value shall be the average of the two appraisals, provided that, if the parties do not agree and if the two appraisals are more than 20% apart, the parties shall jointly select a third independent appraiser, whose Fair Market Value determination shall be binding and final.

g. **“License Fee”** shall mean the guaranteed minimum annual fees as set forth in Exhibit D. At the beginning of Year 10 of the Term, the License Fee will be reset based on a Fair Market Value appraisal for Year 11 and thereafter the License fee shall increase 3.5% annually for the remainder of the Term.

(2) Licensor hereby grants to Licensee and Licensee hereby accepts from DOT this License to enter upon and conduct the Permitted Activities (as defined in Article 4 below) upon:

Block 426 Lot 10, Borough of Queens, as shown in the diagram attached hereto as **Exhibit A**, referred to as the Licensed Premises or Premises. Licensee hereby accepts the Premises in its “as is” condition and will not at any time make any claim that the Premises or structures thereon were not delivered in suitable condition for the uses and purposes of this License. Licensor has not made, nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this License. The provision contained in this section that Licensee accepts the Premises “as is” relates to the condition of the Premises as they were when Licensee first entered into occupancy thereof, or on the commencement date of the Term (as defined below), whichever is earlier. Notwithstanding the foregoing, Licensee is not assuming liability for any condition caused heretofore by the Licensor.

(3) It is expressly understood that Licensee has no real property interest in the Premises and that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by DOT, but that during the Term of this License, Licensee shall have use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as every material term in this License is substantially complied with and provided this License is not otherwise terminated by DOT in accordance with the provisions of this License including provisions, if applicable, related to notice and cure.

(4) Licensee shall provide, on reasonable notice, full and free access to the Licensed Premises to the Commissioner of DOT (the “**Commissioner**”) or the Commissioner’s representatives and to other City, State and Federal officials or their representatives having jurisdiction for inspection purposes, and to confirm Licensee’s compliance with this License Agreement.

(5) DOT shall have access to the Licensed Premises on 5 business days' notice to conduct bridge-related work necessary to effectuate routine repairs and maintenance of the Ed Koch Queensboro Bridge and its related elements. DOT shall have access to the Licensed Premises upon reasonable notice as is practicable under the circumstances, to effectuate urgent or emergency repairs to the Ed Koch Queensboro Bridge and its related elements.

(6) The City reserves the right to perform safety, maintenance, or construction work deemed necessary by the City in the City's sole discretion at or throughout the Licensed Premises on reasonable advance notice at any time during the Term. Licensee agrees to cooperate with the City to accommodate any such work by the City and provide public and construction access through the Licensed Premises as deemed reasonably necessary by the City. The City shall use reasonable efforts to give Licensee at least 10 business days' notice of any such work and such work and access shall not unreasonably interfere with Licensee's operations or use of the Licensed Premises, except such notice shall not be required in the case of an emergency in which case the Licensee shall receive such notice as is practicable under the circumstances of the emergency. The City may (subject to the further provisions of this Agreement) temporarily close a part or all of the Licensed Premises for a reasonable City purpose as reasonably determined by the City. In the event that Licensee cannot operate in all or part of the Licensed Premises, then Licensee may propose and submit for the Commissioner's approval, which approval shall not be unreasonably delayed, a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for Licensee's property on the Licensed Premises during the Term, except the City shall be solely responsible for claims, damages, or injury caused by the City or its contractors or agents or permittees to the extent resulting from its use of or work in the Licensed Premises, except to the extent such claims,

damages and injury (including death) are caused by the negligence or intentional tortious acts or omissions of Licensee.

## ARTICLE 2

### TERM

(1) This Concession shall take effect upon DOT giving the Licensee a written notice to proceed following registration of the Concession in accordance with section 375 of the New York City Charter (the “**Notice to Proceed**”). The Term of the Concession shall commence upon the date in the Notice to Proceed (the “**Commencement Date**”) and shall terminate no later than twenty (20) years from the Commencement Date (the “**Termination Date**” or the “**Expiration Date**”). The period between the Commencement Date and Termination Date shall be the License term (the “**Term**”).

(2) At any time before the end of the Term, and, provided that the Licensee is not in default of its material obligations under this License, the Licensee may request an opportunity to negotiate with DOT regarding a new 20-year license agreement (“Future License Agreement”) to commence no later than the day following the last day of the Term (or such other day as the parties mutually agree to). The City shall, within thirty (30) days of receiving such request, commence discussions with Licensee, and shall negotiate in good faith to endeavor to reach agreement on a Future License Agreement, which shall be subject to all relevant mandatory City approval procedures, including, but not limited to, all FCRC requirements; notwithstanding the foregoing the City shall not be obligated to extend Licensee’s use of the premises if the parties cannot agree on the terms of a Future license Agreement. Upon the Expiration Date or any earlier revocation or termination in accordance with the provisions of this Agreement (including notice provisions), all rights of Licensee in said Premises by virtue of this Concession shall cease and terminate, and at

Licensor's request, Licensee shall remove its property and improvements from the Premises and return the Premises to its condition at the commencement of the Concession, reasonable wear and tear excepted. Any rights Licensor may have under this Concession and any laws, rules or regulations affecting the conduct of activities permitted hereunder and the restoration of the Premises shall survive the revocation or termination of this Concession.

### ARTICLE 3

#### TERMINATION OF CONCESSION

(1) Notwithstanding any language contained herein, this Concession is terminable at will by the City at any time (subject to the provisions of this Concession) for (i) cause, as described below, (ii) for Exigent Circumstances as defined herein, (iii) for convenience as provided herein provided that the City shall not terminate for convince in order to permit another commercial use within the first 10 years of the Term. Except in the case of Exigent Circumstances, such termination shall be effective after three hundred and sixty-five (365) days written notice to Licensee. In the event of a determination of Exigent Circumstances, the City may terminate this Concession with as much notice as such Exigent Circumstances reasonably allow, provided that in the event such Exigent Circumstances no longer exist, the Licensee shall have the right but not the obligation to reoccupy the Premises pursuant to this License Agreement for the remainder of the Term. If the City terminates for any reason other than cause or Exigent Circumstances, the City shall excuse Licensee from the requirement to pay the final six months of the then current Licensee Fees to the Licensor for the remainder of the Term. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee caused solely by the termination of this License provided the City simultaneously satisfies its termination obligations, if applicable.

Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have, by reason of the required notice, any real property interest in the Premises.

a. The City may terminate this Concession for cause as follows:

i. Should Licensee materially breach or fail to comply with any of the material provisions of this License or any federal, state, or local law, rule, regulation or order affecting this License or the Premises, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with receipt (as prescribed in Article 19 Section 1 of this Agreement) of such order within thirty (30) days subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order occurs within the same calendar year as the first breach or failure to comply, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

ii. The following shall constitute events of default for which this Concession may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit

of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which materially and substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

iii. Nothing contained in paragraphs (i) or (ii) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the City may terminate this License.

(2) Licensee agrees that upon the expiration or sooner termination of this Concession, it shall promptly cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take prompt possession of the Premises.

(3) In the event the City terminates this Concession for reasons related to Article 3 Section 1(a) above, any property of the Licensee (other than motor vehicles, trailers, and portable personal property) on the Premises may be held and used by the City until all indebtedness of the Licensee hereunder, at the time of termination of this Concession, is paid in full. Unless the City provides notice to the Licensee that it intends to hold such property, Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and leave the Premises in as good condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be

abandoned unless the City holds such property as set forth above. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement. The City may use the Security Deposit to recover such damages in part or in whole.

(4) If this Concession is terminated as provided in Article 3 Section 1(a) above:

a. The City may draw down on the Security Deposit to recover damages, if any;

b. Licensee shall pay to the City all fees payable under this Concession Agreement owed by Licensee to the City up to the Termination Date; and

c. The City may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Premises in such manner as the City may deem reasonably necessary or advisable without relieving Licensee of any liability under this Concession Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period.

(5) If this Concession is terminated as provided herein and, if applicable, the City has excused Licensee from its obligation to pay the License Fee payments for the final six months of the Term, (or upon the expiration of the Concession), the City may, without notice, re-enter and reoccupy the Premises using such reasonable force for that purpose as may be reasonably necessary without being liable to indictment, prosecution or damages and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

(6) No receipt of moneys by the City from Licensee after the termination of this Concession Agreement, or after the giving of any notice of the termination of this Concession

Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of the City to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of the City to recover possession of the Premises by proper remedy. After the service of written notice to terminate this Concession Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, the City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of the City, on account of Licensee's liability hereunder.

(7) Any and all obligations and/or liabilities of Licensee under this Concession accruing prior to the termination or revocation of this Concession shall survive the revocation or termination thereof.

#### ARTICLE 4

##### PERMITTED ACTIVITIES

(1) Licensee may enter upon and use the Premises only for the conduct of the following activities (hereinafter, the "**Permitted Activities**") and for no other purpose: business accessory parking and storage. Licensor makes no representation as to the legality of use of the Premises for the Licensee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction or governmental agency having jurisdiction (and, such declaration of illegality is non-appealable to any court) Licensee covenants and agrees that provided Licensor, its agents, officers, and employees, have had no knowledge of such illegality, then Licensor, its agents, officers, and employees, shall not be liable for any damages arising out of or related to

such unknown illegal use; and Licensee shall defend, indemnify, and hold harmless Licensor, including its officials and employees, against any liability or expense for such illegal use.

(2) Licensee shall not charge a specific user fee for use of the space.

(3) Licensee shall not use the Premises for the sale of tobacco or tobacco products, electronic cigarettes, non-tobacco smoking products, cannabis products, or for arcades, slot machines, gambling establishment of any kind, game rooms, billiard halls, gun sales or repair shops, pornography or physical culture establishments of any kind, or for discotheques or cabarets.

(4) Licensee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules and regulations of all federal, state and municipal bodies having jurisdiction.

(5) Notwithstanding any provision to the contrary, Licensee may include the use of the Licensed Premises in its agreements with its customers and prospective customers.

## ARTICLE 5

### MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES

(1) Licensee shall, at its sole cost and expense (or through arrangements with third parties), maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the Licensed Premises.

(2) Licensee shall be responsible, at its sole cost and expense, for clean-up and removal of all snow, waste, garbage, refuse, rubbish, weeds, and litter from the Licensed Premises. Snow and ice shall be removed from the entire Licensed Premises, including surrounding sidewalks, within a reasonable period of time. 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.

(3) Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may Licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(4) Licensee shall maintain and repair the perimeter fencing surrounding the Licensed Premises. Licensee shall not park any vehicles or devices on the sidewalks surrounding the Licensed Premises and shall use commercially reasonable efforts not to allow third parties to do the same.

(5) Licensee, at its sole cost and expense, shall maintain and make any necessary repairs to the Licensed Premises within 72 hours of Licensee's knowledge of occurrence of a necessary repair. If such repairs cannot be completed within 72 hours, as reasonably determined by DOT, Licensee shall commence such repairs or clean-up within 72 hours of occurrence and proceed with due diligence in carrying out the repairs or clean-up until they are completed.

(6) Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

(7) At request of the City, Licensee shall prepare and provide to DOT operational status reports and reports of any incidents that result in an internal written report or police report occurring at the Licensed Premises. The City may request such reports on a quarterly basis. Licensee shall promptly notify DOT, in writing, of any written claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify

DOT in writing as to said person's name, telephone number, and address within thirty (30) days of the date of the Notice to Proceed.

(8) Should DOT, in its sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises that was not caused by the City or DOT, after written notification, Licensee shall have 72 hours to correct such unsafe or emergency condition. DOT will use the list of contact information, provided and updated on a bi-annual basis by the Licensee, to call in case of an emergency. During any period where DOT determines that an unsafe or emergency condition exists on the Licensed Premises not caused by the City or DOT, DOT may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify DOT in writing and indicate the period within which such condition shall be corrected. DOT, in its sole reasonable discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

(9) Licensee may alter the Licensed Premises only in accordance with the requirements of Article 5 Section (10) below. Alterations shall become property of City, at its option, upon their attachment, installation, or affixing.

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

- a. obtain DOT's written approval (which shall not be unreasonably delayed) for contemplated purchases and/or work;
- b. ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in a good and workmanlike manner, and within a reasonable time; and

c. notify DOT of completion of any Alteration within thirty (30) days after completion and final payment.

(11) Upon installation, and absent any separate agreement, title to all Alterations made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at the conclusion of the Term. To the extent the City chooses not to exercise its option with respect to any of the Alterations made to the Licensed Premises, Licensee shall remove such Alterations and restore the Licensed Premises to DOT's satisfaction to the condition at the commencement of the Term at the sole cost and expense of Licensee.

(12) DOT may, in its discretion, make or cause to make additions, alterations, repairs, decorations or improvements to Licensed Premises at the City's expense that do not materially interfere with Licensee's use of the Premises, but nothing 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 Licensee's obligation herein in any respect. DOT will coordinate with Licensee and provide reasonable notice to Licensee of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such additions, alterations, repairs, decorations, or improvements to be made by DOT at such times as will cause the least interference with Licensee's operations.

13) Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, flammable materials, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

ARTICLE 6

LICENSE FEE AND ADDITIONAL CHARGES

(1) Licensee shall pay to the City License Fees for each Operating Year<sup>1</sup> consisting of the guaranteed minimum annual fees set forth in **Exhibit D, “License Fee Schedules.”**

(2) The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the schedule set forth in Exhibit D, “License Fee Schedules”. Each monthly payment is due and payable regardless of whether Licensee has received a bill for it from DOT.

(3) Licensee shall pay to Licensor as additional charges such other items identified in this Concession as additional charges.

ARTICLE 7

LATE CHARGES/DISHONORED CHECKS

(1) If Licensee fails to pay any Licensee Fee and/or any additional charge in full by the fifteenth (15<sup>th</sup>) day from any due date, Licensor, at its sole discretion, may impose a late payment charge equal to two percent (2%) of any fees/charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an additional charge. Licensor’s failure to immediately demand a late payment charge shall not waive Licensor’s right to collect it at a later date.

(2) In the event that any payment by check is not honored the first time it is presented for payment, Licensee shall make that payment by certified or bank check unless otherwise indicated by Licensor in writing. Nothing contained herein, however, shall be deemed to prevent Licensor from holding Licensee in default under this Concession for the dishonor of any of

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<sup>1</sup> “Operating Year” shall refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

Licensee's checks. Licensee must pay Licensor a fee of twenty (\$20.00) dollars for each dishonored check, which fee shall be collectible as an additional charge.

## ARTICLE 8

### FINANCING

(1) Provided the License is in full force and effect, Licensee shall have the right to mortgage or pledge this License and Licensee's interest therein to an "Institutional Mortgagee," as hereinafter provided. Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have any real property interest in the Premises.

(2) Notwithstanding anything to the contrary, the execution and delivery of any Mortgage shall not be deemed to constitute an assignment or transfer of this License nor shall the holder of any Mortgage, as such, be deemed an assignee or transferee of this License so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Licensee to be performed hereunder.

(3) For the purpose of this License, unless the context otherwise requires:

a. **"Mortgage"** means a mortgage covering Licensee's interest herein and /or a pledge of the direct or indirect ownership of License, including a construction or building loan, a permanent mortgage loan, a combination thereof, and any replacement, renewal, modification, consolidation and extension thereof.

b. **"Mortgagee"** means the holder of a Mortgage.

c. **"Institutional Mortgage"** means a Mortgage or other financing instrument, the holder of which is a bank, savings bank, trust company, savings and loan association (state or federal), real estate investment trust, mortgage REIT, finance company, subsidiary of a Fortune 500 company, investment bank, foundation, endowment fund, insurance

company, union, pension, retirement or debt or welfare fund, or an education, scientific or religious society regularly engaged in making loans, including a Mortgage held by a bank or trust company as trustees for the benefit of bond or debenture holders.

d. **“Institutional Mortgagee”** means the holder of an Institutional Mortgage.

(4) Provided this License is in full force and effect, Licensee shall have the right during the Term of this License at any time and from time to time, without limitation as to amount and on any terms the Licensee may deem desirable, to mortgage this License and Licensee’s interest herein under a Mortgage or Mortgages and to assign this License and existing or future sublicense agreements and fees thereunder to an Mortgagee as additional collateral security for the payment of the Mortgage indebtedness, provided that:

a. Each such mortgage shall be with an Institutional Mortgagee (or with a non-Institutional Mortgagee, with the prior written consent of the Commissioner, which consent shall not be unreasonably withheld, conditioned, or delayed), and if such consent is given any such non-Institutional Mortgage shall have all rights granted to an Institutional Mortgagee under this Section;

b. Each such Mortgage shall provide that there be no subordination of the City’s underlying real property interest in the Licensed Premises including any improvements made thereon; and

c. A true copy of each Mortgage, together with the Mortgagee’s mailing address, shall be delivered to City in the manner herein provided for the giving of notice to DOT within fourteen (14) days after receiving a copy of each such Mortgage.

(5) With respect to any Mortgage, DOT covenants that the following shall apply:

a. When giving notice of termination to Licensee under the provisions of this License the City shall work in good faith to accommodate requests from Mortgagees and use reasonable efforts to deliver a copy of each such notice upon each Mortgagee of whom it has received prior notice as provided in this Article.

b. In case Licensee defaults under any of the provisions of this License, each Mortgagee shall have the right to make good such default, whether same consists of a failure to pay fees or failure to perform any other act, matter or thing which Licensee is required to do or perform; and the City shall accept such performance on the part of such Mortgagee as though same had been done or performed by Licensee.

c. In case of any default by Licensee other than the payment of money hereunder, Mortgagee shall have the right to either:

i. to cause Licensee to cure the default; or

ii. to obtain permission from City to cure such default which is susceptible of being cured in a manner reasonably acceptable to the City.

d. A Mortgagee enforcing the provisions of its Mortgage, shall prosecute such enforcement with reasonable diligence, and upon completion of such enforcement by such Mortgagee, Mortgagee must obtain reasonable approval of the Commissioner to assign the License to a new operator.

## ARTICLE 9

### PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES

(1) Licensee may not transfer, assign, or sublicense its interest in this Agreement, except as follows:

a. Licensee may, indirectly or directly, transfer, or assign up to forty – nine percent (49%) of its stock or interest in Licensee without prior approval of Licensor, provided Silvercup Studios Feeder, LLC, the direct owner of Licensee, remains in control of Licensee.

b. In the event Licensee intends to transfer more than 49% of its stock or interest in Licensee, the Licensee may request approval from the Commissioner of a transferee prior to, or upon finalizing the terms of a proposed agreement with such proposed transferee, to assign or transfer interest in the Premises to such proposed transferee. Licensee shall seek such approval of the Commissioner by submitting a written request including the financial and performance qualifications of such proposed assignee or transferee, together with either a general description of the proposed assignment or a draft of a final agreement. In no event shall Licensee transfer more than 49% of its stock or interest in Licensee without the Commissioner’s approval. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators, and such constraints are not intended to diminish Licensee’s interest in the Licensed Premises.

(2) In the event that Licensee chooses to assign or sublicense the management of the Licensed Premises to an unaffiliated party, Licensee shall obtain the approval of the Commissioner (which shall not be unreasonably withheld) by submitting a written request including proposed assignment or sublicense documents as provided herein. All sublicensees shall be subject to the same requirements as the Licensee. All terms and conditions of sublicense agreements, including provisions with respect to operations and payments to the City, are subject to the City’s prior

written approval. The Commissioner may request any additional information the Commissioner deems reasonably necessary, and Licensee shall promptly comply with such requests.

a. No consent to or approval of any assignment or sublicense granted pursuant to this Article 9 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

b. In the event that the City authorizes Licensee to enter into a sublicense for operations at the Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of the City. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this Concession Agreement and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this Concession Agreement and that it is bound by same. All provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation and maintenance of the Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with City directives and the provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation, and maintenance of the Premises, including, but not limited to, obtaining insurance required of Licensee under this Concession Agreement and indemnifying the City as set forth in Article 13 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this Concession Agreement, the City may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of the City which may not be unreasonably

withheld. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this Concession Agreement.

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

#### ARTICLE 10

##### CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL

(1) Licensee may not change or add to the Premises without the prior written consent of Licensor, which consent may be granted or denied by Licensor in its sole discretion. All permanent structures installed by Licensee, including, without limitation, trade fixtures, shall, at the option of Licensor, become the property of Licensor when attached to the Premises.

(2) Licensee may not attach any notice or sign in, to or outside of the Premises without obtaining Licensor's prior written consent. Advertising (other than in a form identifying Licensee with approval from Licensor is strictly prohibited.

(3) Licensee shall pay the entire cost of all work, labor and material in connection with all activities undertaken by it at the Premises, including but not limited to:

- a. Construction, use, maintenance and removal;
- b. The protection of all structures, including any bridge structures, which shall in any way be disturbed by the conduct of Permitted Activities;
- c. All changes in sewers or other subsurface structures necessitated by the conduct of Permitted Activities, including the laying or relaying of pipes, conduits, sewers or other structures;
- d. The replacing or restoring of the pavement in the Premises which may be disturbed during the conduct of Permitted Activities;

e. The inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any City, state or federal department having jurisdiction.

## ARTICLE 11

### PERMITS AND COMPLIANCE WITH LAWS

(1) Before the conduct of any Permitted Activities hereunder shall begin, Licensee shall obtain all permits which may be required by any City, state or federal department having jurisdiction. Licensee shall perform all lawful duties which may be imposed by any department as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Concession. Licensee shall submit to those departments working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

(2) The sale and/or service of alcohol at the Premises is strictly prohibited without the prior written approval of Licensor and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction.

(3) Upon the completion of the work, Licensee shall furnish to any department having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction and complete dimensions of any structure erected or installed pursuant to this Concession.

(4) Licensee shall comply with all applicable laws, rules, regulations and orders of City, state and federal authorities regarding the Premises and the use, occupancy and maintenance thereof, and with such other rules, regulations, orders, terms and conditions as may be set or required by Licensor.

(5) Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a concessionaire of the City of New York as set forth in the Earned Safe and Sick Leave Law Concession Agreement Rider annexed hereto as **Exhibit C**.

## ARTICLE 12

### INSURANCE

(1) Licensee's Obligation to Insure

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

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

(2) Commercial General Liability Insurance

a. The Licensee shall maintain Commercial General Liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least two million dollars (\$2,000,000.00). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Concession. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

b. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

(3) Workers' Compensation, Employers Liability, and Disability Benefits Insurance

a. The Licensee shall maintain workers' compensation insurance, employers liability insurance, and disability benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this Concession, and such insurance shall comply with the laws of the State of New York.

(4) Commercial Automobile Liability Insurance

a. With regard to all operations under this Concession, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles in connection with this agreement. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

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

(5) General Requirements for Insurance Coverage and Policies

a. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," or a Standard and Poor's rating of at least A, or a Moody's Investors Service rating of at least A3, or a Fitch Ratings 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 City Corporation Counsel.

