

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No.1)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the existing license agreement between Parks and Statue Cruises, LLC (“Licensee”) for the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee.. The amendment, among other things, extends the agreement through September 30, 2019; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. (January 1, 2018 – December 31, 2018): \$2,500,000 vs. 8.5%; (January 1, 2019 – September 30, 2019): \$1,875,000 vs. 8.5%; First Option Year (October 1, 2019 – September 30, 2020): \$2,500,000 vs. 8.5%; Second Option Year (October 1, 2020 – September 30 2021): \$2,500,000 vs. 8.5%.

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

January 10, 2018

Date: _____

Signed: _____

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

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: <u>New York City Department of Parks and Recreation ("Parks")</u>	RECOMMENDED CONCESSIONAIRE Name: <u>Statue Cruises, LLC</u> Address: <u>1 Audrey Zapp Drive, Room 108B, Jersey City, NJ 07305</u> Telephone # (201) 432-6321 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #20-8877253 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: <u>Amendment to the existing license agreement with Statue Cruises, LLC for the operation of three landing slips at The Battery, Manhattan, New York</u> CONCESSION I.D.# <u>M5-E-M</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*)

Address Three Landing Slips at the Battery ☐ N/A

*Attach additional sheet

Borough Manhattan **C.B.** 1 **Block #** 3 **Lot #** 1

SELECTION PROCEDURE

(*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
- ☐ Competitive Sealed Proposals* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___.)
- ☒ Different Selection Procedure: * (☐ Sole Source Agreement ☒ Other: Amendment to existing license agreement)
- > FCRC approved different selection procedure on 04/13/2017.
- ☐ Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Extension Term: One (1) year, nine (9) months

Renewal Option(s) Term: Two (2) one (1)-year renewal options

Total Potential Term: Three (3) years, nine (9) months

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

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet ☐s attached

☐ **Annual Fee(s)** \$ _____

☐ **% Gross Receipts** _____%

☒ **The Greater of Annual Minimum Fee(s) of**

Year 11: \$2,500,000 vs. 8.5%

Year 12: \$1,875,000 vs. 8.5%

Option Year 1: \$2,500,000 vs. 8.5%

Option Year 2: \$2,500,000 vs. 8.5%

☐ **Other**

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP.

☐ YES ☒ NO

If YES, check the applicable box(es) below:

- ☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by ___/___/___, which was at least 30 days prior to its issuance.
- ☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.
- ☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by ___/___/___, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP received written notice by 03/03/2017, which was at least 40 days

in advance of the FCRC meeting on 04/13/2017 at which the agency sought and received approval to use a different selection procedure.

- ☐ The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on XXXXX

Award is a major concession.

☐ YES ☒ NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

☐ CPC approved on __/__/__ ☐ City Council approved on __/__/__ or ☐ N/A

AUTHORIZED AGENCY STAFF

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

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- ☐ The concession was approved by the FCRC on __/__/__.
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han

Title Director of Concessions

Signature _____ **Date** __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

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

Signature _____ **Date** __/__/__
City Chief Procurement Officer

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

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amendment to the existing license agreement between Parks and Statue Cruises, LLC for the operation of three landing slips at The Battery, Manhattan, New York.

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

A. SELECTION PROCEDURE

☐

Sole Source

☒

Other *Describe:* Amendment to existing license agreement between Parks and Statue Cruises, LLC.

B. NEGOTIATIONS

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

The amendment of the existing license agreement between Parks and Statue Cruises, LLC ("Licensee") for the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee. The amendment, among other things, extends the agreement through September 30, 2019; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. (January 1, 2018 – December 31, 2018): \$2,500,000 vs. 8.5%; (January 1, 2019 – September 30, 2019): \$1,875,000 vs. 8.5%; First Option Year (October 1, 2019 – September 30, 2020): \$2,500,000 vs. 8.5%; Second Option Year (October 1, 2020 – September 30, 2021): \$2,500,000 vs. 8.5%.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

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

The National Park Service ("NPS") and Statue Cruises, LLC ("Statue Cruises") are parties to an agreement by which Statue Cruises provides ferry services to the Statue of Liberty National Monument ("Statue of Liberty") and Ellis Island from The Battery, Manhattan. On February 28, 2014, the parties amended the agreement to extend the expiration date by eighteen (18) months, from March 31, 2018 to September 30, 2019. Statue Cruises is the only ferry operator licensed by NPS to operate at the Statue of Liberty and Ellis Island. The justification for the amendment was mitigation of the effects of a two (2) year closure of the Statue of Liberty and Ellis Island to address damage from Superstorm Sandy and related repair work.

The current license agreement between Parks and Statue Cruises for the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee expires on December 31, 2017. Parks has negotiated an amendment to the current agreement to extend the term by twenty-one (21) months so that it expires on September 30, 2019, conterminously with the agreement between NPS and Statue Cruises.

Since NPS is the only entity with power to grant access to the Statue of Liberty and Ellis Island, and Statue Cruises is the sole ferry service with an agreement with NPS to provide said service, Parks has determined that a competitive solicitation process for this concession is not warranted. Parks is committed to offering this service to the public. Due to Statue Cruises' relationship with NPS, Parks is requesting sole source approval of the amendment which includes an extension of the term of the current agreement to make it coterminous with the agreement between NPS and Statue Cruises.

For the reasons set forth above, Parks believes that it is in the City's best interest to amend Statue Cruise's existing agreement for the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee.