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

c. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

e. All required policies, except for Workers' Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date,

except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

(6) Proof of Insurance

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

b. For Workers' Compensation, Employers Liability Insurance and Disability Benefits, insurance policies, the Licensee shall submit one of the following options:

i. Form C-105.2, Certificate of Workers' Compensation Insurance;

ii. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

iii. Form SI-12, Certificate of Workers' Compensation Self-Insurance;

iv. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

v. Form DB-120.1, Certificate of Disability Benefits Insurance;

vi. Form DB-155, Certificate of Disability Benefits Self-Insurance;

vii. Form CE-200 – Affidavit of Exemption;

viii. Other forms approved by the New York State Workers' Compensation Board.

c. For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits insurance, the Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include: (a) certificates of insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (b) the additional insured endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein; and (c) a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, attached hereto as **Exhibit C**.

d. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner as soon as practicable, but in no event more than 30 (thirty) days after the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

f. Licensee shall provide the City with a copy of any policy required under this Article only in the event of a claim against the City or its officials or employees that the City believes should be covered under such policy for which both the insurer has not provided the City or its officials or employees with a defense thereunder and Licensee

has failed to provide a defense and failed to indemnify the City or its officials or employees. Licensee may redact any information pertaining to Licensee's other insured properties that are unrelated to this License Agreement.

(7) Miscellaneous

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

b. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which it is subject, whether or not the City is an insured under the policy.

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

Church Street, New York, New York 10007. If the Licensee fails to comply with the requirements of this paragraph, the Licensee shall indemnify the City, together with its officials and employees 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.

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

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

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

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

applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors. Such waiver shall apply except for damages or losses arising from the City's own intentional tortious acts or omissions.

h. In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Concession and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

i. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

### ARTICLE 13

#### RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE,

#### AND INDEMNIFICATION

(1) Licensee Responsibilities

a. The Licensee shall be responsible in relation to Licensor for the safety and protection of Licensee's employees, agents, servants, contractors, and subcontractors, and

for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

b. The Licensee shall be responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations undertaken by Licensee at the Premises pursuant to this Concession.

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

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

(2) Indemnification and Related Obligations

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

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

ARTICLE 14  
SECURITY DEPOSIT

(1) Upon execution hereof, Licensee shall deposit with the City of New York a sum equal to one month's License Fee [\$30,000] as its security deposit ("**Security Deposit**"), which sum shall be security for (a) the full, faithful, and prompt performance of and compliance with all obligations imposed upon Licensee hereunder and (b) the payment of all the sums of money (including taxes) which may be due the City pursuant to this agreement.

(2) The Security Deposit shall remain with the City throughout the Term of this License. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts. In the event that Licensee fully and completely performs all such obligations and timely makes all such payments, the City shall cause said sum to be returned to Licensee, with interest earned (if applicable), promptly thereafter.

(3) In the event that Licensee shall default in the performance of any such obligation or the making of any such payment, Licensor may apply the sum so deposited to the cost of performing such obligation or making of such payment on Licensee's behalf. Licensee's liability for such default shall in no event be limited to the amount of such security deposit and Licensee shall be and remain liable for any deficiency.

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

ARTICLE 15  
INVESTIGATIONS

(1) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or concession that is the subject of the investigation, audit or inquiry.

(2) If any person<sup>2</sup> who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(3) If any person<sup>3</sup> 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

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<sup>2</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

<sup>3</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

of, or performance under, any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision thereof or any local development corporation within the City, then:

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

b. If any nongovernmental party<sup>4</sup> 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 concession pending the final determination pursuant to Section 15.5 below without the City incurring any penalty or damages for delay or otherwise.

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

a. 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 concession with or from the City; and/or

b. The cancellation or termination of any and all such existing City contracts, leases, permits or concessions that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an

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<sup>4</sup> Officer or employee or Silvercup Studios, Feeder LLC or its subsidiaries

unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(5) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

a. 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.

b. 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.

c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or concessions with the City.

d. 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 Section 15.4 above, provided that the party or entity has given actual notice to the commissioner or

agency head upon the acquisition of the interest, or at the hearing called for in Section 15.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

e. The term “concession” or “permit” as used herein shall be defined as a concession, permit, franchise or concession not granted as a matter of right.

(6) 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.

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

(8) 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.

a. In addition to and notwithstanding any other provision of this Concession, the commissioner or agency head may in his or her sole discretion terminate this Concession upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Concession by the Licensee, or affecting the performance of this Concession.

## ARTICLE 16

### NO DISCRIMINATION

(1) Licensee shall not unlawfully discriminate against any person because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, state, or federal laws, rules or regulations. Licensee shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities. All advertising for employment by Licensee shall indicate that Licensee is an Equal Opportunity Employer.

(2) 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. (the “ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Licensee 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, Licensee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## ARTICLE 17

### NO CONFLICT OF INTEREST

(1) Licensee warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Concession and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Concession or the proceeds thereof.

ARTICLE 18

OTHER AGREEMENTS

(1) It is understood that all other agreements between the parties with respect to this Concession shall be superseded by this Concession and any obligations between the parties shall be determined solely by this Concession until such time as this Concession is superseded by another agreement.

ARTICLE 19

NOTICES

(1) Except as otherwise provided in this Concession, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Licensor:

Office of Cityscape & Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

To Licensee:

c/o Hackman Capital Partners, LLC  
4060 Ince Blvd.  
Culver City, CA 90232  
Attn: Legal Department

Greenberg Traurig  
Attn: Edward C. Wallace  
1 Vanderbilt Avenue  
New York, NY 10017

ARTICLE 20

WARRANTY

(1) Licensee warrants and represents that the undersigned signatory has full power and authority to enter into this agreement on behalf of Licensee and to bind Licensee to its terms. Licensor warrants and represents that Licensee has fulfilled all previous obligations in connection with these parcels including but not limited to the payment of fees.

ARTICLE 21

JURY WAIVER; WAIVER OF COUNTERCLAIM

(1) To the fullest extent permitted by law, the Licensee waives its right to a jury trial in any action, proceeding, or counterclaim brought by the City or by Licensor in any matter related to this License. In the event of any action or proceeding brought by the Licensor to recover possession of the Premises, Licensee waives its right to counterclaim or set off therein, which waiver shall survive the revocation or termination of this Concession.

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

(3) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within one (1) year of the termination or conclusion of this License, or within one (1) year after the accrual of the cause of action, whichever first occurs.

(4) In the event any claim is made, or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all reasonable assistance which the City of New York may reasonably require of Licensee. Notwithstanding the foregoing, the City shall be responsible for travel expenses if it requires the attendance of any employee or representative of the Licensee in person at a hearing, settlement meeting or similar event.

(5) No claim whatsoever shall be made by the Licensee against any officer, agent, or employee of the City for, or on account of, anything done or omitted in connection with this License, except with respect to criminal or intentional tortious conduct.

## ARTICLE 22

### POSSESSION

(1) In the event Licensor acknowledges that it is unable to give possession of the Premises on the date set forth in Article 2 herein, the License Fee shall not commence until possession has been given or is available, as determined by Licensor. Under such circumstances, Licensor shall not be subject to any liability for failure to give possession on such date and the validity of this Concession shall not be impaired and the Term shall not commence until a new Notice to Proceed is issued with a revised Commencement Date.

## ARTICLE 23

### RIGHT TO AUDIT

(1) Licensee shall make available to the office of the Comptroller of the City of New York and Licensor's auditor, on demand, all books, records, documents, and correspondence pertaining to the Concession, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or Licensor.

## ARTICLE 24

### ESTOPPEL CERTIFICATES

(1) At the request of Licensee made from time to time (but not more than twice a calendar year), the City shall, acting by DOT, furnish to Licensee within fifteen (15) business days after the date of the giving of such request, written confirmation from DOT that (i) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and setting forth the modifications), (ii) the dates through which payments under the Agreement have been made by Licensee, (iii) the City acknowledges that is aware that the certificate may be relied upon by Licensee, a purchaser of, or investor in, the Studios and/or its mortgagee, or lender, and (iv) that to the knowledge of DOT, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by Licensee under this Agreement (or, if there are such facts, excepting the same and briefly describing the default). In the event Licensor makes a request pursuant to this Article 24, Licensee shall use the template attached in Exhibit E.

ARTICLE 25

CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

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

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

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

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

(3) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might

otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

#### ARTICLE 26

#### DEVELOPMENT PURPOSES

(1) In the event that the Licensed Premises or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, Licensee is entitled to the termination fee and protections in Article 3(f).

#### ARTICLE 27

#### ENTIRE AGREEMENT

(1) 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.

#### ARTICLE 28

#### COUNTERPARTS

(1) This License may be executed in one or more counterparts which, when taken together shall constitute the entire agreement.

[Signatures on Following Page]

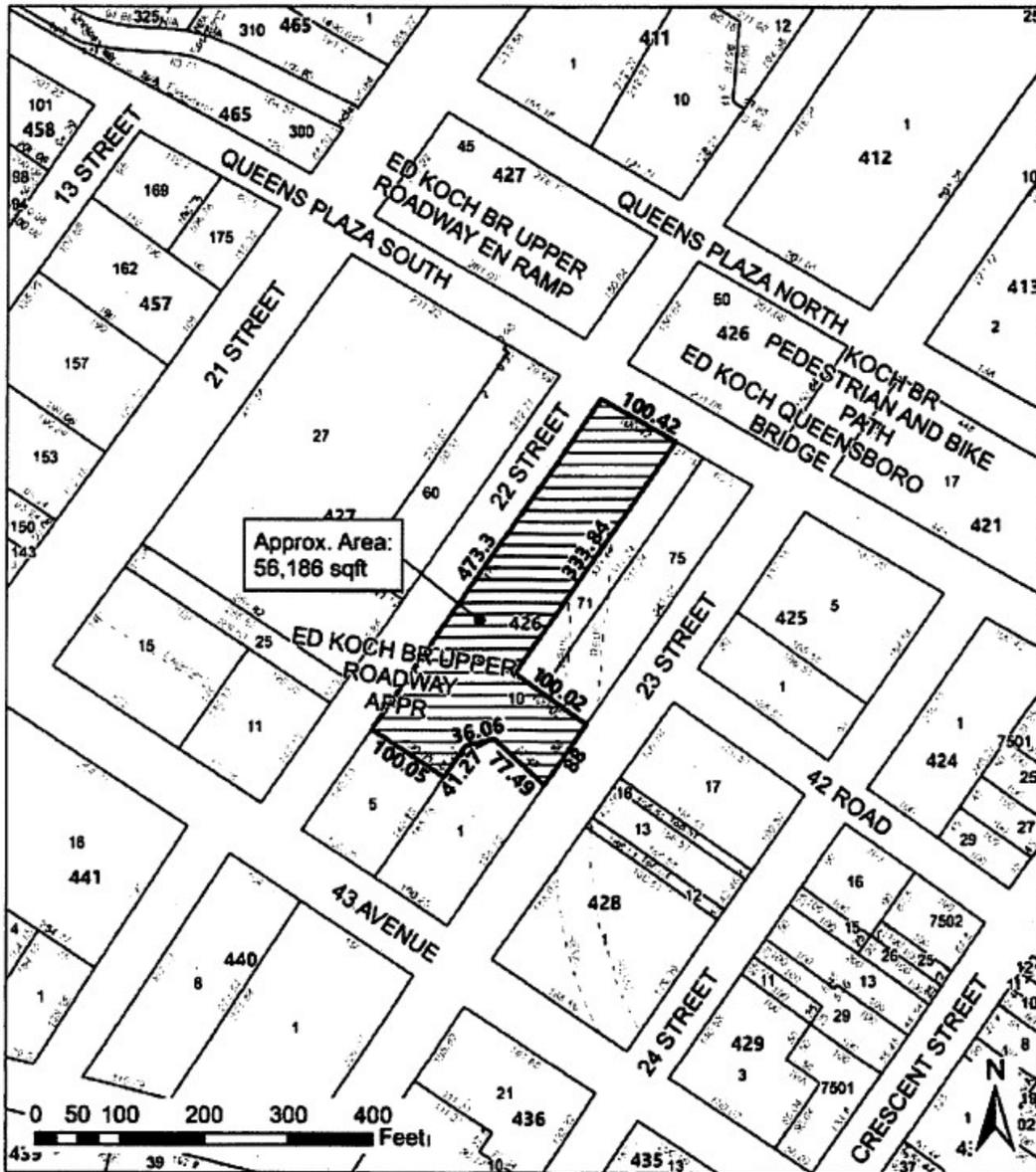




Exhibit "A"

PREMISES

QUEENS, BLOCK 426, LOT 10



**ALL MEASUREMENTS ARE APPROXIMATE AND NOT DRAWN TO SCALE**

**EXHIBIT “B”**

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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



**EXHIBIT “C”**  
**NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER**

A. *Introduction and General Provisions.*

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

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

3. The Licensee must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto: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 Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

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

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.<sup>5</sup> 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

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<sup>5</sup> 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.

the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

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

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

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

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

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

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

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

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

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

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

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

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

6. to enroll children in a new school; or

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

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

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

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

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

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

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

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

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

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and

sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT D: LICENSE FEE SCHEDULES**

<b>TERM YEAR</b>	<b>ANNUAL LICENSE FEE</b>
Year 1	\$360,000
Year 2	\$372,600
Year 3	\$385,641
Year 4	\$399,138
Year 5	\$413,108
Year 6	\$427,567
Year 7	\$442,532
Year 8	\$458,021
Year 9	\$474,052
Year 10	\$490,644
Years 11-20	Fair Market Value in accordance with Article 1(1)(f) and (g)

**EXHIBIT E: ESTOPPEL CERTIFICATE TEMPLATE**

\_\_\_\_\_, 20\_\_

To: [ ] (the “Licensee”) and [ ] (together with its successors and assigns, [“Lender”]/[“Buyer”])

Re: That certain Concession Agreement (the “Agreement”) dated [ ] between the City of New York (“City”), acting by its Department of Transportation (“Licensor” or “DOT”) and Licensee with respect to certain real property designated as Block [ ], Lot [ ] on the Tax Map of the Borough of Queens.

Pursuant to Article 24 of the Agreement, the City, acting by DOT, in its proprietary capacity as fee owner of the Premises Block [ ] Lot [ ], Borough of Queens, hereby acknowledges and certifies the following:

- (i) The Agreement is unmodified and in full force and effect and constitutes the entire agreement between Licensee and DOT with respect to the subject matter contained therein.
- (ii) Licensee has made payments under the Agreement through the following date: [ ].
- (iii) DOT is not holding any security deposit or guaranty under the Agreement except as set forth Article 14 of the Agreement.
- (iv) DOT has neither sent, nor received, a notice of any default under this Agreement.
- (v) To the knowledge of the undersigned, DOT, after reasonable review of its records, states with respect to the material obligations and covenants under the Agreement to be performed or observed: (a) no default exists under the Agreement, nor has any act or omission occurred that, solely with the passage of time or giving of notice or both, would constitute a default; and (b) no act or omission has occurred that, solely with the passage of time or giving of notice or both, would constitute grounds for termination by Licensor of the Agreement without payment of the Termination Fee (as defined in the Agreement).
- (vi) Licensor acknowledges that it is aware that this certificate will be relied upon by Licensee, a purchaser of, or investor in, the Licensee and/or its mortgagee, or lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The undersigned is duly authorized to execute this Estoppel Certificate.

THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
NAME  
TITLE

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) 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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located at South East corner of Queens Plaza South and 22nd Street in Queens (block 426, lot 10). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$360,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

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

4/16/2025

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

Title: City Chief Procurement Officer

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

# Rule 1-16: Different Procedure

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Silvercup Studios NY, LLC Concession ID 2024Con01

Description Sole source concession for Silvercup Studios for DOT parking lot located at Queens Plaza South between 22nd and 23rd Streets in Queens  Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Agency New York City Department of Transportation (DOT)

### Recommended Concessionaire

Name Silvercup Studios NY, LLC Telephone 718-906-2000  
Address 4060 Ince Boulevard  EIN or  SSN # 85-2551454  
Culver City, CA 90232  Not-for-Profit Organization  Certified M/WBE by SBS

### Recommended Concession Agreement Term

Initial Term Notice to Proceed to 20 years Concession Site(s)  Yes  No  
Renewal Option(s) none to \_\_\_\_\_ Address Queens Plaza South between  
\_\_\_\_\_ to \_\_\_\_\_ 22nd and 23rd Streets in Queens  
Total Potential Term 20 years Borough 4 Community Board 2  
 >20 years – FCRC unanimously approved term on \_\_\_/\_\_\_/\_\_\_ Block# 426 Lot# 71

**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 add'l. 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 \_\_\_/\_\_\_/\_\_\_  
 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:  
Please see additional info sheet

### Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:  
Please see additional info sheet

## Concession Agreement Recommendation For Award Memorandum Cover Sheet

### Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 04 / 14 / 2025

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 03 / 07 / 2025 (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 04 / 16 / 2025 (date of the FCRC public meeting)

Votes in favor:      Votes against:     

OR

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

Law Department approved concession agreement on:      /      /     

### Authorized Signatures

#### Agency Staff

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

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

#### Certificate of Procedural Requisites

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Chief Procurement Officer

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located at Queens Plaza South between 22nd and 23rd Streets in Queens **Agency** New York City Department of Transportation (DOT)

Block 426, lot 71 (4-426-71)

**Negotiation Requirements:**

Concessionaire has utilized the Licensed Premises for parking and storage purposes pursuant to a license agreement with the City of New York, acting by its Department of Citywide Administrative Services (DCAS). The license for these spaces commenced in October 2021, with a fee of \$5,000/month for each space. Upon expiration of its license with DCAS, in September 2022 Concessionaire continued negotiations with City Hall for a new agreement. Between July 2022 and November 2023, City Hall had multiple virtual calls and in-person meetings with representatives from the Concessionaire to discuss their plans for operation of the concession, future growth, and fair compensation to the City of New York. In March 2024, the FCRC authorized the New York City Department of Transportation (DOT) to negotiate a sole source concession agreement with Concessionaire. From March 2024 through February 2025, DOT, City Hall, and the Law Department negotiated the terms of the concession agreement, which provides for compensation to the City in the form of an increase license fee.

**Awards Requirements:**

It is in the City's best interest to enter into a sole source agreement with this concessionaire because the total negotiated value of blocks 426, 427, and 291 combined is only \$631 per month less than the most recent appraised value, a difference that could not be closed with a competitive process that would require substantial staff resources. NYC's film and television industry generated \$60B in direct economic activity for NYC, \$3B in tax revenue, and employed 100K people. The average job in the film/television production industry pays over \$100K and many jobs are unionized. Additionally, production activity supports over 2,000 small businesses in production-adjacent sectors (i.e. florists, food services, dry cleaners). During the historic 6-month entertainment union strikes in 2023, many businesses and employees who depend on filming suffered significant financial losses and the City is trying to support film-related businesses as they recover from the dual challenges of the Covid pandemic and strikes. Silvercup, whose sound stages are adjacent to these lots, is one of the largest sound stage operators in NYC with two locations in Queens and one in the Bronx. They directly employ 49 employees, half over 50 years old (Silvercup is recognized by Columbia University as an Age Smart Employer). Silvercup currently has seven productions using their facilities, which support approximately 1,400 employees.

Silvercup Studios NY, LLC

2024Con01

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Sole source concession for Silvercup Studios for DOT parking lot located at Queens Plaza South between 22nd and 23rd Streets in Queens **Agency** New York City Department of Transportation (DOT)

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Please see below fee schedule for the proposed sole source concession for the Licensed Premises. The fee schedule begins at \$108,000 per year and includes 3.5% annual escalations for years one through 10 of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

- o Annual Fee, Term Year 1:  
Block 426, Lot 71: \$108,000
- o Annual Fee, Term Year 2:  
Block 426, Lot 71: \$111,780
- o Annual Fee, Term Year 3:  
Block 426, Lot 71: \$115,692
- o Annual Fee, Term Year 4:  
Block 426, Lot 71: \$119,741
- o Annual Fee, Term Year 5:  
Block 426, Lot 71: \$123,932
- o Annual Fee, Term Year 6:  
Block 426, Lot 71: \$128,270
- o Annual Fee, Term Year 7:  
Block 426, Lot 71: \$132,759
- o Annual Fee, Term Year 8:  
Block 426, Lot 71: \$137,406
- o Annual Fee, Term Year 9:  
Block 426, Lot 71: \$142,215
- o Annual Fee, Term Year 10:  
Block 426, Lot 71: \$147,193



# NOTICE OF PUBLIC HEARING

**To:** Donovan Richards, Queens Borough President  
Debra Markell Kleinert, District Manager, Queens CB 2

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

**Subject:** Notice of Joint Public Hearing: 4/14/2025; For intent to award as a concession a Sole Source License Agreement (“License”) to Silvercup Studios NY, LLC for business accessory parking and storage activities at property under the jurisdiction of the New York City Department of Transportation located at Queens Plaza South between 22nd and 23rd Streets in Queens (block 426, lot 71; the “Licensed Premises”).

**Date:** **3/28/2025**

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Department of Transportation (“DOT”) to be held on 4/14/2025, at 22 Reade Street, Spector Hall, New York, NY 10007 commencing at 2:30pm relative to:

INTENT TO AWARD as a concession a License Agreement (“License”) to Silvercup Studios NY, Inc. for business accessory parking and storage activities at property under the jurisdiction of DOT located at Queens Plaza South between 22nd and 23rd Streets in Queens (block 426, lot 71; the “Licensed Premises”).

The License provides for one 20-year term, commencing upon written Notice to Proceed.

Compensation to the City will be \$108,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

Written testimony may be submitted in advance of the hearing electronically to [fcrc@mocs.nyc.gov](mailto: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](mailto:concessions@dot.nyc.gov) from 3/28/2025 through 4/14/2025.
2. Submit a written request by mail to Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10038. Written requests must be received by 4/7/2025. For mail-in requests, please include your name, return address, and Silvercup Studies NY, LLC Concession/2024Con01.

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](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

**CONCESSION AGREEMENT**

**between**

**THE CITY OF NEW YORK  
DEPARTMENT TRANSPORTATION  
55 Water Street, 9<sup>th</sup> Floor  
New York, New York 10041**

**&**

**SILVERCUP STUDIOS NY, LLC  
4060 Ince Boulevard  
Culver City, CA 90232**

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**Premises:   Block 426, Lot 71, Borough of Queens  
Queens Plaza South between 22<sup>nd</sup> and 23<sup>rd</sup> Streets, Queens, NY 11101  
Approximately 12,587 Square Feet**

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CONCESSION AGREEMENT

<u>ARTICLE</u>	<u>CAPTION</u>	<u>PAGE</u>
ARTICLE 1	GRANT OF LICENSE .....	5
ARTICLE 2	TERM .....	9
ARTICLE 3	TERMINATION OF CONCESSION.....	10
ARTICLE 4	PERMITTED ACTIVITIES .....	14
ARTICLE 5	MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES .....	15
ARTICLE 6	LICENSE FEE AND ADDITIONAL CHARGES .....	19
ARTICLE 7	LATE CHARGES/DISHONORED CHECKS .....	19
ARTICLE 8	FINANCING .....	20
ARTICLE 9	PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES.....	22
ARTICLE 10	CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL .....	25
ARTICLE 11	PERMITS AND COMPLIANCE WITH LAWS.....	26
ARTICLE 12	INSURANCE.....	27
ARTICLE 13	RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION .....	34
ARTICLE 14	SECURITY DEPOSIT.....	37
ARTICLE 15	INVESTIGATIONS .....	38
ARTICLE 16	NO DISCRIMINATION .....	42
ARTICLE 17	NO CONFLICT OF INTEREST .....	42
ARTICLE 18	OTHER AGREEMENTS .....	43
ARTICLE 19	NOTICES .....	43
ARTICLE 20	WARRANTY .....	44
ARTICLE 21	JURY WAIVER; WAIVER OF COUNTERCLAIM.....	44
ARTICLE 22	POSSESSION.....	45
ARTICLE 23	RIGHT TO AUDIT .....	46
ARTICLE 24	ESTOPPEL CERTIFICATES.....	46
ARTICLE 25	CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE.....	47
ARTICLE 26	DEVELOPMENT PURPOSES .....	48

ARTICLE 27 ENTIRE AGREEMENT.....48  
ARTICLE 28 COUNTERPARTS .....48

EXHIBIT - “A” – DIAGRAM

EXHIBIT – “B” – CERTIFICATION BY INSURANCE BROKER OR AGENT

EXHIBIT – “C” – EARNED SAFE AND SICK TIME ACT RIDER

EXHIBIT – “D” – LICENSE FEE SCHEDULES

EXHIBIT – “E” – ESTOPPEL CERTIFICATES

THIS CONCESSION AGREEMENT (the “**Concession**” or “**Agreement**” or “**License**” or “**License Agreement**”) is made and entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2025, by and between THE CITY OF NEW YORK, acting by its Department of Transportation (“**DOT**” or the “**Licensor**”), having its office at 55 Water Street, 9<sup>th</sup> Floor, New York, New York 10041, and SILVERCUP STUDIOS NY, LLC, having an address at 4060 Ince Boulevard, Culver City, CA, 90232 (the “**Licensee**”).