D. PUBLIC HEARING ☐ **N/A – Subject award NOT a significant concession]**

1. Publication & Distribution of Public Hearing Notice

☐ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by ___/___/___.

☐ _____, a NYC citywide newspaper on ___/___/___ and ___/___/___
☐ _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

☒ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 11/24/2017, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 11/24/2017, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice and amended notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 11/24/2017.

☒ New York Post, a NYC citywide newspaper on 12/7/2017 and 12/8/2017.
☒ New York Daily News, a NYC local newspaper published in the affected borough(s) on 12/7/2017 and 12/8/2017.

2. Public Hearing Date, Exception to Public Hearing Requirement

☒ A Public Hearing was conducted on 12/11/2017.

OR

☐ The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345


E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

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

MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Mr. Noah Pfefferblit, District Manager, Community Board 1

FROM: Darryl Milton, Project Manager, Revenue 

SUBJECT: Notice of Joint Public Hearing, December 11, 2017: Intent to amend the existing license agreement between the New York City Department of Parks and Recreation and Statue Cruises, LLC for the operation of three landing slips at The Battery, Manhattan.

DATE: November 24, 2017

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation ("Parks") to be held on Monday, December 11, 2017 at 253 Broadway, 14th Floor Conference Room, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the existing license agreement between Parks and Statue Cruises, LLC ("Licensee") the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee. The amendment, among other things, extends the agreement through September 30, 2019; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. (January 1, 2018 – December 31, 2018): \$2,500,000 vs. 8.5%; (January 1, 2019 – September 30, 2019): \$1,875,000 vs. 8.5%; First Option Year (October 1, 2019 – September 30, 2020): \$2,500,000 vs. 8.5%; Second Option Year (October 1, 2020 – September 30, 2021): \$2,500,000 vs. 8.5%.

A draft copy of the amended license agreement may be reviewed or obtained at no cost, commencing on Monday, December 4, 2017 through Monday, December 11, 2017, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

Individuals requesting Sign Language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

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



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345


E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
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MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Mr. Noah Pfefferblit, District Manager, Community Board 1

FROM: Darryl Milton, Project Manager, Revenue 

SUBJECT: Corrected Notice of Joint Public Hearing, December 11, 2017: Intent to amend the existing license agreement between the New York City Department of Parks and Recreation and Statue Cruises, LLC for the operation of three landing slips at The Battery, Manhattan.

DATE: November 24, 2017

CORRECTED NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation ("Parks") to be held on Monday, December 11, 2017 at 253 Broadway, 14th Floor Conference Room, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the existing license agreement between Parks and Statue Cruises, LLC ("Licensee") the operation of three landing slips at The Battery for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee. The amendment, among other things, extends the agreement through September 30, 2019; with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

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

AMENDMENT TO LICENSE AGREEMENT

BETWEEN

STATUE CRUISES, LLC

AND

**CITY OF NEW YORK
PARKS & RECREATION**

FOR THE OPERATION OF THREE LANDING SLIPS AT THE BATTERY,

MANHATTAN, NEW YORK

M5-E-M

DATED: _____, 2017

FIRST AMENDMENT TO LICENSE AGREEMENT (“Amendment”) made this ____ day of _____, 2017, between the City of New York (the “City”) acting by and through the

Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Statue Cruises, LLC (“Licensee”), a corporation organized under the laws of the State of New York, whose address is Pier 3, the Embarcadero, San Francisco, CA 94111.

WHEREAS, the parties to this Amendment are parties to that certain License Agreement dated December 12, 2007 (the “License” or “License Agreement”); and

WHEREAS, the effects of Superstorm Sandy severely damaged both Liberty and Ellis Islands rendering them unavailable to the public for immediate use, as well as for the use and purposes identified in the License over an extended period of time; and

WHEREAS, the expiration date of Licensee’s National Park Services (“NPS”) Agreement has been extended to September 30, 2019; and

WHEREAS, the parties desire to extend the Term of the License to make the Termination Date of the License coterminous with Licensee’s NPS Agreement;

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

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

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

1.2 Section 1.1 of the License Agreement is hereby amended by deleting Section 1.1 in its entirety and inserting the following new 1.1:

(j) Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more particularly described in Section 2.1(j) herein, for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and

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

1.3 Section 2.1(i) of the License Agreement is hereby amended by deleting Section 2.1(i) in its entirety and inserting the following new Section 2.1(i):

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year, except for Year 12 or Operating Year 12, which shall which shall refer to the period between January 1, 2019 and September 30, 2019.

1.4 Section 2.1(j) of the License Agreement is hereby amended by deleting Section 2.1(j) in its entirety and inserting the following new Section 2.1(j):

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, three (3) landing slips as authorized in writing by Parks currently numbered 3, 4, and 5, and adjacent walkways located in the Battery, Manhattan, and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping, and upon amendment of the license agreement between Parks and The Battery Conservancy (“TBC”) for the operation and maintenance of a food and beverage concession in the New Amsterdam Plein & Pavilion (“Pavilion”), in the Battery, Manhattan, and with Parks written approval, the information wing(s) of the Pavilion as denoted in Exhibit D attached hereto. Parks may authorize Licensee to utilize a different landing slip from slip(s) currently authorized, subject to availability, provided however, that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

1.5 Section 2.1(l)(i) of the License Agreement is hereby amended by deleting Section 2.1(l)(i) in its entirety and inserting the following new Section 2.1(l)(i):

(i) “Gross Receipts” shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks Merchandise as defined below) or services of any kind at the Battery, provided that Gross Receipts shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

1.6 Section 2.1 of the License Agreement is hereby amended by inserting the following Section 2.1(n):

(n) “Parks Merchandise” shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

1.7 Section 3.1 of the License Agreement is amended by deleting Section 3.1(a) in its entirety and inserting the following new Section 3.1(a):

(a) September 30, 2019;

1.8 Section 3.1 of the License Agreement is amended by inserting the following at the end of Section 3.1:

This License may be renewed for two (2) additional one (1) year terms, exercisable at Parks' discretion provided that the expiration date of the NPS Agreement has been extended for at least the same term. In the event the NPS Agreement is terminated during the renewal term, the renewal shall terminate on the same date as the NPS Agreement.

1.9 Section 3.7 of the License Agreement is amended by deleting Section 3.7 in its entirety and inserting the following new Section 3.7:

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

1.10 Section 3.10 of the License Agreement is amended by deleting Section 3.10 in its entirety and inserting the following new Section 3.10:

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

1.11 Section 4.1(a) of the License Agreement is amended by deleting Section 4.1(a) in its entirety and inserting the following new Section 4.1:

Operating Year	Minimum Annual Fee	VS. Percentage of Gross Receipts
1	\$2,000,000	8.0%
2	\$2,000,000	8.0%

3	\$2,000,000	8.0%
4	\$2,000,000	8.0%
5	\$2,000,000	8.0%
6	\$2,000,000	8.5%
7	\$2,000,000	8.5%
8	\$2,000,000	8.5%
9	\$2,000,000	8.5%
10	\$2,000,000	8.5%
11	\$2,500,000	8.5%
12	\$1,875,000	8.5%
Option Year 1 (if applicable)	\$2,500,000	8.5%
Option Year 2 (if applicable)	\$2,500,000	8.5%

1.12 Section 4 of the License Agreement is amended by inserting the following Section 4.11:

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

1.13 Section 5.1 of the License Agreement is amended by deleting Section 5.1 in its entirety and inserting the following new Section 5.1:

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

Notwithstanding the foregoing, the parties hereto acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised or abridged in any way.

1.14 Section 9.2 of the License Agreement is amended by deleting the 3rd sentence in Section 9.2 in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees, including the schedule of sailings for the 2017-2018 Operating Year.

1.15 Section 9.25 of the License Agreement is amended by deleting Section 9.25 in its entirety and inserting the following new Section 9.25:

9.25 The sale or advertising of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes is strictly prohibited. In addition, the use of alcohol, smoking, or

the use of electronic cigarettes at the Licensed Premises is prohibited. Licensee will be required to adhere to and enforce this policy.

1.16 Section 9.29 of the License Agreement is amended by deleting Section 9.29 in its entirety and inserting the following new Section 9.29:

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

1.17 Section 9 of the License Agreement is amended by inserting the following Section 9.30:

9.30 Contingent upon Parks prior written approval, Licensee may operate a visitor information, ticket, and merchandise booth in the information wing(s) of the New Amsterdam Plein & Pavilion in Peter Minuit Plaza as denoted in Exhibit D.

1.18 Section 9 of the License Agreement is amended by inserting the following Section 9.31:

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

1.19 Section 12.8 of the License Agreement is amended by deleting Section 12.8 in its entirety and inserting the following new Section 12.8:

12.8 At its sole cost and expense, Licensee shall maintain the three landing slips as assigned by Parks, slips currently numbered 3, 4, and 5, and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of all litter, debris, and garbage.

1.20 Section 16 of the License Agreement is amended by inserting the following Section 16:

To guarantee prompt payment of moneys to due 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 capital undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

1.21 Section 20.1(b) of the License Agreement is amended by deleting Section 20.1(b) in its entirety and inserting the following new Section 20.1(b):

20.1 (b) Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (c) of this Section. Alterations shall become property of City, at its option, upon their attachment, installation, or affixing.

1.22 Section 24 of the License Agreement is hereby amended by deleting Section 24 in its entirety and inserting the following new Section 24:

24.1 Licensee Responsibility

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

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

C. As between the City and the Licensee, the Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting

from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person. Notwithstanding the foregoing, Licensee shall not be responsible for injuries or damages to the extent due to the negligence or intentional misconduct of the City or its officials and employees.

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

24.2 Indemnification and Related Obligations

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

the fullest extent permitted by law.

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

1.23 Section 26 of the License Agreement is hereby amended by deleting Section 26 in its entirety and inserting the following new Section 26:

26.1 Licensee's Obligation to Insure

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

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

26.2 Commercial General Liability Insurance

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall

be “occurrence” based rather than “claims-made.”

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

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

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 License, and such insurance shall comply with the laws of the State of New York.

26.4 Commercial Automobile Liability Insurance

A. With regard to all operations under this License, 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) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

26.5 Property Insurance

A. At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special

causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an additional insured and loss payee as its interests may appear. Licensee's replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.

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

26.6 Flood Insurance

A. At the direction of the Commissioner, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

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

26.7 General Requirements for Insurance Coverage and Policies

A. Policies of insurance required under this Section 26 shall be provided by

companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII”, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of A3, or a Fitch’s Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City Law Department.

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

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

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

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

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

26.8 Proof of Insurance

A. Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to or upon execution of this Amendment.

B. For Workers' Compensation, Employer's Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance coverage.

C. For all insurance required under this Section other than Workers' Compensation, Employer's Liability, and Disability Benefits Insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Commissioner (attached hereto as **Exhibit F**) or certified copies of all policies referenced in such Certificate of Insurance.