WITNESSETH:

WHEREAS, the City is the owner of, and DOT manages, the property located at Block, 426, Lot 71, Borough of Queens, New York (the “**Licensed Premises**” or “**Premises**”); and,

WHEREAS, Licensee has been in use of this parcel since 1982 which is, (together with certain other parcels occupied under similar agreements) an essential part of business operations for Silvercup Studios (“**Studios**”); and

WHEREAS, Licensee desires to continue entry upon and use of the Licensed Premises in order to continue to conduct business accessory parking and storage activities for Studios’ use, as more fully appears hereinafter, all in accordance with the applicable provisions of City, state, and federal law; and

WHEREAS, Licensor shall provide Licensee with access to the Licensed Premises for the purpose of conducting such activities for which it does not receive a specific third party payment, in exchange for the fees set forth hereinbelow; and

WHEREAS, the Franchise and Concession Review Committee (“**FCRC**”) of the City of New York has specifically authorized DOT to enter into a Sole Source Concession Agreement with Licensee;

WHEREAS, Licensee shall conduct all activities permitted hereunder with reasonable care and be responsible for, and shall indemnify, and hold the City harmless from, any damage to Licensor, third parties (including Licensee's agents, employees and invitees) and the Property resulting from such activities;

NOW, THEREFORE, it is agreed by and between the parties as follows:

ARTICLE 1

GRANT OF LICENSE

(1) Definitions. As used throughout this License, the following terms shall have the meanings set forth below:

a. **“Alteration”** shall mean (excepting ordinary repair and maintenance or otherwise required by this Agreement):

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

ii. 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 Premises; or

iii. any work, excluding ordinary maintenance and repair, affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.

b. **“City”** shall mean the City of New York, its departments, and political subdivisions.

c. **“Commissioner”** shall mean the Commissioner of the New York City Department of Transportation or his/her designee.

d. **“Comptroller”** shall mean the Comptroller of the City of New York.

e. **“Exigent Circumstances”** shall mean circumstances which cause the City to make a reasonable determination that due to an unsafe or emergency condition, the Licensed Premises must be vacant on a permanent basis.

f. **“Fair Market Value”** shall mean the fair market value of a license fee for the Premises taking into account the encumbrances on the parcel including but not limited to (i) the physical structures currently operated by DOT, (ii) the rights of DOT to have access to the lots as provided under this license and (iii) cost of comparable parking near the Premises with similar development and use restrictions in place. If the parties cannot agree on the Fair Market Value, it shall be determined by each party selecting a licensed real estate appraiser with at least 10 years of experience, who shall meet and confer and if they do not agree, the Fair Market Value shall be the average of the two appraisals, provided that, if the parties do not agree and if the two appraisals are more than 20% apart, the parties shall jointly select a third independent appraiser, whose Fair Market Value determination shall be binding and final.

g. **“License Fee”** shall mean the guaranteed minimum annual fees as set forth in Exhibit D. At the beginning of Year 10 of the Term, the License Fee will be reset based on a Fair Market Value appraisal for Year 11 and thereafter the License fee shall increase 3.5% annually for the remainder of the Term.

(2) Licensor hereby grants to Licensee and Licensee hereby accepts from DOT this License to enter upon and conduct the Permitted Activities (as defined in Article 4 below) upon:

Block 426 Lot 71, Borough of Queens, as shown in the diagram attached hereto as **Exhibit A**, referred to as the Licensed Premises or Premises. Licensee hereby accepts the Premises in its “as is” condition and will not at any time make any claim that the Premises or structures thereon were not delivered in suitable condition for the uses and purposes of this License. Licensor has not made, nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting this License. The provision contained in this section that Licensee accepts the Premises “as is” relates to the condition of the Premises as they were when Licensee first entered into occupancy thereof, or on the commencement date of the Term (as defined below), whichever is earlier. Notwithstanding the foregoing, Licensee is not assuming liability for any condition caused heretofore by the Licensor.

(3) It is expressly understood that Licensee has no real property interest in the Premises and that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by DOT, but that during the Term of this License, Licensee shall have use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as every material term in this License is substantially complied with and provided this License is not otherwise terminated by DOT in accordance with the provisions of this License including provisions, if applicable, related to notice and cure.

(4) Licensee shall provide, on reasonable notice, full and free access to the Licensed Premises to the Commissioner of DOT (the “**Commissioner**”) or the Commissioner’s representatives and to other City, State and Federal officials or their representatives having jurisdiction for inspection purposes, and to confirm Licensee’s compliance with this License Agreement.

(5) DOT shall have access to the Licensed Premises on 5 business days' notice to conduct bridge-related work necessary to effectuate routine repairs and maintenance of the Ed Koch Queensboro Bridge and its related elements. DOT shall have access to the Licensed Premises upon reasonable notice as is practicable under the circumstances, to effectuate urgent or emergency repairs to the Ed Koch Queensboro Bridge and its related elements.

(6) The City reserves the right to perform safety, maintenance, or construction work deemed necessary by the City in the City's sole discretion at or throughout the Licensed Premises on reasonable advance notice at any time during the Term. Licensee agrees to cooperate with the City to accommodate any such work by the City and provide public and construction access through the Licensed Premises as deemed reasonably necessary by the City. The City shall use reasonable efforts to give Licensee at least 10 business days' notice of any such work and such work and access shall not unreasonably interfere with Licensee's operations or use of the Licensed Premises, except such notice shall not be required in the case of an emergency in which case the Licensee shall receive such notice as is practicable under the circumstances of the emergency. The City may (subject to the further provisions of this Agreement) temporarily close a part or all of the Licensed Premises for a reasonable City purpose as reasonably determined by the City. In the event that Licensee cannot operate in all or part of the Licensed Premises, then Licensee may propose and submit for the Commissioner's approval, which approval shall not be unreasonably delayed, a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for Licensee's property on the Licensed Premises during the Term, except the City shall be solely responsible for claims, damages, or injury caused by the City or its contractors or agents or permittees to the extent resulting from its use of or work in the Licensed Premises, except to the extent such claims,

damages and injury (including death) are caused by the negligence or intentional tortious acts or omissions of Licensee.

## ARTICLE 2

### TERM

(1) This Concession shall take effect upon DOT giving the Licensee a written notice to proceed following registration of the Concession in accordance with section 375 of the New York City Charter (the “**Notice to Proceed**”). The Term of the Concession shall commence upon the date in the Notice to Proceed (the “**Commencement Date**”) and shall terminate no later than twenty (20) years from the Commencement Date (the “**Termination Date**” or the “**Expiration Date**”). The period between the Commencement Date and Termination Date shall be the License term (the “**Term**”).

(2) At any time before the end of the Term, and, provided that the Licensee is not in default of its material obligations under this License, the Licensee may request an opportunity to negotiate with DOT regarding a new 20-year license agreement (“Future License Agreement”) to commence no later than the day following the last day of the Term (or such other day as the parties mutually agree to). The City shall, within thirty (30) days of receiving such request, commence discussions with Licensee, and shall negotiate in good faith to endeavor to reach agreement on a Future License Agreement, which shall be subject to all relevant mandatory City approval procedures, including, but not limited to, all FCRC requirements; notwithstanding the foregoing the City shall not be obligated to extend Licensee’s use of the premises if the parties cannot agree on the terms of a Future license Agreement. Upon the Expiration Date or any earlier revocation or termination in accordance with the provisions of this Agreement (including notice provisions), all rights of Licensee in said Premises by virtue of this Concession shall cease and terminate, and at

Licensor's request, Licensee shall remove its property and improvements from the Premises and return the Premises to its condition at the commencement of the Concession, reasonable wear and tear excepted. Any rights Licensor may have under this Concession and any laws, rules or regulations affecting the conduct of activities permitted hereunder and the restoration of the Premises shall survive the revocation or termination of this Concession.

### ARTICLE 3

#### TERMINATION OF CONCESSION

(1) Notwithstanding any language contained herein, this Concession is terminable at will by the City at any time (subject to the provisions of this Concession) for (i) cause, as described below, (ii) for Exigent Circumstances as defined herein, (iii) for convenience as provided herein provided that the City shall not terminate for convince in order to permit another commercial use within the first 10 years of the Term. Except in the case of Exigent Circumstances, such termination shall be effective after three hundred and sixty-five (365) days written notice to Licensee. In the event of a determination of Exigent Circumstances, the City may terminate this Concession with as much notice as such Exigent Circumstances reasonably allow, provided that in the event such Exigent Circumstances no longer exist, the Licensee shall have the right but not the obligation to reoccupy the Premises pursuant to this License Agreement for the remainder of the Term. If the City terminates for any reason other than cause or Exigent Circumstances, the City shall excuse Licensee from the requirement to pay the final six months of the then current Licensee Fees to the Licensor for the remainder of the Term. The Commissioner, the City, its employees, and agents shall not be liable for damages to Licensee caused solely by the termination of this License provided the City simultaneously satisfies its termination obligations, if applicable.

Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have, by reason of the required notice, any real property interest in the Premises.

a. The City may terminate this Concession for cause as follows:

i. Should Licensee materially breach or fail to comply with any of the material provisions of this License or any federal, state, or local law, rule, regulation or order affecting this License or the Premises, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with receipt (as prescribed in Article 19 Section 1 of this Agreement) of such order within thirty (30) days subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order occurs within the same calendar year as the first breach or failure to comply, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

ii. The following shall constitute events of default for which this Concession may be terminated on one (1) days' written notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit

of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which materially and substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

iii. Nothing contained in paragraphs (i) or (ii) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which the City may terminate this License.

(2) Licensee agrees that upon the expiration or sooner termination of this Concession, it shall promptly cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take prompt possession of the Premises.

(3) In the event the City terminates this Concession for reasons related to Article 3 Section 1(a) above, any property of the Licensee (other than motor vehicles, trailers, and portable personal property) on the Premises may be held and used by the City until all indebtedness of the Licensee hereunder, at the time of termination of this Concession, is paid in full. Unless the City provides notice to the Licensee that it intends to hold such property, Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and leave the Premises in as good condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be

abandoned unless the City holds such property as set forth above. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement. The City may use the Security Deposit to recover such damages in part or in whole.

(4) If this Concession is terminated as provided in Article 3 Section 1(a) above:

a. The City may draw down on the Security Deposit to recover damages, if any;

b. Licensee shall pay to the City all fees payable under this Concession Agreement owed by Licensee to the City up to the Termination Date; and

c. The City may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Premises in such manner as the City may deem reasonably necessary or advisable without relieving Licensee of any liability under this Concession Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period.

(5) If this Concession is terminated as provided herein and, if applicable, the City has excused Licensee from its obligation to pay the License Fee payments for the final six months of the Term, (or upon the expiration of the Concession), the City may, without notice, re-enter and reoccupy the Premises using such reasonable force for that purpose as may be reasonably necessary without being liable to indictment, prosecution or damages and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

(6) No receipt of moneys by the City from Licensee after the termination of this Concession Agreement, or after the giving of any notice of the termination of this Concession

Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of the City to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of the City to recover possession of the Premises by proper remedy. After the service of written notice to terminate this Concession Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, the City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of the City, on account of Licensee's liability hereunder.

(7) Any and all obligations and/or liabilities of Licensee under this Concession accruing prior to the termination or revocation of this Concession shall survive the revocation or termination thereof.

#### ARTICLE 4

##### PERMITTED ACTIVITIES

(1) Licensee may enter upon and use the Premises only for the conduct of the following activities (hereinafter, the "**Permitted Activities**") and for no other purpose: business accessory parking and storage. Licensor makes no representation as to the legality of use of the Premises for the Licensee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction or governmental agency having jurisdiction (and, such declaration of illegality is non-appealable to any court) Licensee covenants and agrees that provided Licensor, its agents, officers, and employees, have had no knowledge of such illegality, then Licensor, its agents, officers, and employees, shall not be liable for any damages arising out of or related to

such unknown illegal use; and Licensee shall defend, indemnify, and hold harmless Licensor, including its officials and employees, against any liability or expense for such illegal use.

(2) Licensee shall not charge a specific user fee for use of the space.

(3) Licensee shall not use the Premises for the sale of tobacco or tobacco products, electronic cigarettes, non-tobacco smoking products, cannabis products, or for arcades, slot machines, gambling establishment of any kind, game rooms, billiard halls, gun sales or repair shops, pornography or physical culture establishments of any kind, or for discotheques or cabarets.

(4) Licensee shall carry out all Permitted Activities hereunder in accordance with all applicable laws, orders, rules and regulations of all federal, state and municipal bodies having jurisdiction.

(5) Notwithstanding any provision to the contrary, Licensee may include the use of the Licensed Premises in its agreements with its customers and prospective customers.

## ARTICLE 5

### MAINTENANCE, REPAIR, AND ALTERATION OF LICENSED PREMISES

(1) Licensee shall, at its sole cost and expense (or through arrangements with third parties), maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the Licensed Premises.

(2) Licensee shall be responsible, at its sole cost and expense, for clean-up and removal of all snow, waste, garbage, refuse, rubbish, weeds, and litter from the Licensed Premises. Snow and ice shall be removed from the entire Licensed Premises, including surrounding sidewalks, within a reasonable period of time. 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.

(3) Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may Licensee use a baiting system for pest control or extermination. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(4) Licensee shall maintain and repair the perimeter fencing surrounding the Licensed Premises. Licensee shall not park any vehicles or devices on the sidewalks surrounding the Licensed Premises and shall use commercially reasonable efforts not to allow third parties to do the same.

(5) Licensee, at its sole cost and expense, shall maintain and make any necessary repairs to the Licensed Premises within 72 hours of Licensee's knowledge of occurrence of a necessary repair. If such repairs cannot be completed within 72 hours, as reasonably determined by DOT, Licensee shall commence such repairs or clean-up within 72 hours of occurrence and proceed with due diligence in carrying out the repairs or clean-up until they are completed.

(6) Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

(7) At request of the City, Licensee shall prepare and provide to DOT operational status reports and reports of any incidents that result in an internal written report or police report occurring at the Licensed Premises. The City may request such reports on a quarterly basis. Licensee shall promptly notify DOT, in writing, of any written claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify

DOT in writing as to said person's name, telephone number, and address within thirty (30) days of the date of the Notice to Proceed.

(8) Should DOT, in its sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises that was not caused by the City or DOT, after written notification, Licensee shall have 72 hours to correct such unsafe or emergency condition. DOT will use the list of contact information, provided and updated on a bi-annual basis by the Licensee, to call in case of an emergency. During any period where DOT determines that an unsafe or emergency condition exists on the Licensed Premises not caused by the City or DOT, DOT may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify DOT in writing and indicate the period within which such condition shall be corrected. DOT, in its sole reasonable discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

(9) Licensee may alter the Licensed Premises only in accordance with the requirements of Article 5 Section (10) below. Alterations shall become property of City, at its option, upon their attachment, installation, or affixing.

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

- a. obtain DOT's written approval (which shall not be unreasonably delayed) for contemplated purchases and/or work;
- b. ensure that work performed, and Alterations made on the Licensed Premises are undertaken and completed in a good and workmanlike manner, and within a reasonable time; and

c. notify DOT of completion of any Alteration within thirty (30) days after completion and final payment.

(11) Upon installation, and absent any separate agreement, title to all Alterations made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at the conclusion of the Term. To the extent the City chooses not to exercise its option with respect to any of the Alterations made to the Licensed Premises, Licensee shall remove such Alterations and restore the Licensed Premises to DOT's satisfaction to the condition at the commencement of the Term at the sole cost and expense of Licensee.

(12) DOT may, in its discretion, make or cause to make additions, alterations, repairs, decorations or improvements to Licensed Premises at the City's expense that do not materially interfere with Licensee's use of the Premises, but nothing 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 Licensee's obligation herein in any respect. DOT will coordinate with Licensee and provide reasonable notice to Licensee of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such additions, alterations, repairs, decorations, or improvements to be made by DOT at such times as will cause the least interference with Licensee's operations.

13) Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, flammable materials, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

ARTICLE 6

LICENSE FEE AND ADDITIONAL CHARGES

(1) Licensee shall pay to the City License Fees for each Operating Year<sup>1</sup> consisting of the guaranteed minimum annual fees set forth in **Exhibit D, “License Fee Schedules.”**

(2) The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the schedule set forth in Exhibit D, “License Fee Schedules”. Each monthly payment is due and payable regardless of whether Licensee has received a bill for it from DOT.

(3) Licensee shall pay to Licensor as additional charges such other items identified in this Concession as additional charges.

ARTICLE 7

LATE CHARGES/DISHONORED CHECKS

(1) If Licensee fails to pay any Licensee Fee and/or any additional charge in full by the fifteenth (15<sup>th</sup>) day from any due date, Licensor, at its sole discretion, may impose a late payment charge equal to two percent (2%) of any fees/charges due, but not less than a minimum charge of ten dollars (\$10.00). Such late payment charge shall be compounded monthly and shall be collectible as an additional charge. Licensor’s failure to immediately demand a late payment charge shall not waive Licensor’s right to collect it at a later date.

(2) In the event that any payment by check is not honored the first time it is presented for payment, Licensee shall make that payment by certified or bank check unless otherwise indicated by Licensor in writing. Nothing contained herein, however, shall be deemed to prevent Licensor from holding Licensee in default under this Concession for the dishonor of any of

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<sup>1</sup> “Operating Year” shall refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

Licensee's checks. Licensee must pay Licensor a fee of twenty (\$20.00) dollars for each dishonored check, which fee shall be collectible as an additional charge.

## ARTICLE 8

### FINANCING

(1) Provided the License is in full force and effect, Licensee shall have the right to mortgage or pledge this License and Licensee's interest therein to an "Institutional Mortgagee," as hereinafter provided. Notwithstanding the provisions of this Article and for the avoidance of any doubt, Licensee shall not have any real property interest in the Premises.

(2) Notwithstanding anything to the contrary, the execution and delivery of any Mortgage shall not be deemed to constitute an assignment or transfer of this License nor shall the holder of any Mortgage, as such, be deemed an assignee or transferee of this License so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Licensee to be performed hereunder.

(3) For the purpose of this License, unless the context otherwise requires:

a. **"Mortgage"** means a mortgage covering Licensee's interest herein and /or a pledge of the direct or indirect ownership of License, including a construction or building loan, a permanent mortgage loan, a combination thereof, and any replacement, renewal, modification, consolidation and extension thereof.

b. **"Mortgagee"** means the holder of a Mortgage.

c. **"Institutional Mortgage"** means a Mortgage or other financing instrument, the holder of which is a bank, savings bank, trust company, savings and loan association (state or federal), real estate investment trust, mortgage REIT, finance company, subsidiary of a Fortune 500 company, investment bank, foundation, endowment fund, insurance

company, union, pension, retirement or debt or welfare fund, or an education, scientific or religious society regularly engaged in making loans, including a Mortgage held by a bank or trust company as trustees for the benefit of bond or debenture holders.

d. **“Institutional Mortgagee”** means the holder of an Institutional Mortgage.

(4) Provided this License is in full force and effect, Licensee shall have the right during the Term of this License at any time and from time to time, without limitation as to amount and on any terms the Licensee may deem desirable, to mortgage this License and Licensee’s interest herein under a Mortgage or Mortgages and to assign this License and existing or future sublicense agreements and fees thereunder to an Mortgagee as additional collateral security for the payment of the Mortgage indebtedness, provided that:

a. Each such mortgage shall be with an Institutional Mortgagee (or with a non-Institutional Mortgagee, with the prior written consent of the Commissioner, which consent shall not be unreasonably withheld, conditioned, or delayed), and if such consent is given any such non-Institutional Mortgage shall have all rights granted to an Institutional Mortgagee under this Section;

b. Each such Mortgage shall provide that there be no subordination of the City’s underlying real property interest in the Licensed Premises including any improvements made thereon; and

c. A true copy of each Mortgage, together with the Mortgagee’s mailing address, shall be delivered to City in the manner herein provided for the giving of notice to DOT within fourteen (14) days after receiving a copy of each such Mortgage.

(5) With respect to any Mortgage, DOT covenants that the following shall apply:

a. When giving notice of termination to Licensee under the provisions of this License the City shall work in good faith to accommodate requests from Mortgagees and use reasonable efforts to deliver a copy of each such notice upon each Mortgagee of whom it has received prior notice as provided in this Article.

b. In case Licensee defaults under any of the provisions of this License, each Mortgagee shall have the right to make good such default, whether same consists of a failure to pay fees or failure to perform any other act, matter or thing which Licensee is required to do or perform; and the City shall accept such performance on the part of such Mortgagee as though same had been done or performed by Licensee.

c. In case of any default by Licensee other than the payment of money hereunder, Mortgagee shall have the right to either:

i. to cause Licensee to cure the default; or

ii. to obtain permission from City to cure such default which is susceptible of being cured in a manner reasonably acceptable to the City.

d. A Mortgagee enforcing the provisions of its Mortgage, shall prosecute such enforcement with reasonable diligence, and upon completion of such enforcement by such Mortgagee, Mortgagee must obtain reasonable approval of the Commissioner to assign the License to a new operator.

## ARTICLE 9

### PROHIBITION AGAINST TRANSFER, ASSIGNMENTS, AND SUBLICENSES

(1) Licensee may not transfer, assign, or sublicense its interest in this Agreement, except as follows:

a. Licensee may, indirectly or directly, transfer, or assign up to forty – nine percent (49%) of its stock or interest in Licensee without prior approval of Licensor, provided Silvercup Studios Feeder, LLC, the direct owner of Licensee, remains in control of Licensee.

b. In the event Licensee intends to transfer more than 49% of its stock or interest in Licensee, the Licensee may request approval from the Commissioner of a transferee prior to, or upon finalizing the terms of a proposed agreement with such proposed transferee, to assign or transfer interest in the Premises to such proposed transferee. Licensee shall seek such approval of the Commissioner by submitting a written request including the financial and performance qualifications of such proposed assignee or transferee, together with either a general description of the proposed assignment or a draft of a final agreement. In no event shall Licensee transfer more than 49% of its stock or interest in Licensee without the Commissioner’s approval. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators, and such constraints are not intended to diminish Licensee’s interest in the Licensed Premises.