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

E. Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Section is secured and maintained, nor does it

waive Licensee's liability for its failure to do so.

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

26.09 Miscellaneous

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

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

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of

New York, together with its officials and employees, as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

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

1.24 Section 29.1 of the License Agreement is hereby amended by deleting Section 29.1 in its entirety and inserting the following new Section 29.1:

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

(b) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License 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.

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

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

1.25 **Exhibit A** to the License Agreement is amended by adding **Exhibit A1**, attached to this Amendment.

1.26 **Exhibit B** to the License Agreement is amended by deleting **Exhibit B** in its entirety and replacing it with **Exhibit B1**, attached to this Amendment.

1.27 All references to “Battery Park” in the License Agreement shall be deemed amended to read “The Battery”.

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

1.29 This Amendment may be executed in several counterparts, which shall constitute one and the same instrument. The License granted as set forth in Paragraph 1.2 of this Amendment shall become effective upon the date the Amendment is fully executed by the parties. The concession shall become effective upon registration with the Comptroller and commence on January 1, 2018 or such other date as set forth in a written notice to proceed issued by Parks to Licensee.

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

CITY OF NEW YORK
PARKS & RECREATION

STATUE CRUISES, LLC

By: _____

By: _____

Name:

Name:

Title:

Title:

Dated: _____

Dated: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2017 before me personally came _____ to me known, and known to be the _____ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

)ss:

COUNTY OF NEW YORK)

On this __ day of _____, 2017 before me personally came _____ to me known, and known to be the _____ of Statue Cruises, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

EXHIBIT A1

Year 11

<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
01/01/18	\$208,333.33	
02/01/18	\$208,333.33	
03/01/18	\$208,333.33	
04/01/18	\$208,333.33	
05/01/18	\$208,333.33	
06/01/18	\$208,333.33	VS 8.5% OF GROSS
07/01/18	\$208,333.33	
08/01/18	\$208,333.33	
09/01/18	\$208,333.33	
10/01/18	\$208,333.33	
11/01/18	\$208,333.33	
12/01/18	\$208,333.33	

Year 12

<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
01/01/19	\$208,333.33	
02/01/19	\$208,333.33	
03/01/19	\$208,333.33	
04/01/19	\$208,333.33	
05/01/19	\$208,333.33	VS 8.5% OF GROSS
06/01/19	\$208,333.33	
07/01/19	\$208,333.33	
08/01/19	\$208,333.33	
09/01/19	\$208,333.33	

Option Year 1

<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
10/01/19	\$208,333.33	
11/01/19	\$208,333.33	
12/01/19	\$208,333.33	
01/01/20	\$208,333.33	
02/01/20	\$208,333.33	
03/01/20	\$208,333.33	VS 8.5% OF GROSS
04/01/20	\$208,333.33	
05/01/20	\$208,333.33	
06/01/20	\$208,333.33	
07/01/20	\$208,333.33	
08/01/20	\$208,333.33	
09/01/20	\$208,333.33	

Option Year 2

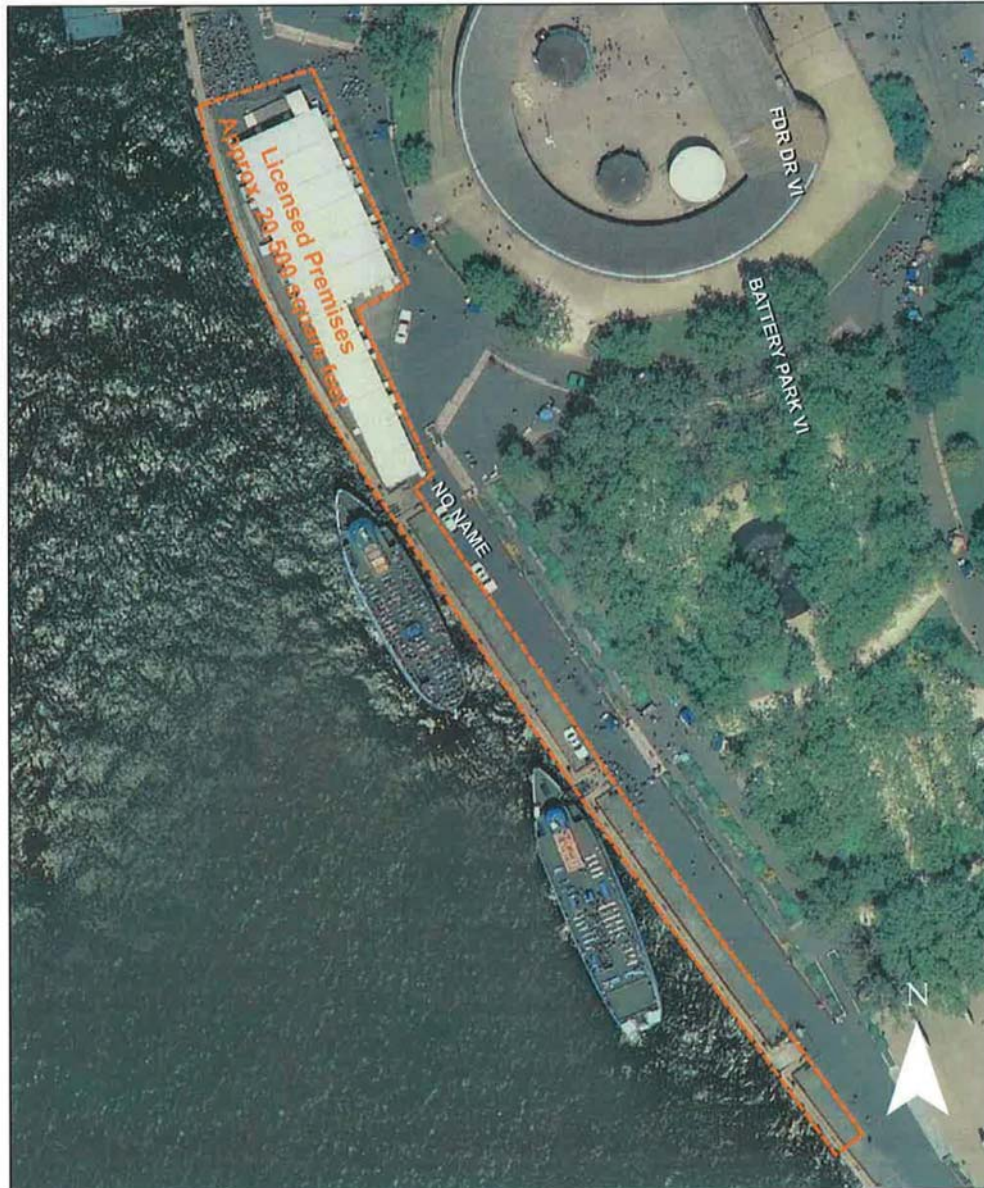
<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
10/01/20	\$208,333.33	
11/01/20	\$208,333.33	
12/01/20	\$208,333.33	
01/01/21	\$208,333.33	
02/01/21	\$208,333.33	
03/01/21	\$208,333.33	VS 8.5% OF GROSS
04/01/21	\$208,333.33	
05/01/21	\$208,333.33	
06/01/21	\$208,333.33	
07/01/21	\$208,333.33	
08/01/21	\$208,333.33	
09/01/21	\$208,333.33	

EXHIBIT B1

EXHIBIT C

License Agreement #M5-E-M

Battery Park
Manhattan, New York



City of New York Parks and Recreation

Michael R. Bloomberg, Mayor
Adrian Benepe, Commissioner

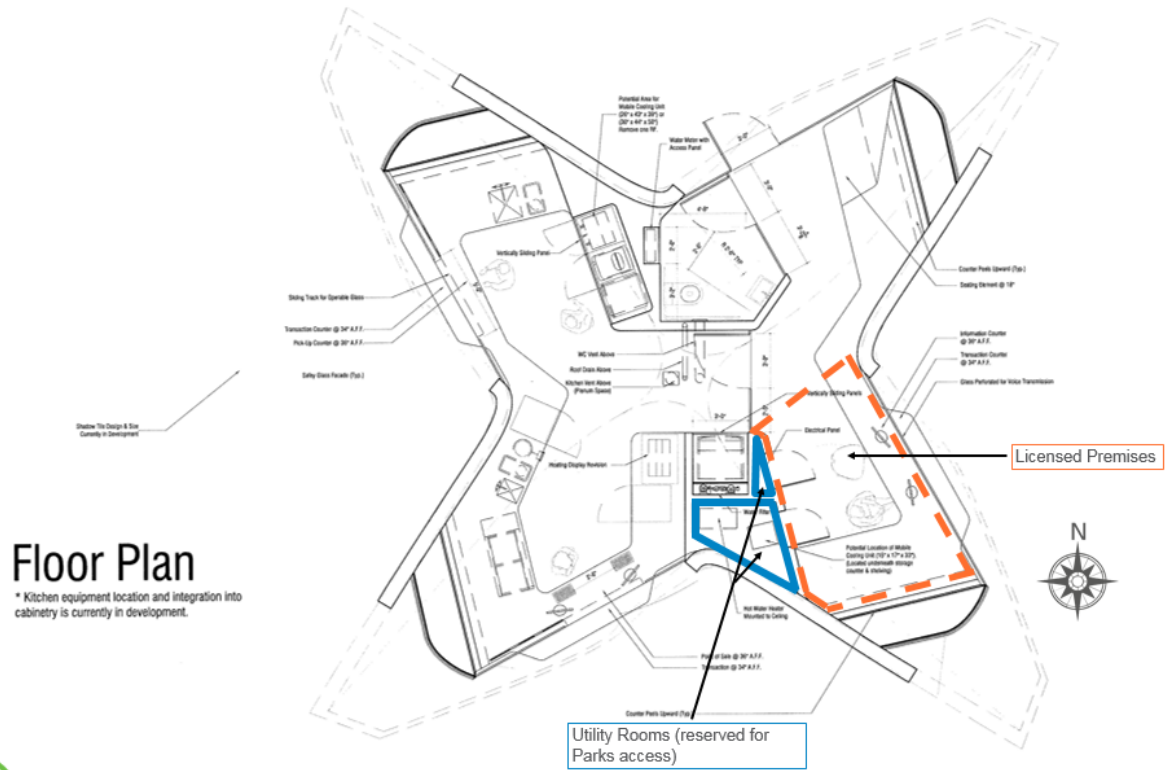
(c) 2009 City of New York/Parks and Recreation. May not be reproduced without consent.
This map has been prepared in whole or part using secondary data.
Data accuracy is limited by the scale and accuracy of the original sources.
Site-specific conditions should be field-verified.
For legal accuracy refer to the maps that established parks and acquisition maps.