(2) In the event that Licensee chooses to assign or sublicense the management of the Licensed Premises to an unaffiliated party, Licensee shall obtain the approval of the Commissioner (which shall not be unreasonably withheld) by submitting a written request including proposed assignment or sublicense documents as provided herein. All sublicensees shall be subject to the same requirements as the Licensee. All terms and conditions of sublicense agreements, including provisions with respect to operations and payments to the City, are subject to the City’s prior

written approval. The Commissioner may request any additional information the Commissioner deems reasonably necessary, and Licensee shall promptly comply with such requests.

a. No consent to or approval of any assignment or sublicense granted pursuant to this Article 9 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

b. In the event that the City authorizes Licensee to enter into a sublicense for operations at the Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of the City. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this Concession Agreement and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this Concession Agreement and that it is bound by same. All provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation and maintenance of the Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with City directives and the provisions of this Concession Agreement applicable to Licensee with respect to the renovation, operation, and maintenance of the Premises, including, but not limited to, obtaining insurance required of Licensee under this Concession Agreement and indemnifying the City as set forth in Article 13 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this Concession Agreement, the City may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of the City which may not be unreasonably

withheld. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this Concession Agreement.

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

#### ARTICLE 10

##### CONSENT TO CHANGE PREMISES; COST OF WORK, LABOR AND MATERIAL

(1) Licensee may not change or add to the Premises without the prior written consent of Licensor, which consent may be granted or denied by Licensor in its sole discretion. All permanent structures installed by Licensee, including, without limitation, trade fixtures, shall, at the option of Licensor, become the property of Licensor when attached to the Premises.

(2) Licensee may not attach any notice or sign in, to or outside of the Premises without obtaining Licensor's prior written consent. Advertising (other than in a form identifying Licensee with approval from Licensor is strictly prohibited.

(3) Licensee shall pay the entire cost of all work, labor and material in connection with all activities undertaken by it at the Premises, including but not limited to:

- a. Construction, use, maintenance and removal;
- b. The protection of all structures, including any bridge structures, which shall in any way be disturbed by the conduct of Permitted Activities;
- c. All changes in sewers or other subsurface structures necessitated by the conduct of Permitted Activities, including the laying or relaying of pipes, conduits, sewers or other structures;
- d. The replacing or restoring of the pavement in the Premises which may be disturbed during the conduct of Permitted Activities;

e. The inspection of all work during the conduct of Permitted Activities and any restoration, as herein provided, which may be required by any City, state or federal department having jurisdiction.

## ARTICLE 11

### PERMITS AND COMPLIANCE WITH LAWS

(1) Before the conduct of any Permitted Activities hereunder shall begin, Licensee shall obtain all permits which may be required by any City, state or federal department having jurisdiction. Licensee shall perform all lawful duties which may be imposed by any department as a condition of such permits, provided such conditions are not inconsistent with the provisions of this Concession. Licensee shall submit to those departments working plans which shall include and show in detail the method of construction of the structures hereby authorized and the mode of protection or changes in all structures required by the construction or removal of the same.

(2) The sale and/or service of alcohol at the Premises is strictly prohibited without the prior written approval of Licensor and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction.

(3) Upon the completion of the work, Licensee shall furnish to any department having jurisdiction, plans of such character as may be directed, showing accurately and distinctly the location, size and type of construction and complete dimensions of any structure erected or installed pursuant to this Concession.

(4) Licensee shall comply with all applicable laws, rules, regulations and orders of City, state and federal authorities regarding the Premises and the use, occupancy and maintenance thereof, and with such other rules, regulations, orders, terms and conditions as may be set or required by Licensor.

(5) Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Law, as a concessionaire of the City of New York as set forth in the Earned Safe and Sick Leave Law Concession Agreement Rider annexed hereto as **Exhibit C**.

## ARTICLE 12

### INSURANCE

(1) Licensee's Obligation to Insure

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

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

(2) Commercial General Liability Insurance

a. The Licensee shall maintain Commercial General Liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least two million dollars (\$2,000,000.00). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this Concession. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

b. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recent edition of ISO Form CG 2026.

(3) Workers' Compensation, Employers Liability, and Disability Benefits Insurance

a. The Licensee shall maintain workers' compensation insurance, employers liability insurance, and disability benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this Concession, and such insurance shall comply with the laws of the State of New York.

(4) Commercial Automobile Liability Insurance

a. With regard to all operations under this Concession, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least one million dollars (\$1,000,000.00) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles in connection with this agreement. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

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

(5) General Requirements for Insurance Coverage and Policies

a. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII," or a Standard and Poor's rating of at least A, or a Moody's Investors Service rating of at least A3, or a Fitch Ratings 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 City Corporation Counsel.

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

c. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. The Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

e. All required policies, except for Workers' Compensation insurance, Employers Liability insurance and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date,

except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

(6) Proof of Insurance

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

b. For Workers' Compensation, Employers Liability Insurance and Disability Benefits, insurance policies, the Licensee shall submit one of the following options:

i. Form C-105.2, Certificate of Workers' Compensation Insurance;

ii. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;

iii. Form SI-12, Certificate of Workers' Compensation Self-Insurance;

iv. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;

v. Form DB-120.1, Certificate of Disability Benefits Insurance;

vi. Form DB-155, Certificate of Disability Benefits Self-Insurance;

vii. Form CE-200 – Affidavit of Exemption;

viii. Other forms approved by the New York State Workers' Compensation Board.

c. For all insurance required under this Article other than Workers Compensation, Employers Liability and Disability Benefits insurance, the Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include: (a) certificates of insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (b) the additional insured endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein; and (c) a duly executed "Certification by Insurance Broker or Agent" in the form required by the Licensor, attached hereto as **Exhibit C**.

d. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner as soon as practicable, but in no event more than 30 (thirty) days after the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

f. Licensee shall provide the City with a copy of any policy required under this Article only in the event of a claim against the City or its officials or employees that the City believes should be covered under such policy for which both the insurer has not provided the City or its officials or employees with a defense thereunder and Licensee

has failed to provide a defense and failed to indemnify the City or its officials or employees. Licensee may redact any information pertaining to Licensee's other insured properties that are unrelated to this License Agreement.

(7) Miscellaneous

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

b. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which it is are subject, whether or not the City is an insured under the policy.

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

Church Street, New York, New York 10007. If the Licensee fails to comply with the requirements of this paragraph, the Licensee shall indemnify the City, together with its officials and employees 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.

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

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

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

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

applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors. Such waiver shall apply except for damages or losses arising from the City's own intentional tortious acts or omissions.

h. In the event the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Concession and requires such entity to name the Licensee as an additional insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

i. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Transportation, 55 Water Street, 9<sup>th</sup> Floor, New York, NY, 100041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

### ARTICLE 13

#### RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE,

#### AND INDEMNIFICATION

(1) Licensee Responsibilities

a. The Licensee shall be responsible in relation to Licensor for the safety and protection of Licensee's employees, agents, servants, contractors, and subcontractors, and

for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

b. The Licensee shall be responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations undertaken by Licensee at the Premises pursuant to this Concession.

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

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

(2) Indemnification and Related Obligations

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

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

ARTICLE 14  
SECURITY DEPOSIT

(1) Upon execution hereof, Licensee shall deposit with the City of New York a sum equal to one month's License Fee [\$9,000] as its security deposit ("**Security Deposit**"), which sum shall be security for (a) the full, faithful, and prompt performance of and compliance with all obligations imposed upon Licensee hereunder and (b) the payment of all the sums of money (including taxes) which may be due the City pursuant to this agreement.

(2) The Security Deposit shall remain with the City throughout the Term of this License. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts. In the event that Licensee fully and completely performs all such obligations and timely makes all such payments, the City shall cause said sum to be returned to Licensee, with interest earned (if applicable), promptly thereafter.

(3) In the event that Licensee shall default in the performance of any such obligation or the making of any such payment, Licensor may apply the sum so deposited to the cost of performing such obligation or making of such payment on Licensee's behalf. Licensee's liability for such default shall in no event be limited to the amount of such security deposit and Licensee shall be and remain liable for any deficiency.

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

ARTICLE 15  
INVESTIGATIONS

(1) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or concession that is the subject of the investigation, audit or inquiry.

(2) If any person<sup>2</sup> who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(3) If any person<sup>3</sup> 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

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<sup>2</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

<sup>3</sup> Officer or employee of Silvercup Studios, Feeder LLC or its subsidiaries

of, or performance under, any transaction, agreement, lease, permit, contract, or concession entered into with the City, the state, or any political subdivision thereof or any local development corporation within the City, then:

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

b. If any nongovernmental party<sup>4</sup> 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 concession pending the final determination pursuant to Section 15.5 below without the City incurring any penalty or damages for delay or otherwise.

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

a. 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 concession with or from the City; and/or

b. The cancellation or termination of any and all such existing City contracts, leases, permits or concessions that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an

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<sup>4</sup> Officer or employee or Silvercup Studios, Feeder LLC or its subsidiaries

unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(5) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

a. 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.

b. 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.

c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or concessions with the City.

d. 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 Section 15.4 above, provided that the party or entity has given actual notice to the commissioner or

agency head upon the acquisition of the interest, or at the hearing called for in Section 15.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

e. The term “concession” or “permit” as used herein shall be defined as a concession, permit, franchise or concession not granted as a matter of right.

(6) 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.

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

(8) 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.

a. In addition to and notwithstanding any other provision of this Concession, the commissioner or agency head may in his or her sole discretion terminate this Concession upon not less than three (3) days’ written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Concession by the Licensee, or affecting the performance of this Concession.

## ARTICLE 16

### NO DISCRIMINATION

(1) Licensee shall not unlawfully discriminate against any person because of actual or perceived age, race, creed, religion, sex, gender, color, disability, sexual preference or orientation, national origin, alienage, citizenship status, partnership status, marital status, military status, presence of a service animal or any other class of individuals protected from discrimination in public accommodations by City, state, or federal laws, rules or regulations. Licensee shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities. All advertising for employment by Licensee shall indicate that Licensee is an Equal Opportunity Employer.

(2) 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. (the “ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. Licensee 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, Licensee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## ARTICLE 17

### NO CONFLICT OF INTEREST

(1) Licensee warrants and represents that no officer, agent, employee or representative of The City of New York has received any payment or other consideration for the making of this Concession and that no officer, agent, employee or representative of The City of New York has any interest, directly or indirectly, in this Concession or the proceeds thereof.

ARTICLE 18

OTHER AGREEMENTS

(1) It is understood that all other agreements between the parties with respect to this Concession shall be superseded by this Concession and any obligations between the parties shall be determined solely by this Concession until such time as this Concession is superseded by another agreement.

ARTICLE 19

NOTICES

(1) Except as otherwise provided in this Concession, a notice or communication which either party is required to give to the other shall be in writing by personal delivery or by overnight mail or by registered or certified mail, return receipt requested, addressed to the other at the address set forth below or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to be received as follows: if by personal delivery upon receipt, if by overnight mail the next day following the date of mailing, or if by registered or certified mail the third day following such mailing.

To Licensor:

Office of Cityscape & Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

To Licensee:

c/o Hackman Capital Partners, LLC  
4060 Ince Blvd.  
Culver City, CA 90232  
Attn: Legal Department

Greenberg Traurig  
Attn: Edward C. Wallace  
1 Vanderbilt Avenue  
New York, NY 10017

ARTICLE 20

WARRANTY

(1) Licensee warrants and represents that the undersigned signatory has full power and authority to enter into this agreement on behalf of Licensee and to bind Licensee to its terms. Licensor warrants and represents that Licensee has fulfilled all previous obligations in connection with these parcels including but not limited to the payment of fees.

ARTICLE 21

JURY WAIVER; WAIVER OF COUNTERCLAIM

(1) To the fullest extent permitted by law, the Licensee waives its right to a jury trial in any action, proceeding, or counterclaim brought by the City or by Licensor in any matter related to this License. In the event of any action or proceeding brought by the Licensor to recover possession of the Premises, Licensee waives its right to counterclaim or set off therein, which waiver shall survive the revocation or termination of this Concession.

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

(3) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within one (1) year of the termination or conclusion of this License, or within one (1) year after the accrual of the cause of action, whichever first occurs.

(4) In the event any claim is made, or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all reasonable assistance which the City of New York may reasonably require of Licensee. Notwithstanding the foregoing, the City shall be responsible for travel expenses if it requires the attendance of any employee or representative of the Licensee in person at a hearing, settlement meeting or similar event.

(5) No claim whatsoever shall be made by the Licensee against any officer, agent, or employee of the City for, or on account of, anything done or omitted in connection with this License, except with respect to criminal or intentional tortious conduct.

## ARTICLE 22

### POSSESSION

(1) In the event Licensor acknowledges that it is unable to give possession of the Premises on the date set forth in Article 2 herein, the License Fee shall not commence until possession has been given or is available, as determined by Licensor. Under such circumstances, Licensor shall not be subject to any liability for failure to give possession on such date and the validity of this Concession shall not be impaired and the Term shall not commence until a new Notice to Proceed is issued with a revised Commencement Date.

ARTICLE 23

RIGHT TO AUDIT

(1) Licensee shall make available to the office of the Comptroller of the City of New York and Licensor's auditor, on demand, all books, records, documents, and correspondence pertaining to the Concession, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or Licensor.

ARTICLE 24

ESTOPPEL CERTIFICATES

(1) At the request of Licensee made from time to time (but not more than twice a calendar year), the City shall, acting by DOT, furnish to Licensee within fifteen (15) business days after the date of the giving of such request, written confirmation from DOT that (i) this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and setting forth the modifications), (ii) the dates through which payments under the Agreement have been made by Licensee, (iii) the City acknowledges that is aware that the certificate may be relied upon by Licensee, a purchaser of, or investor in, the Studios and/or its mortgagee, or lender, and (iv) that to the knowledge of DOT, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by Licensee under this Agreement (or, if there are such facts, excepting the same and briefly describing the default). In the event Licensor makes a request pursuant to this Article 24, Licensee shall use the template attached in Exhibit E.

ARTICLE 25

CHOICE OF LAW; CONSENT TO JURISDICTION AND VENUE

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

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

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

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

(3) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might

otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

#### ARTICLE 26

#### DEVELOPMENT PURPOSES

(1) In the event that the Licensed Premises or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, Licensee is entitled to the termination fee and protections in Article 3(f).

#### ARTICLE 27

#### ENTIRE AGREEMENT

(1) 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.

#### ARTICLE 28

#### COUNTERPARTS

(1) This License may be executed in one or more counterparts which, when taken together shall constitute the entire agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove set forth.

LICENSOR:  
THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Michelle Craven  
Associate Deputy Commissioner  
Cityscape and Franchises

LICENSEE:

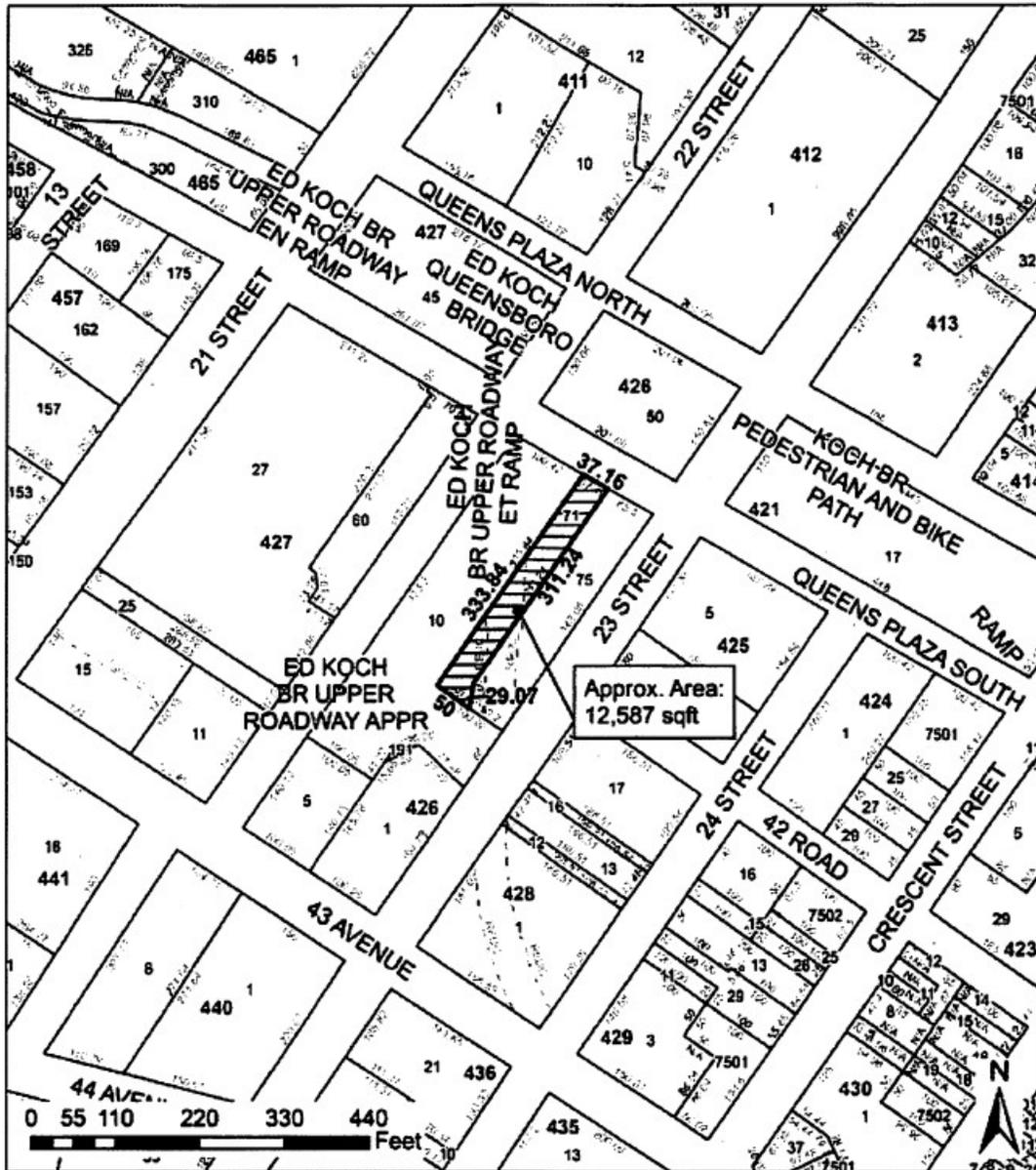
By: \_\_\_\_\_ (Signature)  
\_\_\_\_\_ (Print Name)  
\_\_\_\_\_ (Title, if any)



Exhibit "A"

PREMISES

QUEENS, BLOCK 426, LOT 71



ALL MEASUREMENTS ARE APPROXIMATE AND NOT DRAWN TO SCALE

**EXHIBIT “B”**

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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



**EXHIBIT “C”**  
**NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER**

A. *Introduction and General Provisions.*

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

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

3. The Licensee must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto: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 Licensee must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

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

5. The ESSTA is briefly summarized below for the convenience of the Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.<sup>5</sup> 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

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<sup>5</sup> 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.

the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

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

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

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

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

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

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

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

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

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

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

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

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

6. to enroll children in a new school; or

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

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

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

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

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

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

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

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

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

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and

sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT D: LICENSE FEE SCHEDULES**

<b>TERM YEAR</b>	<b>ANNUAL LICENSE FEE</b>
Year 1	\$108,000
Year 2	\$111,780
Year 3	\$115,692
Year 4	\$119,741
Year 5	\$123,932
Year 6	\$128,270
Year 7	\$132,759
Year 8	\$137,406
Year 9	\$142,215
Year 10	\$147,193
Years 11-20	Fair Market Value in accordance with Article 1(1)(f) and (g)

**EXHIBIT E: ESTOPPEL CERTIFICATE TEMPLATE**

\_\_\_\_\_, 20\_\_

To: [ ] (the “Licensee”) and [ ] (together with its successors and assigns, [“Lender”]/[“Buyer”])

Re: That certain Concession Agreement (the “Agreement”) dated [ ] between the City of New York (“City”), acting by its Department of Transportation (“Licensor” or “DOT”) and Licensee with respect to certain real property designated as Block [ ], Lot [ ] on the Tax Map of the Borough of Queens.

Pursuant to Article 24 of the Agreement, the City, acting by DOT, in its proprietary capacity as fee owner of the Premises Block [ ] Lot [ ], Borough of Queens, hereby acknowledges and certifies the following:

- (i) The Agreement is unmodified and in full force and effect and constitutes the entire agreement between Licensee and DOT with respect to the subject matter contained therein.
- (ii) Licensee has made payments under the Agreement through the following date: [ ].
- (iii) DOT is not holding any security deposit or guaranty under the Agreement except as set forth Article 14 of the Agreement.
- (iv) DOT has neither sent, nor received, a notice of any default under this Agreement.
- (v) To the knowledge of the undersigned, DOT, after reasonable review of its records, states with respect to the material obligations and covenants under the Agreement to be performed or observed: (a) no default exists under the Agreement, nor has any act or omission occurred that, solely with the passage of time or giving of notice or both, would constitute a default; and (b) no act or omission has occurred that, solely with the passage of time or giving of notice or both, would constitute grounds for termination by Licensor of the Agreement without payment of the Termination Fee (as defined in the Agreement).
- (vi) Licensor acknowledges that it is aware that this certificate will be relied upon by Licensee, a purchaser of, or investor in, the Licensee and/or its mortgagee, or lender.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The undersigned is duly authorized to execute this Estoppel Certificate.

THE CITY OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
NAME  
TITLE

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 4)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) 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 concession agreement with Silvercup Studios NY, LLC for business accessory parking and storage activities at a property under the jurisdiction of DOT located at Queens Plaza South between 22nd and 23rd Streets in Queens (block 426, lot 71). The agreement will provide for one 20-year term, commencing upon written Notice to Proceed. Compensation to the City will be \$108,000 in the first year, which shall increase annually by 3.5% for the first 10 years of the term. In year 10 of the term, the license fee will be reset based on a fair market value appraisal for year 11 of the term and shall thereafter increase 3.5% annually for the remainder of the term.

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

4/16/2025

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

Title: City Chief Procurement Officer

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

# MEMORANDUM

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

**From** Christina Rowley, VP of Licensing New York City Tourism + Conventions

**CC:** Daryl Williams, Department of Small Business Services  
James Goebel, Mayor's Office of Contract Services  
FCRC@mocs.nyc.gov  
Natalie Koepff , New York City Tourism + Conventions

**Subject** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Mattel, Inc. for the non-exclusive use of City-owned trademarks on merchandise.

**Date** 3/7/2025

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In accordance with Section 1-16 of the Concession Rules of the City of New York, New York City Tourism + Conventions on behalf of the NYC Department of Small Business Services, is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-significant sole source license agreement with Mattel, Inc. for the non-exclusive use of City-owned trademarks on merchandise.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Christina Rowley, [crowley@nyctourism.com](mailto:crowley@nyctourism.com)

Thank you.