0 35 70 140 210 280 Feet

--- Limit Line

EXHIBIT D

Statue Cruises Ticket Kiosk Licensed Premises



New Amsterdam Plein and Pavilion at Peter Minuit Plaza

EXHIBIT E

PAID SICK LEAVE LAW CONCESSION AGREEMENT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such

employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

Exemptions and Exceptions

Notwithstanding the above, the PSLI does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;
- 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 his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLI. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLI.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLI. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

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

Records

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

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLI, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLI has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLI civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSLI is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLI provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLI may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT F

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the Bryant Park Corp. regarding Bryant Park in Manhattan.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with the Bryant Park Corp. to the Franchise and Concession Review Committee for approval.

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

January 10th, 2018

Date: _____

Signed: _____

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

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: Sole Source License Agreement with the Bryant Park Corp. regarding Bryant Park in Manhattan.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M8-O

SELECTION PROCEDURE

(* City Chief Procurement Officer approval of CPSR required)

☐ Competitive Sealed Bids (CSB)
 ☐ Competitive Sealed Proposals (CSP)*

☒ Different Procedure * (☒ Sole Source Agreement ☐ Other _____)

☐ Negotiated Concession*

Recommended Concessionaire: Bryant Park Corp. ☒ EIN ☐ SSN # 13-3009946
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> <p> Initial Term: To be negotiated Renewal Option(s) Term: To be negotiated </p> <p> Total Potential Term: To be negotiated </p>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</p> <p align="center">(Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____ %</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____ % of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula To be negotiated</p>
--	---

LOCATION OF CONCESSION SITE(S)* ☐ N/A

Address: Between 5th & 6th Avenue, and between West
 40th Street & West 42nd Street
 Borough: Manhattan C.B. 5
 Block # 1257 Lot # 2
 *Attach additional sheet

CONCESSION TYPE (Check all that apply)

> Significant Concession:

☐ NO
☒ YES Basis:
 ☒ Total potential term =>10 years ☐ Projected annual income/value to City >\$100,000 ☐ Major Concession

> Major Concession:

☒ NO
☐ YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. ☐ YES ☒ NO

If YES, check the applicable box(es) below:

☐ The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

☐ The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

☐ The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

☐ The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

☐ The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.

- ☐ The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name **Alexander Han**

Title **Director of Concessions**

Signature 

Date 12/4/2017

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 12/8/17

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. **DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS**

☐ N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- ☐ Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- ☐ Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- ☐ The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- ☒ Other (Describe):

The New York City Department of Parks and Recreation ("Parks") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedure") for the reasons listed in section (B)(2).

B. **DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS**

☐ N/A

1. ***Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.***

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate a Sole Source License Agreement with the Bryant Park Corp. ("BPC") regarding Bryant Park in Manhattan.

2. ***Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.***

BPC is a not-for-profit, private management company and a cooperating business improvement district of neighboring property owners. It was founded in 1980 with a charge to reclaim Bryant Park for the people of New York City, as Bryant Park had suffered a severe decline in conditions in the 1970s. Since that time, BPC has transformed the park into a premier public space. BPC's ongoing mission is to create a rich and dynamic visual, cultural and intellectual outdoor experience for New Yorkers and visitors alike; to burnish the park's status as a prime NYC tourist destination by presenting a meticulously maintained venue for predominantly free entertainment events; and to help prevent crime and disorder in the park by attracting thousands of patrons, at all hours, thus fostering a safe environment.

BPC is privately funded, and includes talented professionals in the fields of urban management, sanitation, security, industrial design, graphic design, horticulture, retail services, event planning and management, visitors' services, and information systems. BPC works in Bryant Park to provide the public with a high level of sanitation, security services, spotless restrooms, colorful gardens, and seasonal horticultural installations for the park. BPC also works with civic minded organizations and park patrons to offer interesting amenities, free educational programs and predominantly free high-level entertainment for people of all ages. Careful selection and management of sublicensees ensures that park visitors have access to high quality food and merchandise.

On July 29, 1985, the City of New York ("Parks") entered into a management agreement with BPC, then called the Bryant Park Restoration Corporation, to manage Bryant Park on the City's behalf. After an initial term, on July 1, 1988, Parks and BPC entered into a 15-year agreement with an unspecified number of five-year renewal options. The most recent renewal expires on June 30, 2018.

Under the agreement and at its own expense, BPC provides all maintenance and security services, funds its capital projects, and hosts high-quality events, activities and concessions for all New Yorkers. BPC is responsible for all maintenance, repair, snow removal, landscaping, programming, and security in the park. The agreement provides BPC with the exclusive right to operate and maintain all concessions in the park, retain revenue from such concessions and enter into sublicenses with concessionaires. They are also permitted to retain all revenue from special events and sponsorships. Any revenue received by BPC by such operations is used to fund BPC's operating expenses in managing the park.

Presently, Parks seeks to negotiate a new Sole Source License Agreement with BPC for the continued operation, maintenance and programming of Bryant Park. It is anticipated that the new agreement will allow BPC to engage in revenue generating activities including the operation of the Bryant Park restaurant, food concessions, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks. It is anticipated that all revenue received by BPC will continue to be used exclusively for the operation, maintenance, and programming of Bryant Park.

BPC has extensive experience providing valuable public amenities and has been an excellent steward of Bryant Park. Given BPC's demonstrated and firm commitment to maintaining and improving Bryant Park, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement with BPC, rather than proceed with a competitive solicitation process.

3a. ***Briefly explain the selection procedure that will be utilized.***

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with BPC which will go before the FCRC on January 10, 2018 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with BPC to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:*** ☒ N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- ☐ The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** ____/____/____.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. ☒ N/A



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

City of New York
Parks & Recreation

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

MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Wally Rubin, District Manager, Manhattan Community Board 5

FROM: Phil Abramson, NYC Parks Director of Revenue Communications *PA*

SUBJECT: Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with the Bryant Park Corp. regarding Bryant Park in Manhattan

DATE: December 1, 2017

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 5 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with the Bryant Park Corp. for the operation, maintenance and programming of Bryant Park in Manhattan, in addition to revenue-generating activities including the operation of the Bryant Park restaurant, food concessions, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks.

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, NYC Parks Director of Revenue Communications, by phone at (212) 360-3426 or via email at phil.abramson@parks.nyc.gov.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

RESOLVED, that, pursuant to Section 1-05 of the Concession Rules of the City of New York, the Franchise and Concession Review Committee (“FCRC”) hereby unanimously approves and authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing license agreement with Randall’s Island Sports Foundation, now known as Randall’s Island Park Alliance, Inc., and Island Tennis L.P. d/b/a Sportime, now known as Sportime Clubs LLC for the construction, operation, maintenance and management of a year-round tennis facility at Randall’s Island Park, Manhattan (“Licensed Premises”). Parks anticipates that, among other things, the amendment would expand the Licensed Premises to include the construction of ten (10) additional fullsize tennis courts adjacent to the current Licensed Premises and extend the term of the agreement for twenty-five (25) years from the date the expanded facility opens.

BE IT FURTHER RESOLVED, that Parks shall submit the amendment it proposes to enter into with the Randall’s Island Park Alliance, Inc. and Sportime Clubs LLC, to the FCRC for approval.

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

January 10, 2018

Date: _____

Signed: _____

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

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: Construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park, Manhattan
# VOTES required for proposed action = 6 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M104-IT

SELECTION PROCEDURE

(* City Chief Procurement Officer approval of CPSR required)

☐ Competitive Sealed Bids (CSB)
 ☐ Competitive Sealed Proposals (CSP)*

☒ Different Procedure * (☐ Sole Source Agreement ☒ Other Intent to negotiate an amendment to the existing License Agreement)

☐ Negotiated Concession*

Recommended Concessionaire: Sportime Clubs LLC ☒ EIN ☐ SSN # 11-3224021
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> <p>Initial Term: To be negotiated</p> <p>Renewal Option(s) Term: To be negotiated</p> <p>Total Potential Term: To be negotiated</p>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</p> <p align="center">(Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____ %</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____ % of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula To be negotiated</p>
--	--

LOCATION OF CONCESSION SITE(S)* ☐ N/A

Address: 1 Randall's Island; New York, NY 10035

Borough: Manhattan C.B. 11

Block # 1819 Lot # 50

*Attach additional sheet

CONCESSION TYPE (Check all that apply)

> Significant Concession:

☐ NO

☒ YES Basis:

☒ Total potential term =>10 years ☒ Projected annual income/value to City >\$100,000 ☐ Major Concession

> Major Concession:

☒ NO

☐ YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. ☐ YES ☒ NO

If YES, check the applicable box(es) below:

☐ The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

☐ The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

☐ The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

☐ The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

☐ The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

the FCRC to waive advance written notice to each affected CB/BP.

- ☐ The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name **Alexander Han**

Title **Director of Concessions**

Signature 

Date 12/20/2017

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 12/22/17

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

A. **DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS** ☐ N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- ☐ Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- ☐ Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- ☐ The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- ☒ Other (Describe)

The New York City Department of Parks and Recreation ("Parks") will be pursuing an amendment to its current License Agreement pursuant to Sections 1-05 and 1-16 of the Concession Rules of the City of New York ("different procedures") for the reasons listed in section (B)(2) below.

B. **DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS** ☐ N/A

1. **Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date – when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate an amendment to the License Agreement ("Agreement") between Parks, Randall's Island Sports Foundation, now known as Randall's Island Park Alliance, Inc. ("RIPA") and Island Tennis, L.P., d/b/a Sportime, now known as Sportime Clubs, LLC ("Sportime") for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park, Manhattan. It is anticipated that, among other things, the amendment would expand the Licensed Premises to include the construction of 10 additional fullsize tennis courts adjacent to the current Licensed Premises and extend the term of the Agreement for 25 years from the date the expanded facility opens. Parks believes that a term extension of this length is necessary in order for Sportime to move forward with its anticipated \$20 million capital investment in constructing an expanded facility, which is described more in section (B)(2) below.

2. **Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

In 2005, Parks and RIPA entered into the Agreement with Sportime for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park. Sportime invested \$18 million in private funds to build this 20-court facility, far exceeding their minimum capital requirement of \$7.5 million. At the conclusion of its construction, the Agreement commenced on July 1, 2009 for a 20-year term, expiring on June 30, 2029.

The Sportime Tennis Center is a state-of-the-art tennis facility where all New Yorkers are welcome to play on 10 Deco-Turf hard tennis courts and 10 Har-Tru clay tennis courts. Court reservations, group and private instructional programs, and competitive programs and tournaments are offered for adults and juniors alike. Five of the Deco-Turf hard courts are housed in a year-round permanent building, and the other 15 courts are outdoor courts, but bubbled during the winter/indoor season. Half of the facility's courts are available for use by Parks tennis permit holders during the outdoor season. The facility includes an athletic training center, locker rooms, a pro shop, a café, and classroom and meeting spaces. The Sportime Tennis Center is also the home of the John McEnroe Tennis Academy ("JMTA").