# Rule 1-16: Different Procedure

## Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title Mattel Inc. Concession ID NYCCO-2025-04

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise Agency New York City Tourism + Conventions on behalf of NYC Department of Small Business Services

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

### Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because: See additional Info sheet

#### Indicate the Different Procedure utilized

- Sole Source     Amendment  
 Not-for-Profit Agreement  
 Other \_\_\_\_\_

### Proposed Concession Details

Concessionaire Mattel Inc. Concession Site(s)  Yes  No  
 Not yet determined  
EIN/TIN 95-1567322 Address \_\_\_\_\_  
Initial Term To be negotiated  
Renewal Option(s) To be negotiated Borough \_\_\_\_\_ Community Board \_\_\_\_\_  
Total Potential Term To be negotiated Block# \_\_\_\_\_ Lot# \_\_\_\_\_

#### Proposed Concession Revenue

- (Check all that apply)  
 Annual Minimum Fee \$ \_\_\_\_\_  
 Gross Receipts \_\_\_\_\_ %  
 The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_ % of Gross Receipts  
 Other Formula

### Prior Concession Details

N/A (No Prior Concession)

Concessionaire Mattel Inc.  EIN or  SSN # 95-1567322  
Initial Term 03/01/21 to 12/31/22 Address 333 Continental Blvd  
Renewal Option(s) 01/01/23 to 12/31/24 El Segundo, CA 90245  
Total Potential Term 03/01/21 to 12/31/24 Borough \_\_\_\_\_ Community Board \_\_\_\_\_  
Concession Site(s)  Yes  No Block# \_\_\_\_\_ Lot# \_\_\_\_\_

#### Prior Concession Revenue

- (Check all that apply)  
 Annual Minimum Fee \$ \_\_\_\_\_  
 Gross Receipts \_\_\_\_\_ %  
 The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_ % of Gross Receipts  
 Other Formula

### Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession  Yes  No

(if yes, please select all applicable boxes below)

- Total potential term =/>10 years  
 Projected annual income/value to City >\$100,000  
 Major Concession

This is a Major Concession  Yes  No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

Agency notified affected Community Boards and Borough Presidents on 03/07/2025

#### Intent to Seek a Different Procedure

Agency notified affected Community Boards and Borough Presidents on 03/07/2025 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

### Authorized Signatures

#### Agency Staff

This is to certify that the information presented herein is accurate

Signature Daryl Williams  
Name Daryl Williams  
Title ACCO Date 3/18/2025

#### City Chief Procurement Officer

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

Signature \_\_\_\_\_  
Date \_\_\_\_\_ City Chief Procurement Officer

## For Agency Use With Concession Forms

Mattel, Inc

NYCCO-2025-04

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services 

Mattel, Inc. is one of the largest manufacturers of toys, games and toy vehicles worldwide. Mattel, which has been in business for over 75 years, owns multiple well-known exclusive brands, such as Matchbox, Barbie, Hotwheels, and Fisher-Price. Throughout the duration of Mattel's term, which just expired on 12/31/24, they have proven to be a strong licensee within the City's Licensing Program, and they continue to remain in good financial standing with the City. Mattel has produced multiple die-cast cars under the Matchbox brand that is exclusive to Mattel featuring the NYPD and FDNY, that sell around the world and continue to help expand the licensing programs reach and helps the continued use of our marks across the globe. Mattel's strong retail presence in all types of stores, from mass marketing, drug stores, hobby stores, and more, allows the City's trademark to be marketed and available widely to a diverse consumer while being associated with one of the top toy companies in the world. Therefore, it is in the City's best interest to negotiate a sole source agreement with Mattel, Inc. for toys, games and toy vehicles. This proposed non-exclusive license agreement will not bar opportunities for other types of toy, game, and toy vehicle manufacturers.

**Proposed Revenue:**

To be negotiated

**Proposed Term:**

To be negotiated

**Previous Contracted Financial Terms:**

Guaranteed Minimum Royalties:

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company the Guarantee as follows:

Upon full execution of this License Agreement and written notice to proceed from NYC & Company:

Two thousand seven hundred dollars (\$2,700) (the "Guarantee") .

In this License Agreement, Licensee shall pay to NYC & Company for the license granted herein, a royalty equal to:

(i) For Wholesale Sales (defined below): Two percent (2%) of Wholesale Sales of Licensed Products;

(ii) For Retail Sales (defined below): One percent (1%) of Retail Sales of Licensed Products; and

(iii) For Approved Promotions: Zero percent (0%) of sales (Licensee shall be exempt from paying royalties) when the Licensed Products are used as part of a gift with purchase promotion as offered by Licensee (each such purchase promotion containing Licensed Products must be approved by Licensor in each instance in writing in advance).

**Renewal Terms:**

Additional Guarantee for the renewal term 1/1/23-12/31/24, Two thousand three hundred dollars, (\$2,300) to be payable upon full execution of the extension letter.

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 5)

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

BE IT FURTHER RESOLVED, that New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) shall submit the sole source agreement it proposes to enter into with Mattel Inc. to the FCRC for approval.

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

***4/16/2025***

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

**Title:** City Chief Procurement Officer

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



NYC Parks

**David Cerron**  
Assistant Commissioner  
Business Development &  
Special Events

T 212.360.3457

E david.cerron@parks.nyc.gov

**City of New York  
Parks & Recreation**

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

# MEMORANDUM

**To:** Hon. Donovan Richards, Queens Borough President  
Mark McMillan, District Manager, Queens Community Board 13

**From:** Phil Abramson, Director of Concessions Communications, NYC Parks *PA*

**Subject:** Notice of Intent to Seek Franchise & Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with Colonial Farmhouse Restoration Society of Bellerose, Inc. d/b/a Queens County Farm Museum, and the Historic House Trust of New York City, Inc., for the Maintenance, Operation, Management and Programming of the Queens County Farm Museum in Queens.

**Date:** 3/7/2025

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In accordance with Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Parks & Recreation is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a significant sole source concession agreement with Colonial Farmhouse Restoration Society of Bellerose, Inc. d/b/a Queens County Farm Museum, and the Historic House Trust of New York City, Inc., for the maintenance, operation, management and programming of the Queens County Farm Museum in Queens.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Phil Abramson, Director of Concessions Communications at NYC Parks at 212-360-3426 or phil.abramson@parks.nyc.gov.

Thank you.

# Rule 1-16: Different Procedure

## Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title Queens County Farm Museum License Agreement Concession ID Q453-O

Description Maintenance, operation, management and programming of the Queens County Farm Museum Agency NYC Department of Parks & Recreation

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

### Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because:

See Additional Information Form

#### Indicate the Different Procedure utilized

- Sole Source  Amendment  
 Not-for-Profit Agreement  
 Other \_\_\_\_\_

### Proposed Concession Details

Concessionaire Colonial Farmhouse Restoration Society of Bellerose, Inc. Concession Site(s)  Yes  No  
 Not yet determined  
EIN/TIN 11-2508369 Address 73-50 Little Neck Parkway  
Floral Park, NY 11004  
Initial Term To be negotiated Borough Queens Community Board 13  
Renewal Option(s) To be negotiated Block# 8401 Lot# 1  
Total Potential Term To be negotiated

#### Proposed Concession Revenue

- (Check all that apply)  
 Annual Minimum Fee \$ \_\_\_\_\_  
 Gross Receipts \_\_\_\_\_ %  
 The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_ % of Gross Receipts  
 Other Formula

### Prior Concession Details

N/A (No Prior Concession)

Concessionaire \_\_\_\_\_  EIN or  SSN # \_\_\_\_\_  
Initial Term \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ Address \_\_\_\_\_  
Renewal Option(s) \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ Borough \_\_\_\_\_ Community Board \_\_\_\_\_  
Total Potential Term \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ Block# \_\_\_\_\_ Lot# \_\_\_\_\_  
Concession Site(s)  Yes  No

#### Prior Concession Revenue

- (Check all that apply)  
 Annual Minimum Fee \$ \_\_\_\_\_  
 Gross Receipts \_\_\_\_\_ %  
 The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_ % of Gross Receipts  
 Other Formula

### Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession  Yes  No

(if yes, please select all applicable boxes below)

- Total potential term =/ > 10 years  
 Projected annual income/value to City > \$100,000  
 Major Concession

This is a Major Concession  Yes  No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

- Agency notified affected Community Boards and Borough Presidents on 03 / 07 / 2025

#### Intent to Seek a Different Procedure

- Agency notified affected Community Boards and Borough Presidents on 03 / 07 / 2025 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

### Authorized Signatures

#### Agency Staff

This is to certify that the information presented herein is accurate

Signature Philip Abramson

Name Philip Abramson

Title Director of Concessions Communications Date 03/21/2025

#### City Chief Procurement Officer

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

Signature \_\_\_\_\_ City Chief Procurement Officer

Date \_\_\_\_\_

Queens County Farm Museum License Agreement

Q453-O

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Maintenance, operation, management and programming of the Queens County Farm Museum  
**Agency** NYC Department of Parks & Recreation ("Parks")

### Proposed Concessionaire

Colonial Farmhouse Restoration Society of Bellerose, Inc. d/b/a Queens County Farm Museum & Historic House Trust of New York City, Inc. (EIN 13-3590825)

### Proposed Concession Justification

The Queens County Farm Museum ("QCFM") is one of New York City's last operating farms and is the longest continually farmed site in New York State. It is a cornerstone of New York City's agricultural history. Currently owned by NYC Parks, the facility is operated by Colonial Farmhouse Restoration Society of Bellerose, Inc. d/b/a Queens County Farm Museum, and is a member of the Historic House Trust of New York City, Inc. ("HHT")

HHT is a not-for-profit organization that works in tandem with NYC Parks to provide support for services and programs and foster arrangements with not-for-profit organizations that preserve, maintain, and assist in the general operations of 23 historic house sites owned by the City of New York. The Adriance Farmhouse is part of HHT and is the oldest surviving structure at the Queens County Farm Museum. In addition to maintaining this historic farm house, HHT provides other complimentary nonprofit support services at QCFM including promotion, advocacy, board development, historic interpretation recommendations, and partnership management. HHT also provides historic preservation expertise to both QCFM and Parks toward the goal of sustaining NYC history for future generations. QCFM has operated the site continuously and previously entered into license agreements with Parks from 1989 through 2006, and then in license agreements with both Parks and HHT from 2006 through 2014. Since QCFM is a member of HHT and HHT manages the oversight of the Adriance Farmhouse, where QCFM also operates out of, all parties felt it was appropriate for the agreement to be co-signed by both Parks, HHT and QCFM.

First established by the Adriance family in the 17th century, the farm was operated by a succession of family farmers for nearly 300 years. The current farmhouse was built around 1772 by Jacob Adriance, and much of the original building remains standing today. Three centuries of private ownership came to an end in 1927 when the land, including the historic farmhouse and 19th-century barn complex, was purchased by the State of New York and incorporated into the adjacent Creedmoor Psychiatric Center. Patients from the center's hospital maintained the farm's barns and fields as therapy. As time passed, Creedmoor's formal farming program halted, but resident caretakers continued to work the land for their own love of farming. In 1973, when the historic buildings were scheduled for demolition, area residents encouraged the State to transfer the land and farm buildings to the City as a public park.

Since 1975, it has operated as a historic museum, dedicated to preserving, restoring, and interpreting the city's rich agrarian legacy. As one of the longest continually farmed sites in New York State, Queens County Farm Museum connects the past to the present, offering an authentic experience of urban farming and historic agriculture. Today, the farm grows an array of flowers, herbs, fruits, and vegetables, which are sold on-site seasonally. The farm raises a variety of livestock and invites visitors to feed its goats and sheep. Scheduled educational programs for students and adults in the restored barn and farmhouse feature demonstrations of open hearth cooking, farming techniques, traditional crafts, and more.

Each year, the farm welcomes over half a million visitors, engaging New Yorkers through programs that extend beyond historic preservation. Its mission encompasses education, serving over 35,000 NYC school children annually, environmental stewardship through workforce development and volunteer initiatives, and cultural enrichment via free public events. Additionally, Queens County Farm Museum is committed to advancing food equity, growing over 40,000 pounds of fresh, affordable produce to support under-served communities across Queens. Through these efforts, it remains a vital resource for sustainability, education, and community connection.

Queens County Farm Museum sustains its mission through a blend of revenue-generating activities and free public programming. At the heart of their commitment to accessibility, Queens County Farm Museum offers a variety of free public programs, including cultural festivals, seasonal celebrations, environmental stewardship initiatives, and volunteer opportunities. They also provide no-cost educational resources such as self-guided farm visits, hands-on gardening workshops, and composting services. Through these initiatives, they ensure that all New Yorkers can connect with agriculture, sustainability, and history, regardless of their financial means.

Queens County Farm Museum currently supports, and is anticipated to continue supporting with Parks' approval in this agreement, a community composting program. Residential food scrap donations are accepted daily in designated areas and all of Queens County Farm Museum's own compost is made on site. They amend their soil with finished compost each planting season in order to improve structure and fertility, promote water retention and air flow, prevent erosion, and boost biological activity. This in turn produces healthier plants with more resistance to pests and disease. Composting also diverts organic matter from landfills, reducing our carbon footprint while making excellent use of a valuable resource. Queens County Farm Museum plans to further develop composting program for the public through establishing composting sites with expert consultation and advanced workshops led by a composting educator.

(see next page)

## For Agency Use With Concession Forms

Queens County Farm Museum License Agreement

Q453-O

**Concession Title** \_\_\_\_\_ **Concession ID** \_\_\_\_\_

**Description** Maintenance, operation, management and programming of the Queens County Farm Museum **Agency** NYC Department of Parks & Recreation ("Parks")

With Parks' approval, Queens County Farm Museum intends to continue a non-regional, local composting operation, directly benefiting its operations at the site. Queens County Farm Museum's planned composting site will span approximately 15,000 square feet out of the total 47-acre site. Their Education Department is actively developing this space, incorporating sheds, benches, composting bins and interpretive signage, alongside an engaging curriculum aligned with state standards. It will serve as a hands-on learning space for thousands of NYC students and community members, fostering greater understanding and participation in sustainable agriculture.

Queens County Farm Museum's earned income streams include admissions-based experiences such as seasonal festivals, farm-to-table tastings, public education programs, and agri-tourism events, as well as private rentals for weddings, corporate gatherings, and film productions. Additionally, they operate a farmstand, a community-supported agriculture (CSA) program, and an online store featuring fresh produce, honey, and handmade goods. In FY24, they generated about \$2.2 million in revenue including 49% from event income, 22% from produce and livestock sales, and 18% from educational programs. Grant funding contributed an additional \$1 million. Compared to FY23, their total revenue remained stable while their total support decreased by 15% due to lower grant funding. In the future, Queens County Farm Museum plans on potentially offering a food-service / catering concession on the Licensed Premises.

Parks is planning to negotiate a Sole Source License Agreement with Queens County Farm Museum and HHT for the continued maintenance, operation, management and programming of this site. As the license is anticipated to include revenue-generating components ((as described above), Parks seeks FCRC authorization to negotiate this license. Any sublicense agreements that Queens County Farm Museum may potentially enter into for any revenue generating components will be subject to the approval of Parks. Further, any revenue generated by Queens County Farm Museum is anticipated to be used to offset costs related to their maintenance, operation, management and programming requirements that will be stipulated in the license. Parks shall submit the license it proposes to enter into with Queens County Farm Museum to the FCRC for approval.

Given that the Queens County Farm Museum has demonstrated a steadfast commitment to this piece of New York City's history, preserving and programming it for countless New Yorkers and visitors, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement rather than proceed with a competitive solicitation process.

Proposed Concession Revenue  
Other Formula  
To be negotiated

# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 6)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks & Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a significant sole source concession agreement with Colonial Farmhouse Restoration Society of Bellerose, Inc. d/b/a Queens County Farm Museum, and the Historic House Trust of New York City, Inc. (“Licensee”), for the maintenance, operation, management and programming of the Queens County Farm Museum in Queens.

BE IT FURTHER RESOLVED, that Parks shall submit the sole source agreement it proposes to enter into with Licensee to the FCRC for approval.

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

***4/16/2025***

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

**Title:** City Chief Procurement Officer

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



NYC Parks

**David Cerron**  
Assistant Commissioner  
Business Development & Special  
Events

T 212.360.3457

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**City of New York  
Parks & Recreation**

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## MEMORANDUM

**TO:** Hon. Antonio Reynoso, President of the Borough of Brooklyn  
Gerald A. Esposito, District Manager, Brooklyn Community Board 1

**FROM:** Kat Cognata, Senior Project Manager *KC*

**SUBJECT:** Request for Proposals for the Development, Operation, and Maintenance of an Outdoor Café and Other Amenities in WNYC Transmitter Park, Brooklyn

**DATE:** March 7, 2025

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In accordance with Section 1-13 of the Concession Rules of the City of New York, the New York City Department of Parks and Recreation (Parks) intends to issue a significant Request for Proposals (RFP) for the Development, Operation, and Maintenance of an Outdoor Café and Other Amenities in WNYC Transmitter Park, Brooklyn. This concession will include the addition of public restrooms.

Please note that Parks intends to seek unanimous approval from the Franchise and Concession Review Committee (FCRC) for the issuance of this RFP for a term of twenty-five (25) years.

The concession will be operated pursuant to a license issued by Parks; no leasehold or other proprietary right will be offered.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Please direct any questions or comments you may have regarding development of the scope of this RFP to Kat Cognata, Senior Project Manager, by phone at 212-360-3407 or via email at [Katherine.Cognata@parks.nyc.gov](mailto:Katherine.Cognata@parks.nyc.gov). These comments must be made by April 16, 2025 to ensure consideration. Thank you.

# Rule 1-13: Competitive Sealed Proposals

## Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title \_\_\_\_\_ Concession ID \_\_\_\_\_

Description \_\_\_\_\_ Agency \_\_\_\_\_

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

### Proposed Concession Justification

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

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors
- Other (describe): \_\_\_\_\_

### Proposed Concession Details

Initial Term \_\_\_\_\_ Address \_\_\_\_\_

Renewal Option(s) \_\_\_\_\_

Total Potential Term \_\_\_\_\_ Borough \_\_\_\_\_ Community Board \_\_\_\_\_

Concession Site(s)  Yes  No Block# \_\_\_\_\_ Lot# \_\_\_\_\_

#### Proposed Concession Revenue

(Check all that apply)

- Annual Minimum Fee \$ \_\_\_\_\_
- Gross Receipts \_\_\_\_\_%
- The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_% of Gross Receipts
- Other Formula

### Prior Concession Details

N/A (No Prior Concession)

Concessionaire \_\_\_\_\_  EIN or  SSN # \_\_\_\_\_

Initial Term \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ Address \_\_\_\_\_

Renewal Option(s) \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Total Potential Term \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ Borough \_\_\_\_\_ Community Board \_\_\_\_\_

Concession Site(s)  Yes  No Block# \_\_\_\_\_ Lot# \_\_\_\_\_

#### Prior Concession Revenue

(Check all that apply)

- Annual Minimum Fee \$ \_\_\_\_\_
- Gross Receipts \_\_\_\_\_%
- The Greater of Annual Minimum Fee(s) of \$ \_\_\_\_\_ vs \_\_\_\_\_% of Gross Receipts
- Other Formula

### Community Board / Borough President Notice Requirements (Check all that apply)

**This is a Significant Concession**  Yes  No

(if yes, please select all applicable boxes below)

- Total potential term => >10 years
- Projected annual income/value to City >\$100,000
- Major Concession

**Please indicate how and when your agency notified affected Community Boards and Borough Presidents of the above:**

- Agency provided notice as to whether this a Significant Concession in its Annual Plan
- Agency notified affected Community Boards and Borough Presidents on \_\_\_/\_\_\_/\_\_\_ (which was at least thirty (30) days prior to issuance of a solicitation), and a copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

**This is a Major Concession**  Yes  No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

**Please indicate how and when your agency notified applicable Community Boards and Borough Presidents of Major/Non-Major Concession status:**

- Agency provided notice as to whether this is a Major Concession in its Annual Plan
- Agency notified affected Community Boards and Borough Presidents on \_\_\_/\_\_\_/\_\_\_ (which was at least forty (40) days prior to issuance of a solicitation), and a copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

### Authorized Signatures

#### Agency Staff

This is to certify that the information presented herein is accurate

Signature Philip Abramson

Name \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

#### City Chief Procurement Officer

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

Signature \_\_\_\_\_

Date \_\_\_\_\_ City Chief Procurement Officer



NYC Parks

**David Cerron**  
Assistant Commissioner  
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**City of New York  
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[www.nyc.gov/parks](http://www.nyc.gov/parks)

TO: Franchise & Concession Review Committee (FCRC)

FROM: Phil Abramson, Director of Revenue Communications *PA*

DATE: March 28, 2025

SUBJECT: Request for the FCRC to unanimously approve the issuance of a Request for Proposals (RFP) by NYC Parks for the development, operation, and maintenance of an outdoor café and other amenities in WNYC Transmitter Park, Brooklyn, for a term of twenty-five (25) years.

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NYC Parks is seeking unanimous approval from the FCRC for the issuance of a Request for Proposals (RFP) for the development, operation, and maintenance of an outdoor café and other amenities in WNYC Transmitter Park, Brooklyn, for a term of twenty-five (25) years. This concession will include the addition of public restrooms.

WNYC Transmitter Park is located on the site of the former AM-radio transmission towers for public radio station WNYC. Built in Brooklyn's Greenpoint neighborhood, where Greenpoint Avenue ends at West Street by the East River shoreline, the site was set aside for the station by the City of New York in 1935. From 1937 to 1990, the radio station broadcast its AM signal from two 304-foot galvanized steel towers at this waterfront location. The Greenpoint WNYC site was decommissioned in 1990. The station's transmitter was moved to New Jersey and the towers were torn down. This city-owned site then remained vacant until 2010, when construction began on the present WNYC Transmitter Park.

With the park's breathtaking views of Manhattan across the East River and with the redevelopment of the waterfront in Greenpoint and Williamsburg, the former transmitter building is an ideal site for a food service facility with the option of indoor and outdoor seating.

On April 20, 2017, Parks issued an RFP for this concession opportunity for a term of fifteen (15) years. That RFP did not result in the receipt of any proposals. Then, on November 20, 2023, Parks issued an RFP for this concession opportunity for a term of twenty (20) years. There was extensive outreach, and two meetings were held with interested proposers, which were attended by 18 different entities. Parks received one proposal in response to the RFP, but that sole proposer ultimately withdrew after looking into the site further and assessing the extent of the capital restoration work that would be required.

The overwhelming feedback received from Parks, not only from the sole proposer, but from many of the other interested parties was that a 20-year term would be insufficient to amortize the extensive capital improvements required to restore this facility. The existing structure is in a state of extreme disrepair, particularly because the basement has been

severely damaged by flooding from groundwater infiltration. Renovating and rehabilitating the structure will demand significant investment from any prospective operator.

Given the substantial upfront costs associated with this renovation, a 25-year term is essential to provide proposers with a sufficient timeline to recoup their investment and generate a reasonable return. The added five years would not only incentivize high-quality proposals but also ensure the long-term sustainability and operation of the park's facilities. Without this extended term, it is unlikely that potential proposers will be able to justify the financial risk or commit the necessary resources to address the current structural challenges.