Sportime/JMTA introduces tennis to thousands of local youth from the New York City area, including those who, in many cases, would not otherwise have access to the sport. Their youth engagement and intensive outreach efforts are heavily focused on East Harlem and the South Bronx, the two neighborhoods closest to Randall's Island. For their most committed young athletes, Sportime/JMTA provides a pathway to success through competitive tennis, often leading to college scholarships, careers in the industry and, for a few, professional tennis careers.

Sportime's increasing popularity has caused the facility to operate at capacity during prime time hours. In order to best serve the diverse array of New Yorkers who benefit from its offerings and opportunities, Sportime is proposing to expand the existing facility on Randall's Island with an anticipated additional investment of \$20 million in private funds. It is anticipated that the project would include the construction of 10 additional full-size courts with six of those courts being Deco-Turf hard courts and to be housed in a new permanent indoor building. It is anticipated that the other four courts will be Har-Tru clay courts and will be outdoor courts, but bubbled during the winter/indoor season. It is anticipated that the expansion project would also include a support building, a connector structure, renovations to the existing clubhouse, relocated bleacher seating, a viewing slope, an overlook, parking, and U10 learning courts – a cluster of smaller tennis courts optimal for players under the age of 10 and for senior citizens learning to play tennis. Each of these elements is part of a comprehensive design that builds on prior designs for the tennis center and for the master plan of Randall's Island Park. These elements would help maintain the open atmosphere of the Island's publicly accessible spaces and encourage engagement with the outdoors through sports, all while creating an improved tennis facility that people of all ages and skill levels can enjoy. Further, Parks believes that soliciting competitive sealed proposals is not in the best interest of the City. The existing Sportime facility is adjacent to the proposed expansion location and customers and staff would be able to take advantage of the entire site's amenities such as locker rooms and food service. The proposed expansion location is not large enough on its own to support a full-service tennis operation, and even if it were, Parks would not want two separate tennis concessions located right next to each other. This way, Sportime would be able to take advantage of its existing support staff and tennis pros to ensure that operations at the expanded facility run efficiently.

As the site of the proposed expansion is currently Ballfield #30 on Randall's Island, it is anticipated that Sportime will fund the installation of lights at Ballfields #20 and 21, to encourage nighttime play, while making up for the hours lost at Ballfield #30. The installation of lights at Ballfields #20 and #21 must be performed according to Parks' specifications and completion of the installation will be required prior to Ballfield #30 being taken off-line for construction.

It is anticipated that this expansion proposal will result in an increase in free community programs offered to local youth. Currently, Sportime annually provides more than 2,500 hours of free group tennis programs to more than 1,000 youth primarily in East Harlem and the South Bronx. With an expanded facility, it is anticipated that Sportime would increase their free school-sponsored and Community Based Organization ("CBO")-centered tennis instruction to more than 6,000 hours per year, allowing more than 1,300 local youth the opportunity to learn tennis annually. It is anticipated that expanded free, off-site, tennis instruction would also be offered at local schools and CBOs in the communities surrounding the Island.

Additionally, in the context of the proposed expansion, it is anticipated that Sportime would fund \$1.5 million in improvements to one or more existing parks in East Harlem and the South Bronx.

Due to the extraordinary circumstances described above, it is anticipated that an amended license agreement would extend the term of the agreement for twenty-five (25) years from the date that the expanded and improved facility opens to the public. This extension is critical to Sportime's capacity to move forward with this significant anticipated additional \$20 million capital investment, which would bring their total investment on Randall's Island to more than \$38 million.

For the above reasons, and given that Sportime: has proven to be a model concessionaire; has demonstrated a clear commitment to providing world-class tennis facilities on Randall's Island; has

demonstrated a clear commitment to providing substantial and first-class free community tennis programming primarily for the youth of East Harlem and the South Bronx, and; because Sportime invested substantial capital to construct the tennis center, \$18 million, far more than the \$7.5 million required in the Agreement, with additional capital investment each year, Parks believes that it is in the best interest of the City to amend the Agreement, rather than to proceed with a competitive solicitation process.

3a. Briefly explain the selection procedure that will be utilized. [Explain]

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Sections 1-05 and 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing License Agreement, which will go before the FCRC on January 10, 2018 ("Step 1"). Once negotiated, Parks and the FCRC will hold a joint public hearing on the proposed amendment to its existing Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting.

3b. If the selection procedure is a negotiated concession, check the applicable box: ☒ N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- ☐ The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; [Explain]
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; [Explain]
- ☐ The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. [Explain]
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. [Explain]

Approved by CCPO: _____ **on** ____/____/____.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. [Explain] ☒ N/A



MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Angel Mescain, District Manager, Manhattan Community Board 11

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Notice of intent to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate an amendment to the License Agreement between the New York City Department of Parks and Recreation, Randall's Island Sports Foundation, now known as Randall's Island Park Alliance, Inc., and Island Tennis L.P. d/b/a Sportime, now known as Sportime Clubs LLC for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park, Manhattan

DATE: December 1, 2017

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 11 that the New York City Department of Parks and Recreation ("Parks") is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate an amendment to the license agreement between Parks, Randall's Island Park Alliance, Inc. and Sportime Clubs LLC for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park, Manhattan. It is anticipated that, among other things, the amendment would expand the Licensed Premises to include the construction of ten (10) additional fullsize tennis courts adjacent to the current Licensed Premises and extend the term of the agreement for twenty-five (25) years from the date the expanded facility opens.

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 feel free to contact me at 212-360-3426 with any questions or comments you may have.