A 25-year term reflects a realistic timeframe for an operator to recoup the costs associated with restoring a heavily compromised structure while ensuring that the community benefits from a fully operational and revitalized park.



## REQUEST FOR PROPOSALS (RFP)

The City of New York Department of Parks & Recreation (“Parks”) requests proposals for the Development, Operation, and Maintenance of an Outdoor Café and Other Amenities in WNYC Transmitter Park, Brooklyn.

## THE TERM

Parks is seeking a concessionaire for one (1) twenty-five-year (25) term. No longer term will be considered. This concession will be operated pursuant to a license issued by Parks; no leasehold or other proprietary right is offered.

## PROJECT MANAGER

The Project Manager for this concession is Kat Cognata. All RFP questions and/or inquiries should be directed to her. She may be reached at:

Phone: (212) 360-3407

Email: [katherine.cognata@parks.nyc.gov](mailto:katherine.cognata@parks.nyc.gov)

Fax: (212) 360-3434



Deaf, hard-of-hearing, deaf-blind, speech-disabled, or late-deafened people who use text telephones (TTYs) or voice carry-over (VCO) phones can dial 711 to reach a free relay service, where specially trained operators will relay a conversation between a TTY/VCO user and a standard telephone user.

Alternatively, a message can be left on the Telecommunications Device for the Deaf (TDD). The TDD number is 212-New York (212-639-9675).

## RFP TIMETABLE

The following schedule has been established for this RFP:

### RFP Release Date:

Remote Recommended Proposer  
Meeting & Site Tour:

### Proposals Due:

### Remote Proposer Interviews (if any):



If you have a physical disability and cannot deliver your proposal to the Arsenal, please contact the Project Manager(s) at least 48 hours prior to the deadline and alternate arrangements can be made.

## RECOMMENDED REMOTE PROPOSER MEETING & SITE TOUR

There will be a recommended remote proposer meeting on **date** at **time**. If you are considering responding to this RFP, please make every effort to attend this recommended remote proposer meeting. The link for this remote site meeting is as follows:

**Microsoft Teams meeting | Join on your computer, mobile app or room device:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NTdkOGIzMDEtOTQwMSooODdiLWJmWmMtNjdkNzI4NDMwZjZk%40thread.v2/?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%2299859205-5e01-4a03-b672-0ad8fbd16e2d%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTdkOGIzMDEtOTQwMSooODdiLWJmWmMtNjdkNzI4NDMwZjZk%40thread.v2/?context=%7b%22Tid%22%3a%2232f56fc7-5f81-4e22-a95b-15da66513bef%22%2c%22Oid%22%3a%2299859205-5e01-4a03-b672-0ad8fbd16e2d%22%7d)



Meeting ID: 276 645 185 540

Passcode: nKgG34

Or call in (audio only)

+1 646-893-7101,, 549663747# United States, New York City

Phone Conference ID: 549 663 747#

Subject to availability and by appointment only, we may set up a meeting at the proposed concession site (Block # 2556 & Lot # 41)(“Licensed Premises”), which is located at the site at 10 Kent Street, Brooklyn, NY 11222. Please see Exhibit B for a site plan.

### REMOTE PROPOSER INTERVIEWS

The Selection Committee may decide to meet with certain proposers during the week of **week**. It is recommended that proposers keep the week of **week** available to meet with the Selection Committee.

If there are circumstances beyond a proposer’s or Parks’ control and the meeting cannot take place during the week of **week**, Parks will schedule a meeting between the proposer and the selection committee on an alternate date.

## I. PROJECT BACKGROUND

### A. HISTORY & EXISTING CONDITIONS

WNYC Transmitter Park is located on the site of the former AM-radio transmission towers for public radio station WNYC. Built in Brooklyn’s Greenpoint neighborhood, where Greenpoint Avenue ends at West Street by the East River shoreline, the site was set aside for the station by the City of New York in 1935. From 1937 to 1990, the city-operated station broadcast its AM signal from two 304-foot galvanized steel towers at this waterfront location.

WNYC is one of the oldest radio stations in New York State. Funds for its establishment were approved in 1922 and two years later, on July 8, 1924, WNYC made its first official broadcast through a transmitter on the 25th floor of the Municipal Building in lower Manhattan. For its first 14 years, WNYC was run by the Commission of Plant and Structures, making the City of New York among the first American municipalities to be directly involved in radio broadcasting. By the early 1930s, however, development of lofty skyscrapers around Manhattan created noticeable broadcast interference. The “dead air” problem was so pronounced that in 1934 Mayor, Fiorello La Guardia (1882-1947), considered shutting the station down altogether. To avoid discontinuing the beloved radio service, La Guardia appointed a citizen’s committee to explore all options to save WNYC.



The committee recommended acquiring a new site for the transmitter to improve citywide reception. An ideal location was found at what was once the Greenpoint ferry terminal, which operated from the foot of Greenpoint Avenue to 10th, 14th, and 23rd Streets in Manhattan from 1853 through 1933. Here low-rise buildings and marshland dominated the



landscape, making it ideal for radio transmission. With the Mayor's consent and underwriting from the Works Progress Administration, ground for the new transmitter building was broken in November 1935. The new 1,000-watt transmitter was dedicated in an official ceremony on October 31, 1937, an hour-long event that was broadcast live and featured speeches by Mayor LaGuardia and Commissioner of Plant and Structures Frederick J. H. Kracke (1868-1955), along with musical selections performed by service bands of the Police, Fire, and Sanitation Departments.

The Greenpoint WNYC site was decommissioned in 1990. The station's transmitter was moved to the New Jersey Meadowlands and the towers here torn down not long afterward. The city-owned site remained vacant until August 2010, when construction began on the present park.

The center of the park includes a large lawn with play areas featuring spray showers, sand and water stations, nature gardens, and colorful play structures to the east. A nautical theme reflects the site's waterfront setting. Just west of the playground is the former radio transmitter station itself, designed in the Art Deco style. A pedestrian bridge crosses the excavated ferry slip, restored as a tidal wetland. At the water's edge, the former ferry platform has been replaced with a natural wetland shoreline. At the end of Kent Street is a recreational pier, offering opportunities for fishing and an unmatched view of the Manhattan skyline.

Over the years the transmitter building has served multiple roles for the NYC Department of Parks and Recreation. With the parks' breathtaking views of Manhattan across the East River and with the redevelopment of the waterfront in Greenpoint and Williamsburg the transmitter building is an ideal site for a food service facility with the option of indoor and outdoor seating. In 2023, the nonprofit organization The Pollinator Pathway designated WRNYC Transmitter Park a part of the pollinator pathway in New York City.

Parks expects the concessionaire to respect the history of the building and its significance to the surrounding area. Parks is seeking proposals that include the adaptive re-use and restoration of the former WNYC Transmitter building.

Additional information pertaining to plans, sketches and drawings of WNYC Transmitter Park and the transmitter building may be downloaded on Parks' website by visiting: <https://www.nycgovparks.org/opportunities/business/w NYC-transmitter-park>

*Parks makes no representations as to the availability, accuracy or completeness of these documents.*

**B. PLANNED DEVELOPMENT** There is a US Army Corps of Engineers ("Corps") project in the vicinity of the Licensed Premises of which the concessionaire should be aware, titled "The New York-New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study". Per the Corps, "In response to these storms, the US Army Corps of Engineers (Corps) is investigating measures to manage future flood risk in ways that support the long-term resilience and sustainability of the coastal ecosystem and surrounding communities, and reduce the economic costs and risks associated with flood and storm events. In support of this goal, the Corps completed the North Atlantic Coast Comprehensive Study, which identified nine high-risk, focus areas on the north Atlantic Coast for further in-depth analysis into potential coastal storm risk management measures. One of the nine areas identified was the New York-New Jersey Harbor and Tributaries study area." There is no current timeline for the commencement or completion of the project, but Parks will share the construction phasing schedule as it becomes available, following several steps at the federal level and allocation of funding. It is possible that the aforementioned project may impact some of the concessions' operations during the concession term. However, Parks expects the concessionaire to find ways to adapt and continue to operate.



## C. FINANCIAL HISTORY

The following charts list the total gross receipts and fees paid to Parks by other similar Parks concessions. Proposers should consider financial information below for informational purposes, and offer a fee based on a business plan for a new concession at WNYC Transmitter Park.

<b><u>Hunter’s Point South Café, Long Island City, Queens</u></b>		
<b>OPERATING YEAR</b>	<b>GROSS RECEIPTS</b>	<b>FEES PAID TO PARKS</b>
6/2020-5/2021	\$578,727.86	\$108,052.59
6/2021-5/2022	\$736,856.79	\$115,616.27
7/2022-7/2023	\$1,036,318.51	\$93,000.00

<b><u>McCarren Parkhouse, Brooklyn</u></b>		
<b>OPERATING YEAR</b>	<b>GROSS RECEIPTS</b>	<b>FEES PAID TO PARKS</b>
6/2021-5/2022	\$114,533.32	\$50,000.00
6/2022-5/2023	\$1,168,777.61	\$114,693.76
6/2023-8/2023	\$454,945.30	\$13,260.00

## II. PROJECT COMPONENTS

### A. OVERVIEW

Parks is seeking proposals for the development, operation, and maintenance of an outdoor café and other amenities in WNYC Transmitter Park, Brooklyn.

Proposers will be required to designate approximately 50% of the building’s footprint for both publicly accessible restrooms and a portion for the sole usage of Parks Department Management & Operations (“Parks M&O”).

**Operational Plan** Proposers should submit a detailed operational plan for the entire Licensed Premises. This plan should include, but not be limited to, intended use of the facility, hours of operation, services to be provided, any plans to install energy efficient appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices, staffing plans, safety and security plans, menu, merchandise to be sold, programming plans, mechanisms to measure customer satisfaction, a detailed list of all proposed fees and prices, landscaping/horticulture plans, and maintenance, snow, rubbish removal, and cleaning schedules.

All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior, written approval.



**The Food Service Facility** The concessionaire will be expected to develop, operate and maintain a food service facility at a high standard of quality. The food service facility should make a significant improvement to the ambience of the park and surrounding area while providing a convenient service to the public.

Proposers should submit a menu and price list in their proposals that demonstrates quality, variety, and affordability. Proposers should include some low-cost items on their menus. Parks will view favorably proposals which incorporate diverse and/or healthy food choices, such as salads, fresh fruit, yogurt, nuts, granola bars, protein bars, juices, smoothies, etc. All prices and menu items are subject to Parks' prior written approval.

Executive Order 54, signed by the Mayor on February 6, 2020, directs City agencies to end the unnecessary purchase of single-use plastic beverage bottles, defined as a drink, such as water, in a sealed rigid plastic bottle having a capacity of 21 fluid ounces or less, and to end their unnecessary sale on City owned or leased property. As such, Parks is phasing out the sale of single use plastic bottles at Parks concessions. **Proposers should be aware that single-use plastic beverage bottles as defined herein will be prohibited for sale at this concession.** Plastic bottle alternatives, such as aluminum or boxed beverages, are permitted.

The concessionaire will be required to maintain adequate inventory to assure a constant supply of food and beverages. Any staff assigned by the concessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene ("DOHMH") permits.

**The concessionaire may only operate the food service facility if he or she has obtained the appropriate, valid permits and authorizations required by DOHMH.**

**DOHMH Information** In addition to a Parks' license, at all times that the food service facility is operating, a staff person with a valid DOHMH food handler's license must be present. To obtain a DOHMH license, contact the Citywide Licensing Center, 42 Broadway, 5th floor, Monday through Friday 9:00am to 5:00pm, or by phone at 311 or 212-New York. Note: Offices are closed during City/Public Holidays. Vendors should be aware that if they are applying for a DOHMH license for the first time, this process can take six weeks or more. Vendors operating without all necessary permits may be subject to fines and/or confiscation of merchandise.

**DOHMH Letter Grades: Food Facilities (i.e. Snackbars, Restaurants, etc.)** Proposers should note that food service facilities of concessionaires is subject to a Department of Health and Mental Hygiene letter grading program. The current program is codified in Health Code Article 81.51 and Chapter 23 of Title 24 of the Rules of the City of New York and is described at: <http://www1.nyc.gov/site/doh/business/food-operators/letter-grading-for-restaurants.page>

**Food Service Facility Sublicensing Option** Proposers seeking to sublicense food service operations will be required to report total gross receipts generated from food service. If the proposer's fee offer will be in the form of a guaranteed minimum payment vs. a percentage of gross receipts, total gross receipts from food service or other operations must be included in the gross receipts upon which payment to the City is based, unless otherwise approved by Parks. All sublicensees will be subject to the same internal control requirements as the licensee. All terms and conditions of sublicense agreements and operations, including payment to the City, are subject to Parks' prior, written approval. Parks notes that potential proposers may include subcontracting plans regarding one or multiple scopes of work applicable to this concession. Parks encourages potential proposers to consult with the SBS Certified Business Directory to learn about those Minority & Women-Owned Business Enterprises (MWBES) certified by the City of New York, available at: <https://sbsconnect.nyc.gov/certification-directory-search/>



**Tables, Chairs, & Umbrellas** The concessionaire may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, and food service facility equipment are subject to Parks' prior, written approval. The concessionaire must ensure free and open public access to any outdoor seating areas.

**Hours of Operation** The concessionaire may only operate the Licensed Premises when the park is open. All hours of operation are subject to Parks' prior written approval. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the request is granted by the Commissioner, the concessionaire will continue to be responsible for all other obligations under the License Agreement, including the payment of all license fees.

**Staff** The concessionaire will be required to have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks.

**Storage** Parks makes no representations that there is adequate storage space at the Licensed Premises. The concessionaire shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession. The concessionaire shall not store any equipment or supplies at the Licensed Premises without the prior, written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior, written approval. The concessionaire will be required to store all outdoor equipment on a nightly basis and anytime the concession is closed.

**Maintenance** The concessionaire will be required, at its sole cost and expense (or through arrangements with third parties), to renovate, operate, and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. The concessionaire will be responsible for year-round maintenance of the café structure, and will be responsible for the maintenance of the entire Licensed Premises each day that the concession is operating. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, public restrooms, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval.

**Lighting** The concessionaire shall be responsible for providing safe lighting throughout the Licensed Premises.

**Horticulture & Landscaping** The concessionaire will be required to maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. The concessionaire will be required to submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval. In addition, the concessionaire will be required to obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards.

**Snow, Rubbish Removal, & Recycling** In accordance with the operating schedule, the concessionaire will be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Licensed Premises and the area



within fifty (50) feet of the Licensed Premises. The concessionaire will be required to provide adequate and easily accessible waste and recycling receptacles, approved by Parks, and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval. The concessionaire will be required to comply with all City, State, and Federal regulations regarding recycling. In addition, the concessionaire will be required to demonstrate to Parks' satisfaction, through a detailed maintenance plan, that they will keep and maintain the concession site in excellent condition throughout the license term.

**Signage and Advertising** Licensee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises, without the prior written approval of Parks. The display or placement of tobacco or electronic cigarette advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Permittee will be prohibited from placing advertisements on the exterior of its licensed premises. Any prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks at Permittee's sole cost and expense.

**Internal Controls** Throughout the License term, the concessionaire will be required to maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. In addition, each of concessionaire's Special Events must be documented via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. The concessionaire must also establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record.

**Naming of the Concession** Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of the Commissioner. All intellectual property rights in the Licensed Premises, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks are the property of the City ("City IP"). Licensee may use the name WNYC Transmitter Park in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, and any other uses of or any other City IP may be only pursuant to a separate written agreement between the City and Licensee. Parks may require that the City own the portion of any new name selected by Licensee for use at the Licensed Premises that indicates that it is Parks property or uses a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or an identifier that is not otherwise associated with Parks' property. Note, Parks may issue a separate Request for Proposals for Naming Rights at the facility or portions thereof. In the event Parks solicits for and selects a proposal for naming rights, Concessionaire shall be required to use the name that Parks selects.

**Utilities** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. The concessionaire will be required to connect to and/or



upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage on the licensed premises and an account with Con Edison (or other relevant providers) as appropriate. The concessionaire will be required to pay for any and all utility costs connected with the operation of this concession during the License term. These utility costs include, but are not limited to, paying all water and sewer charges that the New York City Department of Environmental Protection (“DEP”) assesses for water usage. Concessionaire is strictly prohibited from unauthorized use of utilities used, operated or owned by the City

**Drought & Water Conservation Issues** The concessionaire will be required to adhere to all DEP directives and restrictions regarding drought and water conservation issues during the License term. Proposals should include any plans to employ methods and equipment which will conserve water.,

**Environmental Considerations** As a protector and provider of green spaces, Parks is deeply committed to respecting the environment. Therefore, all proposed operational plans should include a detailed description of environmentally friendly practices planned for the Licensed Premises. If certain practices will be phased in, the proposer should provide a timeline.

Parks views favorably proposals that include the following:

- The installation of Energy Star approved appliances and equipment at the Licensed Premises. Proposers should state whether they intend to install products that have the Energy Star seal of approval. Energy Star products and environmentally friendly practices can be found at: <http://www.energystar.gov>.
- The use of “Green Seal” eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint. A list of “Green Seal” certified products can be found at <https://greenseal.org/products-services/>, and a list of environmentally-friendly products/materials is also available at: <https://www1.nyc.gov/site/mocs/partners/environmentally-preferable-purchasing.page>. Proposers should state whether they intend to utilize or install “Green Seal” or other environmentally friendly products, devices, or methods for cleaning and operational purposes. Proposers should also state in their proposals whether they intend to utilize or install energy-efficient LEDs.

Parks also encourages the following:

- The use of chlorine free, biodegradable and/or compostable products such as paper towels, napkins, utensils and plates (if the proposer intends to utilize disposable products for food service at the Licensed Premises).
- The use of environmentally friendly cleaners and the sale of sustainable food products. Proposers can consult the web site of the Green Restaurant Association (“GRA”) to locate GRA-endorsed products. Please visit <http://www.dinegreen.com> for more information.
- Reducing food packaging and encouraging staff and customers to bring and refill their own reusable water bottles.
- Training staff on environmentally friendly food service practices.
- Utilizing a composting service to dispose of food waste.
- Other environmentally friendly practices include employing energy efficient and water-conserving devices (e.g. low flow faucets, high-efficiency toilets), using salvaged or sustainably produced furniture and interior décor, training staff to follow stringent recycling policies, posting clear signs describing how recyclables and landfill waste should be separated, and using energy efficient, non-polluting, low noise generators

**Special Events** Subject to prior written approval from Parks, the concessionaire may conduct special events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Any ticketed (including, but not limited to, payment of a fee at the door) events also require



prior written approval from Parks) at the Licensed Premises. The concessionaire shall submit to Parks for approval all plans for any events or programs at the Licensed Premises, and in no event shall the Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks and such a closure has been announced to the public at least two weeks in advance of such activities or events. Concessionaire must document each Special Event via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such special events must be reported to Parks as Gross Receipts.

Parks, acting on behalf of the City of New York, reserves the right to host a number of annual events without cost to Parks (except as explicitly set forth herein), at the Licensed Premises, including benefits and other non-profit or public events. During any such function, the concessionaire shall be obligated to operate the entire facility without cost to Parks, including, but not limited to providing food service personnel, however normal charges may be made for food and beverage items. The dates of such events shall be mutually agreed upon by both parties and shall be reserved in writing not less than one month in advance. During any such Parks Special Event, Licensee shall be obligated to operate the entire Licensed Premises without cost to Parks, however the City will pay for Licensee's costs for food and beverage items or such other operational costs connected with Parks Special Events. Such costs for Parks Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

**Security** Pursuant to a plan approved in writing by Parks, the concessionaire, at its sole cost and expense, shall be responsible for all security at the Licensed Premises year round and shall provide a 24 hour-a-day security system at the Licensed Premises. The concessionaire will be required to secure the Licensed Premises and any other equipment every evening.

**Safety** Since safety is of the utmost concern, proposers with prior experience in operating this type of facility or similar facilities should submit their personal and/or company safety record. Each proposal should include a detailed outline of maintenance schedules and safety precautions required for the operation of the Licensed Premises as well as any applicable staff qualifications and certifications. Proposers should also provide descriptions of the locations and types of facilities they have operated, including a list of references. The concessionaire will be required to comply with all national safety guidelines and Federal, State and City laws, rules and regulations related to the development, operation and maintenance of the Licensed Premises.

**Community Relations** Parks will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. Parks will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, and the community. Parks will view favorably proposals that demonstrate how the concessionaire will work with Parks staff to address maintenance issues, and work with area residents to address concerns such as noise and amplified sound levels.

**Customer Service** Parks expects the concessionaire to create and maintain a high-quality amenity for the public. Parks encourages proposers to implement customer service mechanisms that will enhance and maintain the satisfaction of patrons. These mechanisms should be outlined in each proposal.

**Signing the License Agreement/Identification & Address** , the successful proposer will be required to present picture identification (such as a driver's license or a passport) and proof of address (such as a utility bill) in order to execute the License Agreement. . In addition, all proposers will be expected to provide Parks with at least two (2) telephone



numbers for contact purposes. The successful proposer shall notify the Parks Revenue office immediately of any changes to the successful proposer’s address or phone number.

**Inspections & Liquidated Damages** Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, Parks may issue directives regarding deficiencies the concessionaire will be obligated to rectify in a timely fashion. Violations of the terms of the license agreement may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the concessionaire’s security deposit. If the concessionaire fails to provide the cleaning, maintenance, and operational services required by the license agreement, Parks shall notify the concessionaire in writing, and the concessionaire shall be required to correct such shortcomings within the timeframe set forth in such notice. If the concessionaire fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the license agreement. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

PROVISION	LIQUIDATED DAMAGES PER OCCURRENCE
Unauthorized Menu Items or Merchandise	\$150
Missing or Unauthorized Price List	\$250
Overcharging	\$350
Expanding	\$350
Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Roving or Vending at Unauthorized Location	\$250
Equipment or Structure Obviously Damaged or in Poor Repair	\$250
Unauthorized Advertising	\$350
Improper Storage	\$350
Graffiti, Dirty Facility or Restroom not maintained	\$350
Unauthorized Vehicular Activity	\$350
Operating without applicable permit(s) or license(s)	\$350
311 sign not displayed	\$250



**Procedure for Appeals of Assessments To Concession License Violations** If an assessment is received for one of the above violations, there is a process by which the assessments may be appealed if the concessionaire feels that the assessment has been assessed in error. The procedure is outlined below:

1. Filing an Appeal

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

2. Adjudication of Appeal

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

**Access to Licensed Premises** The concessionaire will be required to provide Parks with full and free access to the Licensed Premises to ensure Parks' satisfaction with the concessionaire's compliance with the terms of the License Agreement.

**No Exclusive Vending Rights** Proposers should note that the license agreement will not grant the concessionaire exclusive rights to sell in the park in which the Licensed Premises are located. Moreover, Parks may grant other permits to vendors to sell the same or similar items authorized under this license agreement within the same park in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with the successful proposer or operate near the Licensed Premises. Parks encourages concessionaires to report illegal vendors by calling 311.

**Music & Sound Levels** The concessionaire will be required to comply with all laws, rules and regulations of appropriate agencies, specifically the Department of Environmental Protection (DEP), regarding noise levels, and concessionaire shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. The concessionaire may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner.



Outdoor amplified sound will not be permitted past 10pm.. Any musical programming or other types of entertainment must be approved by Parks.

## B. CAPITAL IMPROVEMENTS

The concessionaire will be responsible for all costs associated with the development, operation, and maintenance of the Licensed Premises. Parks will view favorably proposals that include “green building” design elements and encourages the use of environmentally friendly products for all repairs and capital improvements. A list of products/materials relating to environmentally-friendly practices in City construction projects is available in the *New York City EPP Minimum Standards for Construction Products*. A hard copy of the standards may be obtained from the agency or on the web at: [http://www.nyc.gov/html/mocs/html/programs/other\\_epp.shtml](http://www.nyc.gov/html/mocs/html/programs/other_epp.shtml).

**Improvements & Major Repairs** Parks is seeking proposals that include the following improvements and major repairs

- Investigate source of water in basement and remediate/ repair as needed
- Repair or replace the existing roof including the roof drainage system where necessary
- Repair the ceiling or provide a new hung ceiling
- Repair all walls and build new partitions
- Upgrade the electrical system bringing additional power on site as needed and replace wiring to NYC Building Code. Install new electrical meter
- Install new energy efficient lighting systems
- Install gas lines and initiate service. Install new gas meters
- Construct a public restroom facility to provide access to employees, customers, and the general public.
- Upgrade sewage system, install new sewer lines if necessary and provide grease traps as needed throughout the Licensed Premises
- Upgrade plumbing system, including all piping fixtures, drainage and water
- Install new HVAC unit
- Replicate, restore or replace all original windows, doors and openings, including restoring original architectural details for framing, opening dimensions and windows as needed. New exterior openings subject to the prior, written approval of Parks, Department of Buildings and the Public Design Commission
- Repair exterior masonry & finishes, as needed
- Repair and repaint all interior and exterior of facility
- Purchase and maintain all kitchen equipment, including fire and smoke exhaust suppression system
- Provide landscaping adjacent to the building and seating areas
- Provide new signage and/or awnings subject to the prior, written approval of Parks, Department of Buildings and the Public Design Commission
- Replicate and install in the original location on building the WNYC signage
- Restore decorative metal chimney

*Additionally, Parks will consider proposals that increase the footprint to provide indoor or covered seating and storage or support space, as well as outdoor seating.*

**\*Note:** *All designs and work are subject to Parks approval. Additionally, all necessary permits and approvals for capital work and design must be obtained from the Department of Buildings including, but not limited to, obtaining a Certificate of Occupancy, Public Assembly Permit or Letters of No Objection, as needed. Additionally, all designs and construction to be performed on the structure shall be prepared by licensed architects or engineers and will require prior written approval from Parks, the*



*Public Design Commission of the City of New York, the Department of Buildings, and/or any other agency having jurisdiction. The concessionaire will be required to provide Parks with all plans and specifications upon completion of the construction documents.*

**Americans with Disabilities Act (“ADA”) Compliance** The concessionaire shall provide ADA accessibility as required by prevailing code throughout the Licensed Premises including, but not limited to, restrooms, installing ADA accessible counters in the café area, installing ramps, as needed, and providing ADA signage.. The concessionaire shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. The concessionaire is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.

**Permits, Licenses & Approvals** The concessionaire will be responsible for obtaining all necessary permits, licenses and approvals from all City, State and Federal Agencies having jurisdiction for the operation, maintenance and performance of all capital improvements at the Licensed Premises including but not limited to DOB construction permits, DOB Public Assembly Permits, DOB Certificate of Occupancy or Letter of No Objection, approval from the Public Design Commission, DOHMH permits, fire department certificates, DEP permits, New York State Department of Environmental Conservation (NYS DEC) approvals, New York State Historic Preservation Office approvals, and New York City Landmarks Preservation Commission approvals, MTA approvals.. Additionally, all designs, and capital work to be performed on the licensed premises shall be prepared by licensed architects or engineers and require prior written approval from Parks. The concessionaire will be required to provide Parks with all plans and specifications upon completion of the construction documents.

**Evaluation of Capital Investment & Design** Please note that Parks will weigh capital investment and design in its evaluation process (for more information, please see the “Proposal Content Guidelines” section). Therefore, please describe all intended capital work and provide cost estimates for this capital work in your proposal submission. In addition, please include a detailed capital/design timetable which clearly outlines proposed improvements and the anticipated duration of each improvement. The timetable may use “phases” as a schedule. Also, please indicate whether you plan to account for environmental considerations in your capital improvement and maintenance plan. In compiling your capital submission, please be aware that the cost estimates provided in the successful proposal will become a minimum required capital expenditure in the License Agreement and the time frame proposed will become a mandatory capital schedule. In the event the concessionaire performs all capital improvements for less than the minimum required capital expenditure, any excess monies will be remitted to the City as additional License fees. If the concessionaire by the expiration or sooner termination of the License Agreement fails to expend the minimum capital expenditure required up to the date of expiration or sooner termination, the City may also require any unexpended monies to be remitted to the City as additional License fees. Therefore, please be realistic or even conservative in the investment and time frame you offer. All capital improvements and fixed equipment applied toward the proposer’s capital investment become the property of Parks upon installation, at Parks’ option. The concessionaire will also be required to supply all additional equipment and materials necessary for the successful operation of the concession. Proposers should differentiate between equipment to be applied towards the minimum required capital expenditure versus personal expendable items in their proposals. Personal expendable items should not be considered capital. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the concession. For example, routine painting and repair of minor wear and tear is considered routine maintenance and would not be accepted as capital investment. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as capital improvements. The concessionaire shall pay for all improvements. As a



Parks concessionaire, you may request a sales tax waiver for all sales tax costs associated with the capital expenditures on your Parks concession. Therefore, no sales tax expenses will be accepted as part of capital submissions. Personal expendable items not applied toward the required capital expenditure will remain the property of the concessionaire. These personal expendable items should be listed separately in your proposal under the category of “Additional Investment.”

**Certificate of Occupancy** The concessionaire will be required to operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Concessionaire shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the commencement date of the license agreement, the concessionaire does not have a Certificate of Occupancy because one is not legally required, then the concessionaire shall obtain a “Letter of No Objection” from the DOB. Furthermore, in the event that, at the commencement date of the license agreement, or at any time during the term of the license agreement, the concessionaire does not have a Certificate of Occupancy, where required, and does not have a “Letter of No Objection”, the concessionaire may conduct its operations in temporary structures that have been approved by Parks. The concessionaire shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situation, the concessionaire nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until the concessionaire has obtained the necessary Certificate(s) of Occupancy, if required, or “Letter(s) of No Objection.” Nothing in this section shall limit the concessionaire's obligation to pay the License Fees.

**Construction Security Deposit & Payment Bond** At Parks’ discretion, the concessionaire may be required to provide a construction security deposit, in an amount and format approved by Parks, to ensure that all capital work is completed. If required, this security deposit, preferably in the form of a letter of credit, must be in place before any capital work commences.

To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

### **C. DESIGN REVIEW FEE**

For Parks’ Design review of the concessionaire’s design documents, Parks will charge the concessionaire a fee (“Design Review Fee”) which will be a percentage of the total cost of all capital improvements. "Total Cost" of such improvements will be the total amount stipulated in the license agreement. The fee is 1% of the total cost. Upon signing the License Agreement, the successful proposer will pay the Design Review Fee.

### **D. ADDITIONAL REQUIREMENTS DURING THE TERM OF LICENSE**

1. The concessionaire will be required to develop, operate, and maintain the Licensed Premises as a concession for the use and enjoyment of the general public.



2. The concessionaire will be required to designate approximately 50% of the building's footprint for both publicly accessible restrooms and a portion for the sole usage of Parks Department Management & Operations ("Parks M&O").
3. The concessionaire will be required to submit a security deposit of 25% of the highest year's guaranteed minimum license fee, which will be required for the duration of the term of the license. This security deposit, which may be in the form of an interest bearing account or other format approved by Parks, will be due upon signing.
4. Insurance must be in place throughout the entire term of the license agreement. The concessionaire will be required to carry Commercial General Liability insurance in at least Two Million Dollars (\$2,000,000) per occurrence, Three Million Dollars (\$3,000,000) aggregate, and statutory limits of Worker's Compensation, Employer's Liability and Disability Benefits Insurance. The Commercial General Liability insurance will be required to name the City of New York, including its officials and employees, as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form GC 20 26, and the City's limits will be no lower than concessionaire's. If vehicles are to be used in connection with the concession, the concessionaire shall carry Business Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles. The concessionaire shall maintain all-risk property insurance covering all buildings or structures on the property at a value determined by Parks.

If deemed necessary by Parks, the concessionaire shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Licensed Premises. Each building shall be insured separately. For each building, the concessionaire shall maintain the maximum limits available under the NFIP for both the building and its contents.

Proposers are on notice that the City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed concession warrants it.

5. The concessionaire will be required to submit monthly statements of gross receipts from all categories of income in a format approved by Parks. Within sixty (60) days following the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year's operation. The concessionaire will be required to maintain a revenue control system to ensure the accurate and complete recording of all revenues, as described under "Internal Controls" in Section II(A) above.
6. The concessionaire will be required to pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state, or city sales taxes which are paid by the concessionaire.
7. The concessionaire will be responsible for regular pest control inspections and extermination, as needed. To the extent that the concessionaire applies pesticides to any property owned or leased by the City, concessionaire or any subcontractor hired by concessionaire shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.
8. Prior to the commencement of any construction, the concessionaire shall have an asbestos inspection performed on the existing structures at the Licensed



Premises to the extent required by the Department of Buildings or other applicable authority. In the event that asbestos removal is deemed necessary, the concessionaire will remove the asbestos according to City, State and Federal regulations.

9. The concessionaire will be prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from Parks. The concessionaire will report dead and diseased trees to Parks and upon Parks' request they will remove them. Any attachments to the trees, such as lights, will not be permitted.
10. The concessionaire will be required to cooperate with Parks during special and other unanticipated events.
11. Smoking of any tobacco product or non-tobacco smoking product or electronic cigarettes is strictly prohibited at the Licensed Premises. except in parking lots or on sidewalks along the park perimeter. Concessionaire shall adhere to and enforce this policy.
12. Pursuant to Parks' policy citywide, the concessionaire will be prohibited from selling any beverages in glass bottles. All beverages will be required to be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers will be prohibited in the operation of the concession.
13. The selling and/or advertisement of cigarettes, or non-tobacco smoking products, electronic cigarettes, cigars, or any other tobacco products is strictly prohibited. The concessionaire will be required to adhere to and enforce this policy.
14. The concessionaire will be required to retain a professional licensed engineer or registered architect approved by Parks for design and filings of proposed capital work and to oversee the entire construction project. This supervising architect or engineer will be required to ensure that all construction conforms to the plans approved by Parks' Design Division. Proposers are required to submit the Engineer or Architect's qualifications to Parks for prior written approval.
15. For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, the concessionaire will be required to maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with NYS DECS and register such tanks with the DEP. The concessionaire will assume all registration and update costs. The concessionaire must keep a copy of the PBS Certificate on site and provide copies to Parks' 5-Boro Office on Randall's Island, New York. The concessionaire will be required to perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks. A useful web site for compliance issues is: <http://www.dec.ny.gov/chemical/287.html>
16. The concessionaire will be required to indemnify the City for claims arising out of the concessionaire's operations under the License Agreement, pursuant to a provision to be included in the License Agreement.
17. The concessionaire must obtain the prior written approval of Parks prior to entering into any marketing or sponsorship agreement. In the event that the



concessionaire breaches this provision, the concessionaire shall take any action that the City may deem necessary to protect the City's interests.

18. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Concessionaires of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. Exhibit A, the Paid Sick Leave Law Rider, will be included in any concession agreement awarded from this RFP and will incorporate the PSLL as a material term of such agreement. Please read Exhibit A carefully.
19. The concessionaire agrees to work in good faith to cooperate with Parks efforts to advance Parks-approved volunteering events and programming at or near the Licensed Premises. Parks' concession unit will coordinate these activities with the concessionaire.

### III. THE RFP PROCESS/PROPOSAL PROCEDURE

#### A. PROPOSAL SUBMISSION INSTRUCTIONS

In order to maintain a contactless process as much as possible, Parks is encouraging proposers to submit an electronic proposal. All proposals must be submitted before the due date and time.

The following information should be printed on the cover page of the proposal:

**Proposer's Name and Address**

**Solicitation B385-SB-2025**

**Proposal Due Date: **date****

**The proposal should be e-mailed to Parks Revenue at [Proposals.Revenue@parks.nyc.gov](mailto:Proposals.Revenue@parks.nyc.gov)**

If you are submitting the proposal electronically, you should submit a copy of the check/money order within your proposal. A copy of the postal receipt should be included in the proposal as well. Parks will not be able to verify missing checks without this information. If we cannot make this verification, we will consider it non-responsive.

If you are unable to submit an electronic proposal you may submit an original hard copy proposal to the Parks Revenue Office at the following address:

Office of the Revenue Division  
City of New York Parks,  
The Arsenal-Central Park  
830 Fifth Avenue- Room 407,  
New York, New York 10065

You **must** notify the Project Manager by **date** if you cannot submit a proposal electronically and will be submitting it in person, by mail, courier service, etc.

If submitting a hard copy proposal, the following procedures would apply:



The proposal should be typed on both sides of 8 ½" X 11" paper. Pages should be paginated. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult:

<https://www.epa.gov/smm/comprehensive-procurement-guidelines-paper-and-paper-products>). The proposer should state whether its response is printed on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in these instructions. Failure to comply with any of the instructions set forth in this paragraph will not be considered non-responsive.

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to Parks' prior written approval. Oversized drawings may be submitted, but must be accompanied by 8 ½" x 11" sectionals or reductions to 8 ½" x 11". No telegraphic or facsimile proposals will be accepted. The proposal will be evaluated on the basis of its content, not length.

**Please submit four (4) copies of your proposal (including four copies of all required attachments). The following information should be printed on the outside of the envelope:**

**Proposer's Name and Address**  
**Solicitation #: B385-SB-2025**  
**Proposal Due Date: date**

## **B. PROPOSAL SUBMISSION REQUIREMENTS**

Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.

1. All proposers must submit a proposal that includes a fee offer for each year of the License term. At Parks' request, proposer shall submit documentation, satisfactory to Parks, demonstrating that it has the financial capability to pay the fees set forth in its proposal. Failure to provide such documentation will result in a determination of non-responsiveness.
2. All proposers are required to submit as a proposal deposit a certified bank check, official bank check, money order, or cashier's check in the amount of Five Thousand Dollars (\$5,000.00) with the proposal (payable to NYC Parks & Recreation). **Personal or business checks will not be accepted.**
3. If you are submitting the proposal electronically, the actual check or money order must be sent to the office of the Revenue Division, City of New York Parks, The Arsenal-Central Park, 830 Fifth Avenue, Room 407, New York, New York 10065 via mail/UPS/FedEx (or other related delivery service) **and be postmarked no later than the due date of the proposal.**

In the event of the failure of a successful proposer to execute a concession agreement in accordance with the terms of its proposal, the deposit shall be retained by the City unless the proposal has been permitted to be withdrawn. Proposal deposits will be returned to unsuccessful proposers after the concession agreement is signed with the successful proposer.



4. If submitting in person, all proposals must be submitted in a sealed envelope and received in the office of the Revenue Division, City of New York Parks, The Arsenal-Central Park, 830 Fifth Avenue, Room 407, New York, New York 10065.
5. All proposals must be received by **Day, Month #day, 2025 at 3:00 pm**. As previously indicated, you must notify the Project Manager by **Day, Month #day, 2025** if you cannot submit a proposal electronically and will be submitting it in person, by mail, courier service, etc.

**Proposals and modifications received after the time and date listed above will be considered late, will be returned to the proposer unopened and will not be considered for award, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules.**

6. Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, proposers responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal and should do so in a separate envelope. (If the responding proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

Organizations which hold 10% or more ownership of the entity must now be reported. Beginning in January 2018, an entity must submit a DBDF that certifies whether one or more organizations own or control 10% or more of the entity. Until such a DBDF has been received by Doing Business Accountability, a DBDF submitted with a filing status of No Change will not be accepted. To determine if Doing Business Accountability has received a LL 34 certification from your entity and to obtain a report of the officers, owners, and managers currently in the Doing Business Database for your entity, please contact Doing Business Accountability at 212-298-0600 or at [doingbusiness@mocs.nyc.gov](mailto:doingbusiness@mocs.nyc.gov).

Doing Business Data Form with Agency Name and Transaction ID (i.e. PIN, Contract number, PO number, etc.) filled in, Proposal box checked and Transaction Type Indicated.

### **C. PROPOSAL CONTENT GUIDELINES**

Each proposal is expected to include the following:

Completed checklist (the form is included at the front of this RFP) as the cover page of the proposal and a completed Doing Business Data Form.

1. Proposed Capital Investment, Improvements and Design



- Proposers should submit a detailed timetable describing all design, improvements and capital work. This timetable should clearly outline all intended improvements and investments, the projected cost of these improvements, and the anticipated duration of each improvement. The timetable may use “phases” as a schedule. An approximate time frame for each phase should be included.
  - Proposers will be required to designate approximately 50% of the building’s footprint for both publicly accessible restrooms and a portion for the sole use of Parks Department Management & Operations (“Parks M&O”).
  - Proposers should submit a plan describing the extent to which proposed capital improvements and investments will take into account environmental considerations.
  - Proposers should submit designs of the exterior and interior of the Licensed Premises, including dimensions, photographs and renderings. All final designs of the successful proposer must be approved by Parks and other pertinent agencies in writing before construction can commence.
  - Parks will view favorably proposals that include “green building” design elements and encourages the use of environmentally friendly products for all repairs and capital improvements.
  - Parks is seeking proposals that include the Improvements and Repairs noted in Section B, pages 11-13 of this RFP.
2. Fee Offer
- The fee offer should state the highest sum each proposer is prepared to pay as a license fee, expressed as guaranteed minimum annual fee versus a percentage of gross receipts, whichever is greater. The City urges that there be an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum annual fee over the license term.
3. Operating Experience & Financial Capability
- Proposers should submit the following documentation demonstrating their operating experience and financial capability:
    - A resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with City agencies, and/or access to individuals and/or firms with such expertise. For proposers who have done business with Parks or the City, Parks may consider that experience as part of the selection criteria in evaluating proposals. Include the names and addresses of all corporate officers of the entity submitting the proposal. If any principal owner and/or officer of the submitting entity is currently or has been a principal officer of another entity or entities within the last five (5) years, that entity or entities (including applicable tax identification numbers) should be identified as well.
    - Parks would like to confirm whether you have New York certification as an MWBE for informational purposes. The response to this question is optional. If you would like to know more information on MWBE eligibility requirements, please see the link below to the NYC Business website (<https://nyc->



[business.nyc.gov/nycbusiness/description/minority-and-womenowned-business-enterprise-certification-program-mwbe](http://business.nyc.gov/nycbusiness/description/minority-and-womenowned-business-enterprise-certification-program-mwbe))

- A list of at least three (3) recent relevant references, with whom the proposer has previously worked and/or who can describe such matters as the proposer's financial, operational and construction capability. One of the three references should be from a financial institution that has extended credit to the proposer. Include the name of the reference entity, a description of the nature of the listed reference's experience with the proposer and the name, title, address, and telephone number of a contact person at the reference entity.
- A financial statement or statements prepared in accordance with standard accounting procedures. Financial statements should include, but are not limited to, annual income and net worth (assets and liabilities), including a breakdown of liquid and non-liquid assets. Proposers should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and/or personal).
- The intended source of all funds proposed to be invested in the Licensed Premises.

#### 4. Planned Operations

- Proposers should submit a detailed operational plan for the entire Licensed Premises, including but not limited to intended use of the facility hours of operation, services to be provided, menu items and merchandise to be sold, a detailed list of all proposed prices and rates, internal controls, landscaping plans, maintenance, rubbish removal, and cleaning schedules, safety and security plans, any plans to install energy efficient appliances or appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use "Green Seal" or other environmentally friendly products or devices. All plans, schedules, services, menu items, merchandise, prices and rates, and hours of operation are subject to Parks' prior written approval.
- Proposers should submit an estimated number of full-time and seasonal employees and the positions these employees will fill.
- Parks is charged with improving customer satisfaction with the services provided at facilities on parkland. Therefore, Parks would like proposers to explain in their submissions the mechanisms they would use to measure customer satisfaction with the services offered by this concession. Such mechanisms might include customer evaluations or survey forms. Further, Parks would like proposers to explain how they would improve the quality of services offered if the above mechanisms indicate a need to do so.
- Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all the assumptions used in its formulation. In addition to the required four copies of the proposals, Parks requests that the Pro Forma (not the entire proposal) be submitted electronically as an excel file. Excel files must be unlocked and show all formulas and calculations



used. **Electronic submissions may be addressed to [Proposals.Revenue@parks.nyc.gov](mailto:Proposals.Revenue@parks.nyc.gov)**

- Parks will view favorably proposals that incorporate diverse, and/or healthy food choices. Proposers should include some low-cost items on their menu. All prices and menu items are subject to Parks' prior written approval.
  - Parks will view favorably the installation of Energy Star approved appliances and equipment, such as and commercial refrigerators, at the Licensed Premises. Parks will also view favorably proposals that include plans to use "Green Seal" eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint.
  - Parks will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. Parks will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, and the community.
  - Parks will view favorably proposals that demonstrate how the concessionaire will work with Parks staff to address maintenance issues, and work with area residents to address concerns, such as noise and amplified sound levels.
  - Parks also encourages the following:
    - The use of chlorine free, biodegradable and/or compostable products such as paper towels, napkins, utensils and plates (if the proposer intends to utilize disposable products for food service at the Licensed Premises).
    - The use of environmentally friendly cleaners and the sale of sustainable food products. Proposers can consult the web site of the Green Restaurant Association ("GRA") to locate GRA-endorsed products. Please visit <http://www.dinegreen.com> for more information.
    - Reducing food packaging and encouraging staff and customers to bring and refill their own reusable water bottles.
    - Training staff on environmentally friendly food service practices.
    - Utilizing a composting service to dispose of food waste.
5. Integrated Sustainability by Design
- a. The fundamental goals of sustainability are to diminish the utilization of non-renewable energy, limit landfill waste, and create healthy, overall sustainable conditions. Proposers should include an organizational plan for sustainability that looks to decrease adverse effects on the climate and improve the overall quality of life of its users. Parks is seeking proposals that include the following, as applicable and feasible:
    - enhance site potential through sustainably integrated design (see 5 b. below)
    - limit non-renewable energy utilization
    - utilize ecologically ideal items (see 5 c. below)
    - conserve water
    - upgrade indoor natural quality through biophilic designs, which can include incorporating natural materials, natural lighting, vegetation, and other elements of the natural world into the built environment
    - optimize all maintenance and operations to follow concepts of sustainability
  - b. Proposers should identify each portion of the site that can be improved through sustainably integrated design and provide design plans, with labels and explanations, accordingly. Parks is seeking proposals that include sustainable technologies such as:



- Use energy-efficient lighting & appliances
  - Install motion-activated fixtures and lights
  - Use low-pressure faucets and water closets, etc.
  - Increase permeable surfaces
  - Incorporate Storm Water Management, including adding rain garden, if feasible.
  - Reduce paved surface areas by adding new landscaping in and around parking lots
  - Install or convert building systems including Heating Ventilation and Air Conditioning to high efficiency, electric or sustainable systems
  - Use locally sourcing materials
  - Using sustainable/recycled materials
  - Include a Comprehensive Waste Management Plan, including recycling program and composting, if feasible.
  - Plant new deciduous trees, green roofs and landscaping to provide shade and reduce heat islands
  - Install bike racks
  - Provide electric charging stations for vehicles and maintenance equipment
  - Utilize electric vehicles and maintenance equipment
- c. Proposers should include a plan for integrating sustainability into everyday operations such as:
- Provide sustainability measurements, analytics, and performance reviews
  - Use a sustainable leadership system to ensure an operation that is sustainable at its core (via employee training or workshops)
  - Provide a detailed plan for phasing out plastic usage and single-use items
  - Use “clean” or “green” cleaning products to ensure cleaner (water) run-off for the surrounding community
  - Use sustainable soaps, toilet paper, hand dryers (rather than paper towels), low-pressure faucets, etc. for patrons
  - Provide a plan to organize composting or partner with a composting entity to ensure minimal trash to landfills

PLEASE NOTE: All proposals should indicate how the proposer became aware of this concession opportunity (e.g. newspaper ad; mailing list, Parks website, etc).

#### **IV. EVALUATION AND SELECTION PROCEDURES**

Proposals will be evaluated by a selection committee composed of a minimum of three (3) Parks employees or Parks and other City employees, in accordance with procedures established by the Franchise and Concession Review Committee, based on the criteria listed below. The concession will be awarded to the proposer whose submission the selection committee judges best overall based on these criteria.

##### **A. PROPOSAL EVALUATION CRITERIA**

In evaluating proposals, the Selection Committee will use the following criteria:

- Capital Investment, Improvement and Designs: see Section III (C) (1) (30%)
- Fee Offer: see Section III (C) (2) (20%)
- Operating Experience & Financial Capability: see Section III (C) (3) (15%)
- Planned Operations: see Section III (C) (2) (20%)
- Integrated Sustainability by Design: see Section III (C) (5) (15%)

##### **B. EVALUATION PROCEDURES**



Parks will only consider proposals that meet satisfactory levels of the above criteria. The City is not required to accept the proposal that includes the highest fee offer. Parks' acceptance of a proposal does not imply that every element of that proposal has been accepted

Parks cannot consider any proposal that does not comply with the "Submission Requirements" section of this RFP. Proposals that do not meet these requirements will not be evaluated. When feasible, employees of Parks will visit facilities operated by proposers.

## **V. OTHER GENERAL RFP REQUIREMENTS AND CONDITIONS**

Parks reserves the right to postpone or cancel this RFP or reject all proposals, if in its judgment it deems it to be in the best interest of the City of New York to do so.

Proposers are advised that Parks has the option of selecting the proposer without conducting discussions or negotiations. Therefore, proposers should submit their best proposals initially, since discussions or negotiations may not take place.

Proposers are also advised that the award of this concession is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity.

Proposers have the right to appeal a determination of non-responsiveness and/or non-responsibility and have the right to protest a solicitation and award as specified in Chapter 1 of Title 12 of the Rules of the City of New York.

All RFP submission materials become the property of the City of New York and Parks. Proposal submission material will generally be made available for inspection and copying by interested parties upon written request, except when exempted from disclosure under the New York State Freedom of Information Law.

Parks is subject to the New York State Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by Parks. (*See Public Officers Law, Sections 87 and 89*). Individuals or firms that submit proposals to Parks may request that Parks exempt all or part of such a proposal from public disclosure, on the grounds that the proposal contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and state, in detail, the specific reasons for the requested exception. It must also specify the proposal or portions thereof for which the exception is requested. If Parks grants the request for exception from disclosure, Parks shall keep such proposal or portions thereof in secure facilities.

Parks shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therein.

Proposers should be aware that this concession will be developed and operated pursuant to a license agreement issued by Parks. . Notwithstanding any language contained herein, the license agreement is terminable at will by the Commissioner at any time. In the event this agreement is terminated, Parks will not reimburse licensee's unamortized capital improvement costs.

A proposer may submit a modified proposal to replace all or any portion of a proposal submitted up until the proposal submission deadline. Parks will only consider the latest version of the proposal. Late proposals and late modifications will not be considered for evaluation, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules. Proposers may withdraw their proposals from consideration at any time before the proposal submission deadline by submitting written notice to Parks. A proposer may not withdraw its



proposal before the expiration of forty-five (45) calendar days after the date of the opening of proposals; thereafter a proposer may only withdraw its proposal by submitting written notice to Parks in advance of an actual grant of a concession.

Technical addenda issued by Parks will be the only authorized method for communicating clarifying information to all potential proposers. Proposers should contact the agency before submitting a proposal to verify that they have received any addenda issued. Proposers shall acknowledge the receipt of any addenda in their proposal submissions.

Proposers should be aware that, upon Parks' request, proposer(s) will be required to complete an online Procurement and Sourcing Solutions Portal (PASSPort to the Mayor's Office of Contract Services (MOCS)). In addition, any person or entity with at least a 10% ownership interest in the submitting vendor (including a parent company), is required to complete PASSPort Questionnaires (Principal Questionnaire for any person and Vendor Questionnaire for any entity with at least a 10% ownership interest in the submitting vendor). The concession award will be subject to completion of the PASSPort questionnaires and review of certain information contained therein by the Department of Investigation. To submit the questionnaires to MOCS, create an account and submit the vendor enrollment package in PASSPort through the NYC website at <http://www.nyc.gov/passport>

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller's Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007. This office may be reached at (212) 669-2323.

Sue Donoghue,  
Commissioner



## **EXHIBIT A**

### **NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER**

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

#### *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. Contractors 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 Contractor 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 Contractor 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 Contractor must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto: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 Contractor 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, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor 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 Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to [www.nyc.gov/PaidSickLeave](http://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 Contractor can get more information



about how to comply with the ESSTA and the DCWP Rules. The Contractor 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.<sup>1</sup> 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;



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<sup>1</sup> 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 B**

### **SITE PLAN**





**[INSERT DBD FORM]**

### **Checklist of Items to be Included in the Proposal**

Please circle or fill out where applicable and include this form as the cover page of your proposal



Name of Proposer \_\_\_\_\_ Solicitation # **B385-SB-2025**

Yes/No	
Yes/No	<p>You have included the following information:</p> <p>Proposer's Name _____ Address _____</p> <p>_____</p> <p>_____</p> <p>Solicitation #: <b>B385-SB-2025</b></p> <p>Proposal Due Date and Time:</p> <p><b>Date and time</b></p>
Yes/No	<p>If submitting a hard copy proposal, you have submitted four (4) copies of your proposal.</p>
Yes/No	<p>You have submitted a fee offer for each year of the License term as follows:</p> <p>Year 1 _____ Year 2 _____ Year 3 _____ Year 4 _____</p> <p>Year 5 _____ Year 6 _____ Year 7 _____ Year 8 _____</p> <p>Year 9 _____ Year 10 _____ Year 11 _____ Year 12 _____</p> <p>Year 13 _____ Year 14 _____ Year 15 _____ Year 16 _____</p> <p>Year 17 _____ Year 18 _____ Year 19 _____ Year 20 _____</p> <p>Year 21 _____ Year 22 _____ Year 23 _____ Year 24 _____</p> <p>Year 25 _____</p>
Yes/No	<p>You have submitted as a proposal deposit a certified bank check, official bank check, money order, or cashier's check in the amount of <b>(\$5,000.00)</b> with the proposal (payable to NYC Parks &amp; Recreation) <b>(No Personal or business checks)</b>.</p> <p>If submitting the proposal electronically, you should have included a copy of the proposal deposit along with the postal receipt used to send out the deposit.</p>
Yes/No	<p>You have submitted a resume or detailed description of your professional qualifications</p>
Yes/No	<p>You have included a list of at least three (3) recent relevant references</p>
Yes/No	<p>You have submitted a detailed operational plan for the entire Licensed Premises</p>
Yes/No	<p>You have included a financial statement or statements prepared in accordance with standard accounting procedures.</p>
Yes/No	<p>You have identified the intended source of all funds proposed to be invested in the Licensed Premises</p>
Yes/No	<p>If submitting a hard copy proposal, you have submitted four copies of a Doing Business Data Form. One copy for electronic submission.</p>
Yes/No	<p>You have acknowledged the receipt of all addenda that have been issued by Parks for this solicitation</p>
Yes/No	<p>You have indicated in your proposal if you intend to create a new entity which would be awarded the contract, if selected as highest proposer. If you intend to operate as a Doing Business As (dba), please ensure you have filed the required paperwork with the NY Department of State.</p>

**New York City Department of Parks & Recreation  
REQUEST FOR PROPOSALS ~ SOLICITATION # B385-SB-2025  
PROPOSAL RATING SHEET AND GUIDELINES**

<b>Subject</b>	For the Development, Operation, and Maintenance of an outdoor café and other amenities in WNYC Transmitter Park, Brooklyn.
<b>Concession ID</b>	B385-SB-2025
<b>Proposer</b>	
<b>Proposal ID No.</b>	
<b>Evaluator's Name</b>	

	<u>Score Awarded</u>	<u>Maximum Score</u>
<b>A. Proposed Capital Investment, Improvements &amp; Design</b>	_____	<b><u>30 points</u></b>
<b>B. Planned Operations</b>	_____	<b><u>20 points</u></b>
<b>C. Operating Experience &amp; Financial Capability</b>	_____	<b><u>15 points</u></b>
<b>D. Fee Offer</b>	_____	<b><u>20 points</u></b>
<b>E. Integrated Sustainability by Design</b>	_____	<b><u>15 points</u></b>
<b>TOTAL</b>	_____	<b><u>100 points</u></b>

**Evaluator's Signature & Date:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name of Proposer Organization: \_\_\_\_\_

**A. Proposed Capital Investment, Improvements and Design (30 points)**

*The Capital Investment score will be comprised of two parts: a calculated score based on the capital investment (Step 1 Score) and a score based on the extent to which the proposer demonstrates the ability to design and complete quality capital improvements at the Licensed Premises based on proposed capital investment and designs submitted, including any plans to take environmental considerations into account (Step 2 Score).*

**Please refer to the Capital Improvements section on page 11 of the RFP for more information.**

**STEP 1.** The selection committee members must use the following formula to develop an initial score for the proposer (Step 1 Score for Subject Proposer):

\_\_\_\_\_ (Subject Guaranteed Capital Investment) **divided by** \_\_\_\_\_ (Highest Guaranteed Capital Investment Submitted) **times 20** (Max Pts. For Step 1 Score) = \_\_\_\_\_ (Step 1 Score for Subject Proposer)

**STEP 2.** Determine the secondary score (Step 2 Score) taking the following factors into account:

- Proposers should submit a detailed timetable describing all design, improvements and capital work. This timetable should clearly outline all intended improvements and investments, the projected cost of these improvements, and the anticipated duration of each improvement. The timetable may use "phases" as a schedule. An approximate time frame for each phase should be included.
- Proposers should submit a plan describing the extent to which proposed capital improvements and investments will take into account environmental considerations.
- Proposers will be required to designate approximately 50% of the building's footprint for both publicly accessible restrooms and a portion for the sole usage of Parks Department Management & Operations ("Parks M&O").
- Proposers should submit designs of the exterior and interior of the Licensed Premises, including dimensions, photographs and renderings. All final designs of the successful proposer must be approved by Parks and other pertinent agencies in writing before construction can commence.
- Parks will view favorably proposals that include "green building" design elements and encourages the use of environmentally friendly products for all repairs and capital improvements.
- Parks is seeking proposals that include the Improvements and Repairs noted in Section B, pages 11-13 of the RFP.

8-10 points	Proposer offers superior capital investment, improvements and design based on the above considerations.
4-7 points	Proposer offers satisfactory capital investment, improvements and design based on the above considerations.
0-3 points	Proposer offers limited capital investment, improvements and design based on the above considerations.

\_\_\_\_\_ (Step 2 Score)

**STEP 3.** Determine the Final Score for Subject Proposer (Step 1 Score + Step 2 Score) and place the figure next to "A" Score."

**A Score** \_\_\_\_\_  
(Max 30 pts)

**Basis for Score:** \_\_\_\_\_

\_\_\_\_\_

Name of Proposer Organization: \_\_\_\_\_

**B. Planned Operations (20 points)**

*Extent to which the proposer demonstrates that it will operate the concession at the highest caliber based on planned operation.*

**Consider the following factors:**

- Proposers should submit a detailed operational plan for the entire Licensed Premises, including but not limited to intended use of the facility, hours of operation, services to be provided, merchandise to be sold, a detailed list of all proposed prices and rates, internal controls maintenance, rubbish removal and cleaning schedules clean-up and removal of all snow,, safety and security plans, any plans to install energy efficient appliances or appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices. All plans, schedules, services, merchandise, prices and rates, and hours of operation are subject to Parks’ prior, written approval.
- Proposers should submit an estimated number of full-time and seasonal employees and the positions these employees will fill.
- Parks is charged with improving customer satisfaction with the services provided at facilities on parkland. Therefore, Parks would like proposers to explain in their submissions the mechanisms they would use to measure customer satisfaction with the services offered by this concession. Such mechanisms might include customer evaluations or survey forms. Further, Parks would like proposers to explain how they would improve the quality of services offered if the above mechanisms indicate a need to do so.
- Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all the assumptions used in its formulation. In addition to the required four copies of the proposals, Parks requests that the Pro Forma (not the entire proposal) be submitted electronically as an excel file. Excel files must be unlocked and show all formulas and calculations used.
- Parks will view favorably proposals which incorporate diverse and/or healthy food choices. Proposers should include some low-cost items on their menu. All prices and menu items are subject to Parks’ prior written approval.
- Parks will view favorably the installation of Energy Star approved appliances and equipment, such as and commercial refrigerators, at the Licensed Premises. Parks will also view favorably proposals that include plans to use “Green Seal” eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint.
- Parks will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. Parks will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, and the community.
- Parks will view favorably proposals that demonstrate how the concessionaire will work with Parks staff to address maintenance issues, and work with area residents to address concerns, such as noise and amplified sound levels.
- Parks also encourages the following:
  - The use of chlorine free, biodegradable and/or compostable products such as paper towels, napkins, utensils and plates (if the proposer intends to utilize disposable products for food service at the Licensed Premises).
  - The use of environmentally friendly cleaners and the sale of sustainable food products. Proposers can consult the web site of the Green Restaurant Association (“GRA”) to locate GRA-endorsed products. Please visit <http://www.dinegreen.com> for more information.
  - Reducing food packaging and encouraging staff and customers to bring and refill their own reusable water bottles.
  - Training staff on environmentally friendly food service practices.
  - Utilizing a composting service to dispose of food waste.

14-20 points	Proposer offers superior planned operations based on the above considerations.
7-13 points	Proposer offers satisfactory planned operations based on the above considerations.
0-6 points	Proposer offers limited planned operations based on the above considerations.

**B Score** \_\_\_\_\_  
(Max 20 pts)

**Basis for Score:** \_\_\_\_\_

Name of Proposer Organization: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of Proposer Organization: \_\_\_\_\_

### C. Operating Experience & Financial Capability (15 points)

*Extent to which the proposer demonstrates relevant and successful operating experience in the field, including any work with City agencies, and/or access to individuals and/or firms with such expertise.*

**Consider the following factors:**

- Proposers should submit a resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with City agencies, and/or access to individuals and/or firms with such expertise. Include the names and addresses of all corporate officers of the entity submitting the proposal. If any principal owner and/or officer of the submitting entity is currently or has been a principal officer of another entity or entities within the last five (5) years, that entity or entities (including applicable tax identification numbers) should be identified as well.
- Proposers should attach a list of at least three (3) recent relevant references, with whom the proposer has previously worked and/or who can describe such matters as the proposer's financial, operational and construction capability. One of the three references should be from a financial institution that has extended credit to the proposer. Include the name of the reference entity, a description of the nature of the listed reference's experience with the proposer and the name, title, address, and telephone number of a contact person at the reference entity.

6-8 points	Proposer has superior, highly successful operating experience in the field based on the above considerations.
3-5 points	Proposer has satisfactory successful operating experience in the field based on the above considerations.
0-2 points	Proposer has limited successful operating experience in the field based on the above considerations.

- Proposers should include a financial statement or statements prepared in accordance with standard accounting procedures. Financial statements should include, but are not limited to, annual income and net worth (assets and liabilities), including a breakdown of liquid and non-liquid assets. Proposers should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and/or personal).
- Proposers should identify the intended source of all funds proposed to be invested in the Licensed Premises.

6-7 points	Proposer demonstrates a superior capability to undertake all financial obligations under the license agreement based on the above considerations.
3-5 points	Proposer demonstrates satisfactory capability to undertake all financial obligations under the license agreement based on the above considerations.
0-2 points	Proposer demonstrates limited capability to undertake all financial obligations under the license agreement based on the above considerations.

**C Score** \_\_\_\_\_  
(Max 15 pts)

**Basis for Score:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Proposer Organization: \_\_\_\_\_

**D. Fee Offer (20 points)**

**STEP 1.** The selection committee members must use the following formula to develop an initial score for the proposer (Initial Score for Subject Proposer):

\_\_\_\_\_ (Subject Guaranteed Minimum Annual Fee Net Present Value) **divided by** \_\_\_\_\_ (Highest Guaranteed Minimum Annual Fee Present Value Submitted) **times 20** (Max Pts.) = \_\_\_\_\_ (Initial Score for Subject Proposer)

**STEP 2.** Determine if any adjustments to the Initial Score for Subject Proposer are necessary. The selection committee member may adjust the Initial Score for Subject Proposer up or down taking the following into account:

- How the proposed fee offer relates to the fee offer for the prior license term of this concession and/or similar concessions.
- The feasibility of the proposed fee offer based on the planned operations for the concession and the financial history of the concession.
- Consider if the proposer included an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum annual fee over the license term.
- Any other factors which might affect the revenue paid to the city (deductions from gross receipts, etc.)

Selection committee members should explain the basis for any adjustments made to the Initial Score for Subject Proposer.

**STEP 3.** Determine the Final Score for Subject Proposer (Initial Score for Subject Proposer + or – any adjustments) and place the figure next to D Score.” If no adjustments were made to the Initial Score for Subject Proposer, the Initial Score for Proposer shall become the Final Score for Subject Proposer and shall be placed next to “D Score.”

**D Score** \_\_\_\_\_  
(Max 20 pts)

**Explain basis for rating, if adjustments to the Initial Score for Subject Proposer were made:**

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Name of Proposer Organization: \_\_\_\_\_

**E. Integrated Sustainability by Design (15 points)**

*Extent to which the proposer demonstrates the ability to undertake all sustainability-based obligations under the License Agreement.*

**Consider the following factors:**

The fundamental goals of sustainability are to diminish the utilization of non-renewable energy, limit landfill waste, and create healthy, overall sustainable conditions. Proposers should include an organizational plan for sustainability that looks to decrease adverse effects on the climate and improve the overall quality of life of its users. Parks is seeking proposals that include the following, as applicable and feasible:

- Enhance site potential through sustainably integrated design (see 5 b. below)
- Limit non-renewable energy utilization
- Utilize ecologically ideal items (see 5 c. below)
- Conserve water
- Upgrade indoor natural quality through biophilic designs, which can include incorporating natural materials, natural lighting, vegetation, and other elements of the natural world into the built environment
- Optimize all maintenance and operations to follow concepts of sustainability

Proposers should identify each portion of the site that can be improved through sustainably integrated design and provide design plans, with labels and explanations, accordingly. Parks is seeking proposals that include sustainable technologies such as:

- Use energy-efficient lighting & appliances
- Install motion-activated fixtures and lights
- Use low-pressure faucets and water closets, etc.
- Increase permeable surfaces
- Incorporate Storm Water Management, including adding rain garden, if feasible.
- Reduce paved surface areas by adding new landscaping in and around parking lots
- Install or convert building systems including Heating Ventilation and Air Conditioning to high efficiency, electric or sustainable systems
- Use locally sourced materials
- Using sustainable/recycled materials
- Include a Comprehensive Waste Management Plan, including recycling program and composting, if feasible.
- Plant new deciduous trees, green roofs and landscaping to provide shade and reduce heat islands
- Install bike racks
- Provide electric charging stations for vehicles and maintenance equipment
- Utilize electric vehicles and maintenance equipment

Proposers should include a plan for integrating sustainability into everyday operations such as:

- Provide sustainability measurements, analytics, and performance reviews or energy audits
- Use a sustainable leadership system to ensure an operation that is sustainable at its core (via employee training or workshops)
- Provide a detailed plan for phasing out plastic usage and single-use items
- Use "clean" or "green" cleaning products to ensure cleaner (water) run-off for the surrounding community
- Use sustainable soaps, toilet paper, hand dryers (rather than paper towels), low-pressure faucets, etc. for patrons
- Provide a plan to organize composting or partner with a composting entity to ensure minimal trash to landfills

10-15 points	Proposer demonstrates a superior capability to undertake all sustainability-based obligations under the license agreement based on the above considerations.
5-9 points	Proposer demonstrates satisfactory capability to undertake all sustainability-based obligations under the license agreement based on the above considerations.
0-4 points	Proposer demonstrates limited capability to undertake all sustainability-based obligations under the license agreement based on the above considerations.

**E Score** \_\_\_\_\_  
(Max 15 pts)

**Basis for Score:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TOTAL (A+B+C+D+E) =** \_\_\_\_\_

Name of Proposer Organization: \_\_\_\_\_

**Revised Total Score** \_\_\_\_\_

*(List each category changed & reference page numbers as applicable)*

Result of:  Committee Discussion     Interview (if applicable)     BAFO submission (if applicable)  
 Other \_\_\_\_\_

Date: \_\_\_\_\_ Evaluator's Signature: \_\_\_\_\_

**Revised Total Score** \_\_\_\_\_

*(List each category changed & reference page numbers as applicable)*

Result of:  Committee Discussion     Interview (if applicable)     BAFO submission (if applicable)  
 Other \_\_\_\_\_

Date: \_\_\_\_\_ Evaluator's Signature: \_\_\_\_\_

**Revised Total Score** \_\_\_\_\_

*(List each category changed & reference page numbers as applicable)*

Result of:  Committee Discussion     Interview (if applicable)     BAFO submission (if applicable)  
 Other \_\_\_\_\_

Date: \_\_\_\_\_ Evaluator's Signature: \_\_\_\_\_

**Revised Total Score** \_\_\_\_\_

*(List each category changed & reference page numbers as applicable)*

Result of:  Committee Discussion     Interview (if applicable)     BAFO submission (if applicable)  
 Other \_\_\_\_\_

Date: \_\_\_\_\_ Evaluator's Signature: \_\_\_\_\_



# FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 7)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”), pursuant to Section 1-05 of the Concession Rules of the City of New York, unanimously authorizes the NYC Department of Parks and Recreation (NYC Parks) to issue an RFP for a term of twenty-five (25) years for the Development, Operation, and Maintenance of an Outdoor Café and Other Amenities in WNYC Transmitter Park, Brooklyn.

BE IT FURTHER RESOLVED, that NYC Parks shall present the agreement it proposes to enter into at a public hearing of the FCRC for comment.

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

***4/16/2025***

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

**Title:** City Chief Procurement Officer

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